VOLUME THREE

Appendix to the Journal of the Assembly

LEGISLATURE OF THE STATE OF CALIFORNIA
1959 REGULAR SESSION

REPORTS

January 5, 1959-June 19, 1959

HON. RALPH M. BROWN
Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON. WILLIAM A. MUNNELL
Majority Floor Leader

HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

TABLE OF CONTENTS

VOLUME THREE

Social Welfare, Assembly Interim Committee on
Volume 19, Number 6—Rest Homes for the Aged
Volume 19, Number 7—Foster Care for Children
Volume 19, Number 8—Conditions and Problems of California Industries for the Blind
Volume 19, Number 9—Testimony on Assembly Bill No. 1582

Judiciary, Assembly Interim Committee on
Volume 20, Number 4—Abandoned Property—State Acquisition and Recovery by Rightful Owner
Volume 20, Number 5—Gasoline Octane Identification
Volume 20, Number 6—Traffic Accident Consequences
Volume 20, Number 7—Loyalty Oaths
Volume 20, Number 8—Minimum Standards for Law Enforcement Personnel
Volume 20, Number 9—Pornographic Literature

1959 Legislators Orientation Conference

Education Code, Joint Legislative Committee for Revision of

Legislative Procedure, Joint Committee on
Suggested Procedure for the 1959 Session

ASSEMBLY INTERIM COMMITTEE REPORTS
1957-1959
VOLUME 19 NUMBER 6

REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON SOCIAL WELFARE

REST HOMES FOR THE AGED IN CALIFORNIA

MEMBERS OF THE COMMITTEE

CARLOS BEE, *Chairman*
FRANK LANTERMAN, *Vice Chairman*
BRUCE F. ALLEN
DOROTHY M. DONAHOE
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HAROLD T. SEDGWICK

HAZEL FREDERICKSEN, *Consultant*

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OF THE STATE OF CALIFORNIA

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Chief Clerk

LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, February 16, 1959

HON. RALPH M. BROWN, *Speaker*
and Members of the Assembly
State Capitol, Sacramento

GENTLEMEN: The Interim Committee on Social Welfare, created by House Resolution 218 of the 1957 Regular Session, herewith respectfully submits its final report based upon verbatim testimony given in a hearing on Rest Homes for the Aged in California.

The report was prepared under the direction of the Chairman, Hon. Carlos Bee, and was adopted by the committe on February 18, 1959.

Respectfully submitted,

CARLOS BEE, Chairman
FRANK LANTERMAN, Vice Chairman

BRUCE F. ALLEN
DOROTHY M. DONAHOE
BRUCE SUMNER
SAMUEL R. GEDDES
SHERIDAN N. HEGLAND
VERNON KILPATRICK
S. C. MASTERSON
HAROLD T. SEDGWICK

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HEARINGS ON REST HOMES FOR THE AGED

I. Introduction 7
A. Types of present facilities caring for the aged 7
B. Licensing 8

II. Summary of hearings testimony (in order presented) 9

III. Conclusions and recommendations of the committee 16

IV. Sources of information 19

INTRODUCTION

A. TYPES OF PRESENT FACILITIES CARING FOR THE AGED

Various types of facilities have developed in California to meet out-of-home living requirements of older persons. The terms nursing home, rest home, boarding home, and institution are often used indiscriminately although presumably each facility is licensed to provide a specific service. However, it is difficult to draw definite lines in the type of services an older person may require as his needs may change from time to time.

Generally nursing homes are defined as those caring for persons who are disabled by illness and require medical supervision and nursing care.

Boarding homes provide personal care and supervision to active and ambulatory older persons presumed to be well.

Rest homes may take on some of the qualities of either or both types of services offered by nursing and boarding homes, and may be any place or institution providing chronic or convalascent care.

The above types of out-of-home living arrangements for aged excluded the group of aged who need hospital or psychiatric care.

Whatever the type of facility it must be physically safe and comfortable, provide adequate food, clothing and housing; make provision for satisfactory health, recreational and spiritual needs of the older people who live there.

Older people come to live in these facilities for a variety of reasons; the breaking up of their former home due to illness or death of a family member; because they are no longer able to manage the details of homemaking; due to insufficient financial resources to keep up a home, or because a comfortable home with relatives is not available.

Admission to a home does not mean an aged person has lost the capacity to enjoy life; to learn; to develop skills, or to adjust to new conditions, therefore it is necessary for every type of home for older persons to supply varied activities for those persons able to participate.

B. LICENSING

There are three state departments involved in licensing the various kinds of facilities for the aged—(1) the State Department of Public Health; (2) the State Department of Mental Hygiene; and (3) the State Department of Social Welfare.

The State Department of Public Health has responsibility for licensing nursing homes, convalescent homes and sanitaria caring for patients requiring nursing care. The total licensing program administered by this department involves approximately 1,200 hospital facilities and clinics of all types. At present there are 611 nursing homes in California with a total bed capacity of approximately 13,300. The majority of these are in areas of the State served directly by the state staff of the Department of Public Health; the remainder are in

areas served by the Los Angeles City Health Department or the Los Angeles County Health Department.

In Los Angeles, the State Department of Public Health delegates to the Los Angeles County and the Los Angeles City Health Departments responsibility for certain licensing activities such as the investigation and inspection of facilities licensed by the State Department of Public Health.

The State Department of Mental Hygiene does all licensing and inspecting directly, not through any county or city department. Their jurisdiction is limited to facilities caring for mental patients as defined by the Welfare and Institutions Code. This includes mentally ill, mentally retarded, alcoholic and drug addicts. They are currently licensing 324 private institutions throughout the State. These insitutions have a total bed capacity of 8,854.

The State Department of Social Welfare licenses institutions which provide care for ambulatory aged persons. Such institutions are defined as those having facilities for the care of 15 or more aged persons and are licensed directly by the State Department of Social Welfare. The homes which house less than 15 are under the licensing direction of local accredited welfare agencies. Private boarding homes for the well aged are investigated and licensed by county welfare departments in all counties except Butte and Los Angeles. In Los Angeles the two local agencies involved in licensing facilities for the aged are the Los Angeles County Department of Charities, which has an inspection bureau that investigates all facilities providing care for public assistance recipients; and the Los Angeles Public Welfare Commission which licenses private boarding homes for the well aged

This means that in Los Angeles there are *three* state and *two* local agencies licensing facilities for the aged.

Currently in California there are approximately 1,200,000 persons 65 years of age or older; of this number only approximately 50,000 are receiving institutional care. Although these 50,000 aged persons are a small percentage of the total aged population, they comprise a group with special health, social and economic problems. The average age of nursing home patients is 80 years with approximately 70 percent of the patients being 75 years of age.

Charges for care in nursing homes vary considerably, the average private pay patient being $210 a month, and for welfare cases $118 per month. Approximately two-thirds of all patients are private pay patients.

A report of the Legislative Auditor to the Joint Legislative Budget Committee giving an analysis of the Budget Bill of the State of California for the Fiscal Year July 1, 1957-June 30, 1958 states: "A comparison of the staffs in these three departments (Health, Welfare and Mental Hygiene) that licenses out-of-home care led us to examine the legislative authority and departmental policies and administration of these licensing programs. It was soon apparent that there is considerable jurisdictional overlap and some basic policy differences among programs."

"Within the area of aged care, many conditions gave rise to problems. Degrees of infirmity, sickness, and senility gave rise to jurisdictional problems. Differences in legislative direction, applicable

standards, staffing patterns and performance, and professional philosophy cause policy conflicts."

In a national survey conducted by the Senate Interim Committee on Public Health in California in 1955, it was discovered that some 31 states have a single licensing agency for nursing and boarding homes and the general approach is to have the State Health Department or Board license both nursing and boarding homes for the aged.

In July, 1958, newspaper and television reporting focused public attention on problems in homes and institutions which provide care for the aged in California. In order to investigate the problems the Assembly Interim Committee on Social Welfare held a hearing in Los Angeles, on November 17, 1958, for the purpose of hearing testimony in regard to charges and countercharges made concerning the conditions in, and operation of out-of-home facilities housing the aged.

The following questions were among those considered:

1. What constitutes a rest home? A boarding home? What standards are set for each?
2. What are the requirements for licensing? Inspecting? Supervising? By whom are these requirements enforced?
3. Where is the emphasis placed in licensing a home for the aged—on safety? On sanitation? On housing conducive to comfort and privacy? On quality of service provided by the home?
4. What are the actual costs of adequate care in a rest home? Boarding home? If there are variations in the charges what are the reasons?
5. Where does the final responsibility lie for seeing that minimum standards commensurate with decency, health and safety are complied with? That a staff is adequate in number and qualifications? That management conforms to sound standards of ethical practice, medical and physical care, cleanliness and wholesome food?
6. What regulations are now enforced, and by whom, to correct violations and abuses that result in less than decent housing and less than humane treatment of aged persons who are residents of rest homes or boarding homes?

It is impractical to give the complete testimony witnesses presented; however, the following statements are representative of the points of view expressed but do not necessarily express the entire arguments made by the witness.

HEARING—NOVEMBER 17, 1958

Chairman Bee called the meeting to order He stated the purpose of this meeting was to hear testimony in regard to charges and countercharges on the licensing of rest homes for the aged throughout the State of California but specifically in the Los Angeles area. The State is involved in this program because at the present time there are three state agencies doing licensing.

Mr. Gordon Cumming, Chief, Bureau of Hospitals in the State Department of Public Health, presented a prepared statement signed by Dr. Kriete, Deputy Director of the Department.

The State Department of Public Health is responsible for administration of the Hospital Licensing Act. This law requires that all institutions providing care for patients on an overnight basis be licensed; that licenses be renewed annually; and that fees for licenses be charged.

The hospital licensing program began January 1, 1946. Initial emphasis in nursing homes was on securing improvement in the buildings in which patients were accommodated. Next the department concentrated its effort on securing compliance with health standards, including medical and nursing supervision of patients. More recently the department has been working on stimulating a more positive, dynamic treatment program in nursing homes. Under licensing standards which became effective July 30, 1958, nursing homes are required to have activity programs to accelerate ambulation, develop rehabilitation and self-help among patients.

The department believes that competence, character, and motivation of the operator of the homes are the most important considerations. They make an effort to vigorously screen applicants for new licenses. If applicants are not registered or vocational nurses they must pass a written examination in nursing knowledge.

After a nursing home receives its initial license, it is entitled to automatic renewal of this license at the beginning of each calendar year.

Legal action to revoke a nursing home license requires that formal charges be filed against the operator, and a hearing conducted before an impartial hearing officer.

It is the policy of the department to encourage compliance with licensing standards through guidance and consultation rather than legal action. Most nursing home operators wish to improve their standards of care.

Improvement in standards is the product of interest and activity by the public, professional groups, nursing homes and regulatory agencies. A higher degree of local responsibility for the improvement of conditions in nursing homes appears to be desirable. On October 10, 1958, the California Conference of Local Health Officers adopted resolutions which expresses general recognition by public health agencies for greater emphasis on the adequacy of institutional care for aged.

Mr. Bee asked how many people on Mr. Cumming's staff were doing inspection of homes in the State.

Mr. Cumming stated 11 people on his staff were directly involved in visiting homes on a regular basis. They are responsible for licensing the 611 nursing homes in California. The bed capacity is 13,278. Of this number 178 are in Los Angeles, with 6,298 beds. The 178 in Los Angeles are inspected by the Los Angeles County Health Department and the City Health Department. They do not issue licenses. They do not take disciplinary legal action.

Mr. Bee: "Do you feel that we should have one agency, rather than three state agencies, and several county and city agencies?"

Mr. Cumming: "We think that this is inevitable—because the national studies that have been done, all point in this direction. This poses many problems in government and relationships. It doesn't solve all the problems."

Mr. Bee: "It puts the responsibility on one person, rather than several * * * How many of your homes were involved in the report made several months ago by Mr. Paul Coates on his TV program and newspaper column?"

Mr. Cumming said about 22. In response to further questions he said all these homes had been visited several times. All but three they considered were operating in a minimum satisfactory manner. These three have had "concentrated attention." No licenses of these 22 homes have been revoked. An effort is made to use education and persuasion in getting homes to voluntarily close rather than revoke a license.

Mr. Sumner asked whether homes licensed under the State Health Department receive insurance benefits.

Mr. Cumming thought the more widely known insurance programs ordinarily exclude care in nursing homes and aged homes, limiting coverage to care in general hospitals.

Mr. Sumner suggested that if a unified agency licensed all of these homes it might be desirable to have, within that unified agency, certain categories to cover homes that offered hospital facilities.

Mr. Lanterman was interested in knowing whether it was possible to have a dual license issued to those homes where ambulatory patients may occasionally require some period of bed care.

Mr. Cumming said the standards under which nursing homes are licensed permit the development of facilities for both ambulatory and bed cases in the same institution.

Mr. Nyman, Director of the State Department of Social Welfare, reported the State Department of Welfare licenses facilities for aged persons who can no longer sustain completely independent living but who do not need to be in a medical care facility. These facilities may be family type homes caring for two or three persons; a small group care home with a maximum of 15 persons, or an institutional type home sponsored by a board of directors representing a church, a fraternal, or professional organization caring for several hundred persons. Residents may be statewide or even outside the State.

The Welfare Department delegates to local agencies the licensing of foster family homes and small group homes, on the basis that these serve primarily local residents and there is a close tie-in with the public assistance program administered by county welfare departments. A study made in 1954 showed 63 percent of the residents of boarding homes were paying for their care, in whole or in part, from assistance funds

Economic problems and lack of skilled services affect the quality of care given. The maximum grant is $90 for Old Age Security recipients except for those without other income. An additional $16 was granted by the 1957 Legislature for recipients whose total need exceeds the maximum grant. About one-third of the Old Age Security recipients have no income other than the Old Age Security grant.

The department accepts in its own operation, and requires its delegated agencies to accept, responsibility for enforcement of regulations. Violations are followed up and appropriate action taken through denial of license, and if necessary subsequent referral to the District Attorney.

Institutions for the aged licensed by the Department of Welfare total 216, with a total licensed capacity of 9,449. Boarding homes

licensed total 3,003 with a total licensed capacity of 14,113. State administrative costs total $292,293 for institutional and aged boarding home operations. County administrative costs are $260,891, of which state funds subvented the counties in an amount of $65 per license per year, representing $202,608.

Mr. Sedgwick asked whether Mr. Nyman felt, if one agency did all the licensing of faciilties for the aged, a new agency should be established to handle this, or should it be given to one of the existing agencies.

Mr. Nyman would favor it being placed in an already established agency. When asked by Mr. Sedkwick whether if consolidated into one agency the job would be more efficient at less cost to the State, Mr. Nyman doubted it would be less costly if done directly by the State since counties now participate in the cost. The $65 per year per license paid by the State does not meet the actual cost to the counties. However, a *single* agency with delegation to the counties would not make a difference.

Dr. Frank W. Otto, Chief of the Division of Private Institutions, State Department of Mental Hygiene, stated the Department of Mental Hygiene licensed only facilities for mentally subnormal children, narcotic addiction, alcoholics, and mentally ill The mentally ill are divided into acute treatment cases, and senile or geriatric cases. The bed capacity licensed in this division is approximately 9,000 beds in over 300 institutions Our staff consists of myself as chief, an assistant chief, a fieldman and three stenographic people. We have several requisites for applicants wishing to secure a license, their moral approach, their mental ability, training and experience, and are they financially able to operate. Also they should have a registered nurse to carry out the doctor's orders We license and renew licenses at the end of the fiscal year. We spend two to four hours evaluating a prospective applicant. If there is a violation we discuss it in our office with the operator. If they are unwilling to co-operate we must cite them in written violation and seek the advice of the Attorney General's Office, or they may sell within 30-60 days to an operator who must pass our rules and regulations. This probably happens 10 to 20 times a year.

Mr. Lee Demming, Administrative Adviser, Department of Mental Hygiene, felt that if a program could be worked out to place licensing in one of the existing agencies it would solve some problems, however, there would need to be separate categories for specialized activities of the various programs, so costwise it would not save much money.

On the question of license fees paid by the operator, the Welfare Department does not charge a fee, public health licensees pay a fee and mental hygiene a still higher fee, based upon bed capacity. In mental hygiene, fees pay a little less than half the operating cost for licensing inspection.

Mr. Geddes asked for constructive suggestions concerning licensing procedures.

Mr. Demming called attention to the fact that a large number of the people cared for in boarding and nursing homes, also in mental hygiene facilities, are publicly supported. The county and State, with the Federal Government, are paying for it. In those areas there is not enough money for the kind of care these people need Consequently

there are complaints about operation, care, lack of good and experienced help

So far as combining licensing, I think the three agencies involved feel that one licensing agency would be preferable, but it would have to have different categories so would not save much money

Mr. Ericksen, representing Mr. Paul Coates of the Los Angeles *Mirror-News*, said the investigation of homes for the aged was conducted by four members of Paul Coates' staff over a period of three or four weeks. The series of articles are facts. All complaints that came to them were turned over to Mrs. Bee Copeland, of Los Angeles County Public Welfare Commission.

One thing Mr. Coates' staff found was confusion of authority between city, county, and state inspectors. They found petty jealousies between some men administering the programs, and discrepancies in statements as to "who was giving what to whom" Mr. Ericksen then sighted some examples of petty jealousies and discrepancies

Mr. Hugh C. Larkin, former member of the Bureau of Inspection Services, testified under oath, that he found serious and even criminal violations in some facilities for the aged, with no appropriate action being taken.

He told of his efforts to initiate some action and when he was unable to do so he took his story to Mr. Paul Coates.

Mr. Larkin read statements (not sworn affidavits) made by practical nurses in regard to bad conditions in rest homes These included poor and insufficient food, filthy bedding, lack of sanitation, use of drugs by attendants, unauthorized drugs given patients, restraint of patients by straps or belts, and some charges of immorality among some staff members.

Mrs. Carol Schmooit, housewife, gave a detailed account of her experience in placing her uncle, an arteriosclerotic patient, in a series of facilities. The last placement in a facility recommended by a physician was so poor in every way that Mrs. Schmooit believes it hastened her uncle's death.

Mr. Larkin believes the worst conditions exist in large type facilities, either state convalescent, or nursing home type. He believes there are many fine facilities for care of the aged in Los Angeles County, but "it is time we found the good ones and got rid of the bad ones"

Dr. George Uhl, Health Officer for the City of Los Angeles, and **Dr. Leo Tepper,** Director of the Adult Health Division, testified briefly in regard to their responsibility for the inspection and supervision of both boarding and nursing homes for the aged. The City of Los Angeles is spending more than $75,000 yearly for inspection within institutions. No state inspection fees are available. Local action in regard to nursing homes depends upon state action. "We cannot move as fast as we would like on some cases. We can close a dirty restaurant on the spot for serious violations, but we cannot do the same with an unsatisfactory nursing home situation. We must wait for the State hearing" There is a 30-day waiting period under the 1957 law before an injunction to cease operation may be served on the operator. However, if practices dangerous to health exist which violate a city ordinance, the city can take steps directly.

There are 566 institutions caring for aged, under supervision of the City Health Department. Four hundred twenty of these are boarding homes for the aged, licensed by State Social Welfare Department, and County Public Welfare Commission.

Five hundred actions against undesirable conditions have been taken in the Fiscal Year 1957-58. Three hundred seventy-five of these were abated; return visits found conditions corrected, 18 were office hearing citations, four cases went to the city attorney's office. One case went to court with revocation of license.

So far 1958-59 (November, 1958) about 200 citizen complaints have been investigated, resulting in legal action on 17 percent.

Following Mr. Coates' story 38 institutions were under close surveillance; 11 were reported by the County Bureau of Inspection Services; 17 came from the city health inspection unit. Of the 38, four have been closed; one has changed ownership; two are in the city attorney's office for action; the others are co-operating in making improvements.

Frederick S. Reynolds, representing the California Association of Sanitariums, Nursing Homes, and Homes for the Aged, said this association represents over 700 members caring for over 13,000 patients. The association recognizes there are some homes unacceptable by anyone's standards. However, licensing agencies must have the help of government and the general public in assuming their responsibilities.

The association recommends one licensing agency—the State Department of Public Health—and further recommends they add social workers to their staff.

The association feels that an agency handling funds for the care of the aged should not also be a licensing agency.

Rules and regulations to improve the standards can be written all day, but they are impossible to enforce if there is not sufficient qualified personnel earning adequate salary to do the required job of inspection—and well trained staff in the homes to care for guests. These things can be done only when and where money is available.

Mrs. Dorothy Edelen, President of the California Guest Home Owner's Association, said 11,500 senior citizens in the State are using foster home facilities "licensed for six or under and a comparable number using facilities licensed for seven or more" This is a total of approximately 23,000 senior citizens living in facilities that as nearly as possible duplicate the standard of living to which they are accustomed. This type of facility has nothing in common with a nursing home since none of the guests are in need of nursing home care. The Guest Home Owner's Association would not endorse any change in the administration of the licensing program which will destroy the family atmosphere of their program, or restrict through residential zoning, the rights of senior citizens to live in their own communities.

Mrs. Thelma Shanks, Secretary of the Los Angeles County Public Welfare Commission—"We have licensed 1,200 homes as of November 1. Of this number 109 are for seven or more persons. All the others are for six or less. The average number of guests would be about four per home. Our goal is to simulate homelike and family conditions as nearly as possible. We may have two in one home; one in another; three in another, and they are broadly scattered throughout the community. It has not seemed necessary that elderly people living in this

kind of home have all the equipment of a group care situation, if they are given the protections ordinarily needed by elderly people—no rugs to slip on, handrails where needed, et cetera

> "I urge you, as legislators, to remember this group is a different group from those in institutional care. They need your protection to see they are not placed under rules and regulations far beyond what is necessary in a private home. That would regulate them out of exitsence."

We do take action when we receive complaints We have had five cases in court the past year. We have denied nine applications and persuaded 90 to withdraw applications.

In the first group of 35 complaints given to Mrs Copeland by members of Paul Coates' staff, she tried to trace them down but could identify only 19. Of this number, 10 were licensed by the State Department of Mental Hygiene, seven were licensed by the State Department of Public Health, one by the State Department of Public Welfare and one by the Public Welfare Commission.

In the second group of 28 complaints Mrs. Copeland identified the homes as follows: 12, Public Health Department; 12, Mental Hygiene Department; three, State Department of Social Welfare, and one Public Welfare Commission.

Mr. Frank E. Gardner, California Institute of Social Welfare, believes, from his experience, it is always desirable to have one authority; however, he felt the State Department of Social Welfare should have boarding homes and the Public Health Department nursing homes.

Mr. William Heideman, Superintendent of Hollenbeck Home for the Aged, representing the Southern California Homes for the Aged (nonprofit) composed of 48 homes serving over 5,600 aged persons. Mr. Heideman said the associate believes the present licensing arrangement is satisfactory. The home where he is superintendent operates under a dual licensing, the well section licensed by Social Welfare; the convalescent section by State Public Health through the local Los Angeles Health Department.

One change that could be made would be to give both inspection and licensing to the State Public Health Department. Now inspecting is delegated to Los Angeles City Health Department, but the State Health Department reserves the right to license or to revoke a license.

CONCLUSIONS

From testimony offered during the hearing and from material submitted in letters and in personal conferences with committee members:

1 It appears that the conditions most seriously damaging to elderly persons occur in a limited number of the smaller so-called "rest homes" and nursing homes where infirm and sick nonambulatory or partially ambulatory aged persons live.

2 Abuse, physical and moral, seems to result in facilities where the operators are licensed without sufficient determination of their: (a) financial ability to operate a proper facility for care of aged persons; (b) their background and training and (c) their moral qualifications

3. There is a shortage of skilled personnel to give adequate care to patients both day and night

4. Operators trying to maintain a home on a "shoestring" often employ untrained, unskilled, and ocasionally morally corrupt employees because of the shortage of qualified staffs—or because they are unable or unwilling to pay adequate salaries for qualified staffs.

5 There is a lack of frequent and intelligent inspection of rest homes, nursing homes and boarding homes for the aged Annual or cursory inspection by unqualified inspectors is not sufficient to prevent abuses of rules and regulations.

6 The licensing and inspection system for homes and institutions serving aged persons in California is complicated and confusing There are three major licensing agencies; the State Departments of Health, Welfare, and Mental Hygiene. In addition in Los Angeles, the city and the county health departments are responsible for certain licensing activities such as investigation and inspection of facilities licensed by the State Department of Public Health, also in Los Angeles two local agencies, the Los Angeles County Department of Charities, and the Los Angeles Public Welfare Commission, are involved in licensing facilities for the aged. Private boarding homes for the well aged are investigated and licensed by county welfare departments in all counties except Butte and Los Angeles.

The State Department of Mental Hygiene directly licenses all facilities caring for mental patients. It does not delegate responsibility to any city or county department.

7. A large number of the people cared for in boarding and nursing homes and in mental hygiene facilities are supported by county or state and federal funds. Their income is substantially below the level of income of the total population (less than one-half the income of other families and persons in the State), therefore they are unable to pay for the kind of care they need, and must accept what is available at the price they can pay

8. Many aged persons remain in county hospitals, when they could be better cared for in nursing homes if good care was available to them. County hospitals are now overcrowded. As a result of overcrowding

and needed bed-space, it was pointed out that the discharge of aged patients from Los Angeles General Hospital to rest homes was often done in a haphazard fashion, practically forcing overcrowded homes to accept patients and no instructions given to the home as to type of care or medication needed by the patient.

9. A licensing agency must have the authority not only to issue licenses, but also to revoke licenses when such action is necessary.

10. Not every person over 65 in out-of-home care is an ill, infirm or senile person, therefore a foster home for well aged does not necessarily have to provide some facilities required in a nursing home. However, as a condition for licensing a boarding home, the operator should be required to provide some type of program other than a TV set. Even well aged persons need some constructive plan of activity

RECOMMENDATIONS

1. The committee recommends that the present licensing laws be strengthened by more rigid enforcement on the part of the authorizing state licensing agencies in each of the separate categories.
2. Licensing of foster care for aged should be kept in the State Department of Social Welfare, but should be placed in the Division of Social Security, instead of the Division of Child Welfare.
3. It is recommended that each state department licensing facilities for the aged maintain a central information bureau where complete, definite, and up-to-date information may be obtained as to location and type of all facilities caring for aged persons. This information should also cover cost of care, number of guests and under what authority the facility is operating.
4. Infirm, sick nonambulatory or partially ambulatory aged persons requiring continuous or extensive nursing services shall be placed in a licensed nursing home, *not* a boarding home.
5. Each department licensing facilities for the aged must provide for careful screening of applicants for licenses. It must be determined: (a) whether at the time of application the applicant has sufficient financial means to operate a proper facility for care of aged persons; (b) the kind and condition of housing to be used (sanitation, space, comfortable and adequate furnishings, including linens and dishes); (c) the background, training and experience of the applicant, and their moral and mental qualifications for such work.
6. Local agencies delegated as agents of the state departments to license, supervise or inspect, should be given the power to revoke a license, remove aged persons, and close the home immediately if the conditions of home or patients warrant such action. There is now a 30-day waiting period before an injunction to cease operation may be served on the operator.
7. It is further recommended that during the 1959-1960 interim period a thorough investigation be made of all facilities in the State engaged in out-of-home care for the aged. This investigation should be made by well-qualified investigators (who would be alert for good as well as bad features) selected by the Assembly Interim Committee on Social Welfare. The investigation should include housing, fire protection, sanitation, adequacy and quality of food; sleeping facilities (cleanliness, space, air, bedding, etc.); and especially qualification of employees. In those facilities for nonambulatory or partially ambulatory persons, consideration should be given to the following points. Is the staff qualified to give bedside care, maintain correct and sufficient medical records and intelligent control of drugs? Is there a careful check made of the employee's health and determination that the employee

will not violate ethical or moral nurse-patient relationships? A check should be made to determine what amount of the fees paid by the guests, in the various facilities, are used for their health and welfare. In this investigation the various state departments should be called upon to supply the special services they are equipped to give.

8. In all boarding homes licensed under the State Department of Welfare it should be determined that there is ready access to medical care when needed.

9. It is recommended that more frequent inspection of all homes and institutions licensed under the three state departments (Health, Welfare, Mental Hygiene) be made mandatory.

SOURCES OF INFORMATION

Gordon R. Cumming—Chief, Bureau of Hospitals, State Department of Public Health
George K. Nyman—Director, Department of Social Welfare
Lucile Kennedy—Chief, Division of Child Welfare, State Department of Social Welfare
Dr. Frank W. Otto—Chief of the Division of Private Institutions, State Department of Mental Hygiene
Lee Demming—Administrative Advisor, State Department of Mental Hygiene
Paul Augustine—California Guest Home Owners' Association
Mr. Ericksen—Assistant to Paul Coates, Los Angeles Mirror-News
Hugh Larkin—Former Investigator, Los Angeles Bureau of Inspection Services
Carol Schmooit—Housewife
Dorothy Edelen—President, California Guest Home Owners' Association
George Uhl, M.D.—Health Officer of the City of Los Angeles
Leo Tepper, M.D.—Director, Adult Health Services Organization, Los Angeles City Health Department
Frederick S. Reynolds—California Association of Sanitariums, Nursing Homes, and Homes for the Aged
D. W. Gormley—President, Sanitarium Association of California
Thelma Shanks—Secretary, Los Angeles County Public Welfare Commission
Frank E. Gardner—California Institute of Social Welfare
William Heideman—Superintendent, Hollenbeck Home for the Aged
Vera M. Reeser—Licensed Vocational Nurse

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REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON SOCIAL WELFARE

FOSTER CARE FOR CHILDREN IN CALIFORNIA

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LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, February 16, 1959

Hon. Ralph M. Brown, Speaker
and Members of the Assembly
State Capitol, Sacramento

GENTLEMEN: The Interim Committee on Social Welfare, created by House Resolution 218 of the 1957 Regular Session, herewith respectfully submits its final report based upon verbatim testimony given in a public hearing on Foster Care for Children in California.

The report was prepared under the direction of the Chairman, Hon. Carlos Bee, and was adopted by the committee on February 18, 1959.

Respectfully submitted,

CARLOS BEE, Chairman
FRANK LANTERMAN, Vice Chairman

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TABLE OF CONTENTS

	Page
Letter of Transmittal	3
Introduction	7
Questions	9
Testimony	10
Judges	10
Welfare	11
Probation	16
Youth Authority	20
Mental Hygiene	22
Other	23
Conclusions	24
Recommendations	27
Appendix A	29

INTRODUCTION

The responsibility of caring for children deprived of a natural home is a constant challenge to welfare agencies, both public and private.

The general opinion is that, other things being equal, no foster home or institution can be a genuinely satisfactory substitute for the natural family life of the child However, in many cases it is not physically possible, and sometimes for the child's own welfare, it is not desirable for him to remain in his own home.

A child may be placed in a foster home or institution because his home has been judged unfit and his parents have been deprived of his custody, because his home has been broken up by family difficulties or death; or because his behavior problems could not be coped with in the family situation.

When it becomes necessary to find foster care for a child the agency is faced with the possibility of two choices—foster home or institution.

Generally the foster home takes precedence because it is thought to offer a more homelike quality of care For some children, however, living arrangements in a small institution where they are not required to develop close parental or personal relationships are more satisfactory.

The needs of the child and the community resources must be evaluated in placement of any child away from his own home. If a foster home suitable for his needs is not available in the immediate vicinity of the child's present home, is it desirable to place him in a distant community in a foster home, or is there an institution of such high quality in his community that placement there would be more satisfactory for this particular child?

There is no easy general way of determining which kind of place a child needs. Public and private agencies engaged in child placing must carefully examine foster homes, institutions, and the child's specific needs, to be sure in each particular case the child will get the closest approximation of what will be the ideal circumstances for him.

As of June 30, 1958, there were 80 institutions licensed by the State Department of Social Welfare, to provide 24-hour care for 4,606 children, and 8,678 full-time foster family homes, licensed by the State Department of Social Welfare or their delegated agent, to care for approximately 20,054 children. In addition there were 7,156 foster family *Day Care* homes licensed which can offer care to about 18,600 children.

The State Social Welfare Department accredits county welfare departments and the Public Welfare Commission in Los Angeles to license foster homes for children. It also licenses private welfare agencies to certify foster homes and place children in them for temporary care. Eight of these agencies are also institutions licensed to care for chil-

dren. Homes for children under the jurisdiction of the State Department of Health or the State Mental Hygiene Department are exempt from licensing jurisdiction of the State Department of Social Welfare.

In an effort to receive information in any areas of foster care for children where it would prove helpful in solving some of the following questions, the Assembly Interim Committee on Social Welfare had a hearing in Fresno on September 19, 1958.

The testimony given during the hearing on these and other questions, raised, is summarized in the following pages in order to present the pros and cons of the problems as expressed by representatives of agencies actively engaged in child placing.

QUESTIONS

Is there, as often said, a general shortage of foster homes? If so, what is mainly responsible—inadequate board rates? Unreasonable requirements? Lack of fees for foster parents' serivces over and above the board rates for the child? Lack of help by the placing agency in problems of foster parents?

Is there undue competition among various agencies for the available supply of good foster homes? Has there been an increase or decrease in the use of foster homes during the past year? Is anything being done, and if so, by whom, to encourage or discourage the development of foster homes?

The various county welfare departments differ widely in their child-placement policies. So do the various probation departments Should there be a geater unanimity in these policies—and practices? If so, how could it be brought about?

A single division in the State Department of Social Welfare now administers the licensing and provides specialized consultation for boarding homes for the aged as well as for children. What are the values or weaknesses of this multiple role?

Still other considerations are: Is it more expensive for a county to build its own treatment facilities for children, or to buy services from private institutions? Are there adequate small facilities and foster homes where the mentally retarded child can get care and training? If not, what are the limiting factors—standard? financing? staff?

What is the child-placing relationship between probation and welfare? What of the juvenile court judges' role in foster-home placement of children? What is the experience of the Youth Authority in the use of foster homes? Are foster parents able to cope with delinquent children, even the adolescent?

Small institutions (16-35 children) have in the past cared for a number of children who could not remain in their own homes. A number of these have developed into treatment centers for their charges. Is this the best possible use that could be made of the small institution? If small institutions are the best means of meeting the needs of certain children, does the problem of recruiting and retaining capable house-parents become an insurmountable difficulty?

The following is a summary of pertinent points in testimony given at the hearing on foster care in Fresno, California, September 19, 1958.

In addition, there are excerpts from letters and reports submitted to the committee on the problems of foster care for children in California.

Vice Chairman Lanterman introduced members of the committee and stated that the hearing had been called to consider problems of foster care for children

TESTIMONY

JUDGES

Judge De Wolf, Fresno County, said, we find a shortage of homes for juveniles in two areas—the area of dependent children—and for delinquent children. The problem of foster homes for delinquent children is a difficult one. Usually the delinquent child is an older child and he brings into the home a number of disturbing qualities—emotional as well as delinquent.

Foster parents have to understand the boy's or girl's problem to work with them, and foster parents, chiefly for the reason that they live with the child, are the ones who produce change for the better. Probation officers can't see each child as frequently as they would like largely on account of their heavy caseload.

Our policy is not to remove a child from his family if we can keep him with them. In cases where we move the child because it has been demonstrated that he cannot get along, our ultimate aim is to build up the child's family and the child, so he can be returned to his own family.

We have been experimenting for the past year with intensive supervision of the child in the foster home, through assigning a probation field deputy to assist the child back to a law abiding attitude while he is in the foster home The indications are that there will be some success.

We need more foster homes. We have 26 now (Fresno County). That does not sound like a large number, yet we have a man who spends all his time trying to find families in this county who will provide homes for the delinquent child.

I have had to keep children in Juvenile Hall, not because I did not know what I wanted to do with the child, but because I had to wait until we could get a foster home.

The question was asked, "would an increase in rate of pay to foster parents help?"

Judge De Wolf felt that certainly people who take delinquent children should have more pay because of greater problems involved than in cases of dependent children, but he doubts that people willing to take the delinquent, and be a good foster parent, are chiefly interested in money. Increased rates of pay might be some inducement to additional people, but it might not bring the right foster parents

At present Fresno County pays a basic rate of $65 per month for care for a dependent *or* a delinquent child Cost of care in Juvenile Hall is considerably higher, about $7-$8 a day per child.

Mr. Kilpatrick asked about the necessary qualifications of a foster home

Judge De Wolf mentioned qualifications necessary to secure a license if a child is under 16. If a child is over 16, no license is required. Two ideas are important—to get a home where the cultural background

is not too far beyond that of the child, and to secure foster parents who are interested in and understanding of the child

Judge De Wolf would like to have this committee help in securing, from a state level, the proper kind of foster homes and training for the foster parents willing to accept delinquent children.

Judge Ralph Hoyt, Alameda County, states in a letter to the committee: "We do not have any major problem of placing children in foster homes because of the very excellent placement department in the probation office.

"Minor problems are: (1) the difficulty of placing children who are disturbed. This is not a matter of money since the supervisors have authorized extra compensation; relatively few people are willing to take a disturbed child into their homes; (2) using foster homes in other counties which makes supervision expensive—possibly some method of foster home exchange could be worked out between counties; (3) placement of girls who are in danger of leading an immoral life—but should not yet be sent to the Youth Authority. Their homes are not adequate to give them supervision, and foster homes do not seem to be the answer. Some kind of 24-hour school or institution which can give the girl close supervision until she is able to become more stable and dependable may be the answer."

Judge Martin J. Coughlin, San Bernardino County, in a letter states that in his "considered opinion, the county probation officer should be permitted to license homes the court might select for delinquency cases. The philosophy and attitudes of the welfare department, as reflected in their boarding home licensing division, meets the needs of dependent youngsters but is not understanding of the *different* needs of delinquent children."

Judge Robert K. Meyers, Tulare County, says in a letter: "Our use of licensed foster homes in general is satisfactory. However, there are problems inherent in the system. The main problem is in evaluating the home and the child; attempting to place the child in an understanding home. Foster homes tend to be choosy and usually want younger children. This makes placement of teenagers, particularly girls, difficult.

"An increase in support payments, especially for older children, would help. Foster parents usually spend time and money far in excess of what they are paid for. There is more need for counseling or advising of foster parents."

WELFARE

Miss Lucile Kennedy reported that administrative costs of the foster care licensing program in county welfare departments during 1957-1958 was $1,401,355. State funds paid approximately 78 percent of these costs. Each county determines the amount they will pay for full-time foster care. The amount paid varies considerably, generally from $45-$75 per month per child.

Payments to institutions are usually higher, but in some institutions the board and care paid from public funds does not meet the actual cost to the institution. Some costs of care are met by parents; others through county funds and some by the State through the Aid to Needy Children foster care program. The State may participate in Aid to

Needy Children payments for foster care up to 67.5 percent of the total amount actually paid, but not to exceed a maximum of $75 per month per child.

The total amount spent for these children in foster care during July, 1958, was $764,396. Approximately $484,000 of this amount was state funds, the remainder was paid by counties.

In July, 1958, there were 11,292 children in foster care receiving ANC. The average payment per child was $66.

County welfare departments are responsible for determining eligibility of all applicants for ANC funds, but the responsibility for placing and supervising of only part of these children in foster care falls under the jurisdiction of county welfare departments. Some of them are under the supervision of probation departments, private agencies and private institutions.

The problem of recruiting and maintaining a sufficient number of foster homes and institutional facilities to meet the needs of individual children is a complex one. Lack of skilled staff to help families avoid the need for placement is one aspect of the problem.

Mr. Kilpatrick asked how successful we are with children placed in foster homes. There was no direct and specific answer to this question. He then asked what was known about the quality of the foster homes used.

Miss Kennedy explained that the state field staff during the year does an administrative review of the boarding home program in the counties, checking with them on a sampling of the homes they use to see what kind of care has been given children in the home.

In answer to another uestion from Mr. Kilpatrick as to whether there was uniformity of foster home standards among the counties, Miss Kennedy said the field staff made spot checks and also an organized review to see that uniform standards of foster home care are maintained by the counties.

Mr. Lanterman asked whether securing foster homes for emotionally disturbed children was a placement problem.

Miss Kennedy felt this was a real problem and these children were often sent to institutions. In answer to further questioning from Mr. Lanterman concerning size of institutions and cost of care, Miss Kennedy said the institutions licensed by the State Department of Social Welfare vary in size—the average number of children being 50-75, however, some are smaller, 12-16. The number varies greatly. As for cost, this also varies. In some institutions the amount paid for the child's care is less than the per capita cost per child since services rendered are considerably more than just the child's board and keep.

Mr. Lanterman then inquired whether the State Social Welfare Department had come across the question of dual administration where the child receiving an ANC grant is a ward of the court.

Miss Kennedy believes this is a real problem. A child may be under the supervision of two agencies. This results, at times, in representatives from both agencies going into a foster home to see the same child This is confusing to a child; to the foster parents, and can result in neither agency taking as much responsibility as should be given to planning for the child. There is a trend for the two departments to

work out an agreement as to who will take over the supervision, but it is not worked out this way in all counties—it varies a great deal.

Mr. Boyden, Welfare Director of Imperial County, brought out many pertinent facts in regard to foster home care. Any child who has been subjected to home conditions that make it necessary to place him away from his home has undoubtedly developed emotional and behavior problems which must be treated with great skill, patience, endurance and understanding. For foster parents with such qualities, we offer a maximum of $75 per month per child This may seem like a sizeable amount, yet the purchasing power of $75 now is no more than $37.50 was 15 years ago. The average payment in the State in July, 1958, was not $75 but $66.32. This amount of money provides for food, clothing and shelter for the child, but does not allow anything for wear and tear on possessions of the foster family, or for the services given to the child. The maximum of $75 per child allowed is not paid because the county welfare director is forced to maintain a cushion between the amount paid and the maximum allowable to provide for emergencies.

Furthermore, the program of boarding homes and institutions is handicapped because it is linked to, and controlled by the rules and regulations of the Aid to Needy Children program. For example:

1. The children in an Aid for Needy Children family had to be placed in juvenile hall for nearly a month because their mother squandered the Aid for Needy Children check in a drunken spree and landed in jail. Because an Aid for Needy Children payment had been made for the month, a Boarding Homes and Institutions payment could not be made till the beginning of the next month.
2. A 10-year-old child was made a ward of the court because of pitiful neglect and recommended by the court for foster home placement. Because the parents did not have technical eligibility for Aid for Needy Children, the child could not receive care through Boarding Homes and Institutions funds and had to be placed in juvenile hall. If the father, who was completely inadequate, could have been persuaded to desert, the child would have been eligible.

Mr. Sumner asked what the function of probation would be if the welfare department dealt directly with the court.

Mr. Boyden said these would be dependent and neglected children. After the court acts if the child is to be turned to welfare, it should be done immediately. He continued, when a child is committed by the court to foster home placement confusion would be avoided if he is committed directly to whatever agency does the placing. If he is to be placed by the welfare department, the judge and welfare department can establish a more effective working relationship than as though he is committed to the probation department—then referred to the welfare department for placement and supervision. When probation and welfare are each planning independently for the child, as does happen, foster parents and child become confused and frustrated. No two agencies ought ever to be involved with the same foster home.

If a child is moved from one foster home to another, or needs medical care, the welfare department must request the probation department

to get an order from the court. From the court it goes to probation, then welfare. This is cumbersome, and administratively costly in time and money. This fault is inherent in the law. Section 740 of the Juvenile Court Law gives the probation officer authority to place a child in a foster home and supervise him, but no money is appropriated to implement this function. Section 1500 of the Welfare and Institutions Code provides for care and support of children in foster homes through the Aid to Needy Children program administered by the welfare department. Section 1620 makes the State Welfare Department the licensing and accrediting authority

Thus the probation officer is ordered by the court to perform a function he cannot perform without the aid of the welfare department which holds the power of the purse and of the license which cannot perform its functions except with the consent of the probation officer.

Differences in policies, practices and philosophies, often justifiable, often result in a clash between two sincere and well-intentioned agencies and defeat the purpose for which each exists, the protection of the child.

Adequate protective services in every county could make a significant reduction in the need for boarding homes. Skilled services to families when the need is first observed could often prevent the removal of children from their homes. Protective service requires a high degree of skill, competence and training. Small counties cannot compete with larger counties for the services of such workers because of lower salaries. If counties under 100,000 population could be reimbursed for 75 percent of the worker's salary, protective services might be implemented.

Miss Mesple, Assistant Director of the Fresno County Department Public Welfare, reported a joint effort of the county welfare department, judge of the juvenile court, and probation office to return children as soon as feasible to their natural homes, and to limit, if possible, the number of children being removed from their natural homes for placement in foster home care.

The Fresno County Welfare Department has a protective services unit with three full-time workers who are available to help families before problems involving a child require taking him out of the home. Through the co-operative efforts of juvenile judge, probation department and this protective services unit, some problems have been solved which has reduced to some extent the number of dependent and neglected children in foster homes.

Father James M. Murray, General Director, Catholic Social Service, Archdiocese of San Francisco, said it was necessary to evaluate and plan ahead for the large number of children we have today in California living away from their own families. He expressed deep concerned about the wrecked marriages, disintegrated and disorganized families that make necessary the placement of neglected and dependent children outside of their own homes Too little emphasis is put upon prevention of broken homes. Too little family counselling service is available in communities. Children of these disorganized families become the ward of the State, placed by public, private and religious welfare agencies, often supervised by these agencies until of age. The

cost of this process, humane and necessary though it is, is immense, to say nothing of the enormous human tragedies

These children, placed away from their own homes, need skilled services of experienced workers, as do the families of children under care, working toward return of children to their own homes.

We need to determine which children need group care in an institution, then instead of building more institutions, help the private institutions now in existence to develop and strengthen their services to meet the needs of children placed there.

It would be a "good bargain" for the State and counties to increase their rates, and purchase service by contract with voluntary child welfare agencies where this is possible The number of foster homes is not adequate to meet the need, but quality and present standards should not be sacrificed. There are a number of reasons causing a shortage. Few families wish to take troubled children into their homes, especially if the foster parents do not get constant professional help from the agency to give them an understanding of the child and his behavior. Houses are compact—rooms smaller; families are more mobile than formerly; also there is often economic pressure and present board rates paid do not encourage families to offer care to unrelated children.

It would, in the long run, be less expensive to increase board rates for foster care (including compensation to foster parents for services) than to keep children in public detention and shelter homes at three times the cost, to say nothing of the negative effects upon children.

To help private agencies recruit, study and issue permits to foster homes, consideration should be given to amending Section 1622 of the Welfare and Institutions Code allowing private agencies to receive up to $65 a year for services in issuing new permits or renewal of permits.

It might be well to review the requirements of the State Fire Marshal and the interpretations of local fire departments. Also to review the requirements for foster parents to have an annual chest X-ray. The need for this is quite disputed.

Mr. Lanterman asked what primarily seemed to be the cause of family disintegration today.

Father Murray felt that as we have developed, so intensively, material progress in this country we have concentrated our ideas and goals in line with material things. Many of the spiritual components of family life and of individual goals are gradually being diluted.

Mr. Lanterman inquired whether some of the problems mentioned by Father Murray should be met through legislation.

Father Murray thought the area of responsibility for prevention of conditions resulting in broken homes rests partly on the schools, the churches and religious groups, but primarily on the parents. This cannot be legislated It is done through a broad program of education and interpretation. There needs to be community awareness of needs of children.

Mr. Sumner questioned whether schools tended to take over some jobs that should be the responsibility of parents—so parents may willingly abandon some problems to the schools.

Mr. Kilpatrick suggested that it would be advisable to look into incipient situations in the community, known to be unhealthy home conditions, prior to the time there is need for court action.

John E. McIntyre, Director of Welfare, Riverside County, in a letter to the committee, said quantitatively there is no general shortage of foster homes, but there is a definite shortage of homes for teenagers; children of minority racial groups, retarded or physically handicapped, and seriously disturbed children.

There is normal competition among various agencies for good homes Statewide uniformity insofar as feasible in policies and practices and operating plans, between local welfare and probation departments is desirable Juvenile courts should place children only in licensed foster homes.

Consideration should be given to increasing the State's boarding home reimbursement to counties. This would make possible a continuous training program for foster parents. It would also be helpful if the State provided a boarding home manual separate from the one for aged homes.

Mr. Roscoe Lyda, Director of Welfare in San Bernardino County, comments in a letter to the committee· There is a serious shortage of foster homes We do not believe this is due to unreasonable requirements. It is important for the welfare of the children, the foster families and the community that standards safeguarding the physical and emotional life of these children be maintained.

Placing children in inadequate foster care is costly, in terms of damage to the children as well as expensive administratively Inadequate homes result in frequent replacement

One factor contributing to the shortage of good foster homes is the lack of uniform board and care rates throughout California. Foster parents may prefer to accept children from counties paying the highest rate rather than from local agencies

A lack of professional help and guidance for the foster parents from the placing agency is also a factor Hand-in-hand with this is a lack of professional help for the natural parent in resolving problems which made placement necessary, thus the return of the child to his own home is delayed for an indefinite time

PROBATION

Don R. Sanson, Sr., Probation Director, Los Angeles County, said he did not believe there should be any confusion or conflict between the juvenile court operation and the operation of the welfare department when a child receiving aid is a ward of the court. The juvenile court does not attempt to control all the life of the child. He receives the benefits of education under education laws, and the benefits of aid through welfare laws. In Los Angeles County, when a child is placed by the juvenile court, the board of supervisors designates the probation officer as the county officer who administers the ANC program for these children.

The juvenile court can do anything necessary to protect the welfare of the child, but it does not do things for its wards that the community otherwise provides. In all probability the juvenile court was given such

extensive authority because the facilities for the benefit of children vary so much among the counties, but it shouldn't duplicate existing facilities if they are adequate.

Mr. Lanterman suggested that when the Juvenile Court Law was adopted there was a dearth of welfare programs for children. Since then (1903) welfare programs have developed in extent and breadth of care for children, but the court has tended to keep its original concept of responsibility Does dual administration exist because there has been no definite alignment of authority, supervision or jurisdiction, as to limitation of areas?

Mr. Sanson agreed with the validity of this observation, but pointed out that juvenile courts in various counties used in different ways, the authority given in the Juvenile Court Law.

Mr. Lanterman asked whether juvenile court authority should be subject to review.

Mr. Sanson felt the juvenile court authority has now, through usage, clarified many relationships with other agencies.

Continuing, Mr. Sanson pointed out that in Los Angeles County the probation department places children in about 600 foster homes. About 525 are licensed and 75 unlicensed because they are for children over 16 years. It is extremely rare that children are declared free from the custody and control of their parents, even inadequate parents who won't rear them. These children are not free for adoption, therefore a large group of children are being reared in a whole succession of foster homes Our culture has been struggling for a long time to determine whether we will continue to put the rights of the parents to own their child over the right of the child to have a home. The law presently provides the court authority to make the decision, but our culture has placed a tremendously and erroneously high value on the rights of parents over their children, at the cost of the right of the child to have care. As a consequence, public and private agencies are caring for children, often rearing them poorly, inadequately, and in many instances, even disastrously

Mr. Lanterman: "Which then leads into the upper levels of the Youth Authority facilities, and if that fails our next step—the prisons."

Mr. Sanson then stressed the values of placing a child in a foster home in the area where the child lives The child ought to have something familiar. It is a very frightening experience to be taken away from everything he knows and placed with strange people, in a strange neighborhood, strange school—not anything he knows. If it is a schoolchild there is also the problem of moving him from one locality to another in an already overtaxed school population.

Mr. Lanterman asked what elements should go into the determination of whether the juvenile court or welfare department assumes the responsibility of placement.

Mr. Sanson believes there should not be any reason for competition between the juvenile court and welfare department. When the problem is one that requires the authoritative hand of the court placement would be made by the court, but children who do not require this kind of action could be referred to the welfare department and private agencies for placement.

The welfare department does not have authority to consent to medical care of a child whom they are supporting, therefore children must be made wards of the juvenile court to receive any medical or dental care A bill will be submitted to the Legislature to authorize the welfare departments themselves to consent to medical care for children they support. Children placed by the juvenile court need to have a foster home where a careful treatment program is carried out. Not all foster homes can do this. On the whole, the adolescent or disturbed younger child will require more treatment than a foster home is able to provide unless a highly trained case worker has plenty of time to work with the child and the foster parents.

Mr. Kilpatrick asked for overall suggestions as to what the Legislature should do next on the foster care program

Mr. Sanson thought there should be a look at whether the State ought to control licensing of foster homes to the exclusion of the local community He also believes consideration be given to licensing institutions that care for children over 16 years Most of the other problems should be worked out through various agencies with the knowledge and support of members of the Legislature, but without legislation.

Mr. Kilpatrick suggested the best means of eliminating problems would be stabilizing the natural home.

Mr. Sanson agreed. If caseloads were small enough and staff had sufficient skill to work successfully with the child and parents in the natural home more could be done for children, and the community than is done through foster home placement.

Mr. James King, Placement Unit Supervisor, Alameda County Probation Department, stated with the increase in population there is a greater number of children needing placement Counties have often placed somewhat indiscriminately wherever they could find foster homes, generally without too strict limitations of staying within the county. Competition for foster homes exists between counties and between agencies within the same county.

The tremendous need for foster homes is not limited to homes for adolescents. The need is great for young children, 9-10-11 years old who are not delinquent but perhaps incorrigible; those who do not "fit in" to their own homes or community When a child is placed in a foster home he is not on an island. He is part of a neighborhood, a community, a school, a church, so we must not think of just any foster home, but a particular one for each individual child. The same is true of institutional placement In many cases the best choice of care is not available, so we have to be practical and work out the next best plan for the child and community. A volunteer council of agency representatives (public and private) doing child placing are trying to determine whether we are making the best use of private institutional resources now available; also work out some reasonable and practical standards for placement of children in private institutions.

In recent years many counties have tried to develop resources to absorb some of the problems.

Mr. Kilpatrick asked whether foster parents were more willing to accept aid and direction from an agency than own parents would be if the problem of the incorrigible child was brought to their attention before it became so serious.

Mr. King thought generally this was true Foster parents naturally expect some help and direction from the placing agency

Mr. L. B. Stagner, Probation Officer, Fresno County, said at present the probation department is concentrating their efforts on preventive work; giving special consideration to supervision of the child in his own home. They are trying to help settle family problems in the family before cases have to come into court, and to prevent a child from being taken out of his own home.

Also, in cases where foster home placement is essential, their workers give continuing help and suggestions to the foster parents. Workers are available night and day to assist parents or foster parents if trouble comes up The probation department does not like to put too much emphasis on foster home care. Foster homes have a place but are not the entire answer. In Fresno County, the working relationship between the welfare department, the court, and the probation department is excellent. The courts acts as an assistant to workers in the field rather than a control.

Mr. Stagner favors a sliding scale for payment of foster home care varying for different aged children This would more nearly compensate the foster parent for the time and effort required in care, also give consideration to the wear and tear on the property of the foster parent —not only inside the house, but on the outside. More pay should be given to foster parents handling troublesome delinquent children

Mr. Kilpatrick asked whether the preventive work now being done by work with the child and parent in their own home had financially paid off in Fresno County.

Mr. Stagner felt the preventive program has definitely been a financial saving not only to the county but also in human welfare. The values of such a program depend primarily on a sufficient number of qualified staff to do a satisfactory job. A little more money spent on staff who could work with the child in his home and with his family to prevent trouble will save the county and the State a great deal of money.

Edward Upchurch, Chief Probation Officer, Kings County, states in a letter: "We have for sometime had a problem in securing foster homes in this county, particularly for minors 13-17 years of age It seems people are not interested in taking on the responsibility of boys and girls in this age group. Our rate of monthly pay for this group has been $60. As of September this monthly pay scale was increased to $70. We do not have a problem finding Mexican foster homes, except in 13-17 age group, and usually little difficulty finding white homes for younger white children.

Warren E. Thornton, Probation Officer, Sacramento, in a letter to the committee, says two large areas of concern are: (1) Insufficient probation department personnel to recruit the type of foster home necessary for the care of delinquent children, (2) lack of adequate foster parents who are willing to take teenage delinquent boys and girls into their homes. Actually these two problems go hand-in-hand, because you can't locate this type of foster parent unless you have time and staff to work at it.

David R. McMillan, Probation Officer, Orange County, agrees with others that a genuine shortage of foster homes exists. He states, "with the exception of the very small child, much difficulty is encountered in placing older children, especially those above 15 years." He feels state licensing requirements are equitable, but variation in local restriction placed upon boarding homes, such as zoning, structure, fees, etc, may be one reason for the shortage of foster homes.

In Orange County the probation and welfare departments have fostered the development of a "Foster Parents Home Association" for the purpose of giving knowledge and help through general discussion meetings, to assist foster parents cope with problems of the children placed with them One major problem, Mr McMillan believes, is the lack of facilities for children who must be removed from their own homes pending placement in a state hospital. These children, mentally defective or mentally deficient, could be placed in a small institution if such was available, during the waiting period for commitment to the state hospital.

YOUTH AUTHORITY

Mr. Howard Ohmart, Chief of the Bureau of Paroles, California Youth Authority, said the Youth Authority was at the present time making a thorough analysis of their foster home program because they are concerned about some deficiencies in this program. Out of some 7,800 wards on parole the Youth Authority uses about 260 foster homes, less than 7 percent and approximately half of the children placed in foster homes are girls.

The board is screening out some 8-9 percent of the children committed to the Youth Authority and paroling them as soon as they have had their initial study at the reception center and clinic. It is possible that if these children can be paroled out of the clinic they should have been handled in the community and avoided the stigma that goes with commitment to the Youth Authority

For this reason, the Youth Authority is concerned about the increasing percentage of foster homes they seem to require. For example, the total parole increase the past year was about 12 percent, whereas the foster home load went up nearly 33 percent. The Youth Authority does not place children in foster homes if there is any alternative, since they believe the use of foster homes often creates more problems than it solves, and if there is anything at all to work with in the natural home, they prefer to undertake to do that.

Mr. Lanterman asked if the Youth Authority was being overloaded with inappropriate cases.

Mr. Ohmart felt it was probable that they are getting commitments that could be handled without recourse to the Youth Authority. There is an impression that because the Youth Authority commitment costs $25 a month, whereas foster homes cost $65-$70 a month, commitment to the Youth Authority is obviously the more economical way of handling a particular youngster. We feel generally that the Youth Authority should be used as a last resort after all other treatment possibilities have been exploited.

Mr. Lanterman drew a parallel between what is being done with the placement of seniles in state mental hospitals instead of taking care of them at the local level—i.e. it is cheaper to let "the State pick up the tab" than it is to take care of a condition at the local level in the area of prime responsibility. The Youth Authority has a big job to take care of the acting-out overt case. They should not be used as a juvenile ward depository.

Mr. Ohmart made two suggestions. One, unwillingness to pay a decent foster home rate should not be rationalized on the grounds that if people love kids you do not have to pay them much. If people have the capacity, the interest, and concern, they shouldn't have to take children for little or nothing. The second point is that foster homes are frequently being used when a small institution type of care might be better If a small private institution, 7-12 children or even smaller, was avaialble for children who cannot take the close emotional tone of the average foster-parent-child relationship, these children might not have to run the gamut of 10-12 foster home experiences before they are finally placed in a Youth Authority institution.

Mr. Lanterman suggested that perhaps even if it is a joint effort by some counties, it might be more suitable to have a few small homes of this sort than some of the less well equipped foster homes or less qualified foster parents instead of overloading the Youth Authority with borderline cases. He asked the average annual cost of Youth Authority care per case.

Mr. Sumner reported the Legislative Analyst said $3,540 per year was average, and asked the approximate monthly cost to the State for keeping a person on parole in a foster home.

Mr. Ohmart explained this varies according to the situation. Sometimes a relative's home is subsidized for just $25-$30 a month to help out the budget. It is possible to pay up to $80 per month without special permission from the State Department of Finance—$68 is approximately average. This does not include clothing, medical care or incidental spending money for the child A flat $25 per month is paid by the county for all wards in an institution or in a foster home placement.

Age brackets of youngsters for whom Youth Authority has responsibility are 10-25. Groups that go into foster homes are in 10-16 age group.

Mr. Kilpatrick asked for information on the children sent to Fricot. Mr. Ohmart said there were about 200 there. The average age around 12, though some as young as 9 and 10 are there. The average length of time there is about 11-12 months.

Mr. Lanterman asked for a breakdown of areas of origin of Fricot wards, with classification as to whether they were disturbed children or victims of circumstance.* Perhaps the county did not have facilities to cope with the situation. This review of Fricot may give some aspects of statewide services to be reconsidered if local government gets $25 automatically without assuming their full responsibility.

* See Appendix A.

MENTAL HYGIENE

Mr. Max Bogner, District Supervisor, Bureau of Social Work, State Department of Mental Hygiene, explained the services carried on for special foster home placement of mentally retarded children.

These are private homes available only to patients eligible for leave of absence from state hospitals. The staff of the Bureau of Social Work finds the homes, certifies them under Section 6726 of the Welfare and Institutions Code, places children in them and does the followup supervision There are approximately 250 children in these homes now. Most of them are from hospitals for the mentally retarded; a few, approximately 20-30 of these, are from hospitals for the mentally ill.

The emphasis in finding family homes has been upon a home that can give acceptance, warmth and encourage development There are many special problems of care for these children. Foster parents must be resourceful and flexible. In selection of foster parents anyone who must rely upon the income from the foster child for a livelihood, to any significant degree is ruled out—there must be an independent income.

The recent legislative action resulting in an increase in board rate from $70 to $100 per month has helped immeasurably in securing the kind of homes needed Formerly foster families were having to "cut corners" restricting necessary incidental expenses, recreation, etc. While any good foster parent has the quality of "working from the heart," it is wrong to bank entirely on that and penalize them for the time, effort and work they put into the job.

Mr. Lanterman asked what age these children were, and if they were placed because parents are unwilling to undertake the necessary care.

Mr. Bogner said age range of the children was from infants (in the mentally retarded group) to children of 16 or 18 As far as homes are concerned, there are many reasons these children are placed outside. Generally because the condition of the child and the stresses and problems in the home make it seem that the child would benefit from care outside his own home.

One concern of the Mental Hygiene Department is that many children are admitted to state hospitals who do not belong there because it seems they do not belong anywhere else Similarly children remain in a state hospital who no longer require this kind of care.

The reasons for this are complex, but gaps in community services is one element—unmet needs for diagnostic treatment and counseling services; foster home and day care facilities, schools and recreational resources.

A second factor is the tradition of attaching labels to a child, such as "mentally deficient," "delinquent," "nonresident" and other tags which some way seems to relieve the community of a "problem." On the basis of these labels, we develop a compelling pressure to "send the child away," and so take away his chance of living and growing in his own community This way of doing does not really relieve the community Problems increase and become more difficult to deal with. Services rooted in the community could prevent, in many instances,

the need for hospitalization of children Good foster care services have done this and also have enabled a child to return to the community when hospitalization was no longer needed and their own home was not yet ready to receive them.

Foster care does its best service when all services in the community are related—counseling, clinic, day care, school, etc, so we don't have to use one facility because "that's all there is."

Dr. D. C. Stylianou, Legislative Chairman, California Council for Retarded Children, in a prepared statement to the committee, said these considerations enter into foster home care (1) foster parents cannot really be "substitute parents" since in most cases the child's own parents remain, to some extent, in the picture, (2) the selection of a foster home requires more than the meeting of physical requirements. The mere fact of placing a child away from his own home, however inadequate, adds a new problem to his existing problems; (3) fee schedules are now not necessarily related to the quality of service rendered. Good care should be adequately recompensed; (4) research is urgently needed in the field of foster home placement A survey alone is not enough; (5) the small institution offers an important resource to many children who cannot use a private family home It is clear there is not nearly enough of this kind of facilities. Treatment centers are urgently needed and their development should be encouraged.

OTHER

Mrs. Lois Chalfont, Director of Sunny Hills, representing the Council of Executives of Children's Private Institutions of Northern California, spoke of the change in California, and the Nation, from large custodial institutions for children to the small group care institution for 50 or less children. She mentioned Sunny Hills where they care for 50 disturbed children, the goal being to help these children with the difficulties in their personal lives, and if possible place them back with their own families.

Twenty of the 50 children in this institution have been in foster homes "over and over; one child has been in 15 different foster homes." Foster parents need training just as the house parents in the institution must receive training It costs money to give them this help through classes at the university or through individual conferences. The cost of care per child has also increased from approximately $180 per month per child to $310

Children from broken homes who are emotionally disturbed, the physically or mentally handicapped, and the delinquent are all problems and hard to care for. They are also apt to be destructive I think we would be able to find skilled foster care if we would pay for it. You don't love a child less or help them less because you get more money."

Mr. George Krell, Executive Director, Fresno Community Council, referred to a report just completed of an overall study made by the Family and Welfare Division of the Council, of resources available for children and youth in Fresno City and County who had to leave their natural homes One section of this study dealt with foster homes

The findings revealed a great need for more specialized foster homes to meet the tremendous demand for such services. The lack of homes

for: (a) the dependent teen-age youth; (b) large families of brothers and sisters; (c) delinquent, emotionally disturbed and physically handicapped.

The recommendations of this study are (1) the community should recognize its responsibility to help public agencies obtain more and better foster homes. This is a matter of concern to the entire county; (2) a more realistic stipend should be considered for foster parents. The present $65 minimum amount is in many cases inadequate. If the state matching basis was raised, Fresno County would have a greater incentive to raise their amount of $65; (3) a training program for foster parents should be developed at the local level as a part of the activities of the Department of Public Welfare; (4) in order to make a foster care program work, agencies must have skilled well trained staffs. In order to attract and retain good staff, salaries must be adequate; (5) the lack of factual material available on the effectivness of foster care programs in the State indicates that provision be made on the local and state levels for agency research on the foster care programs. Nothing seems to be available to help communities intelligently decide on types or degree of programs they should have.

Mr. Lanterman suggested the University of California might take responsibility for doing such a research project

Miss Eileen S. Cassidy, President, California Council of National Association of Social Workers, submitted comments to the committee for consideration. Especially noted were the following statements: "It is vital that children remain in their own homes if at all possible—therefore local community services of a preventive nature are needed to keep families together."

"Homemaker service, not well developed in California, would enable children to stay in their own homes during temporary illness or absence of the mother." Permissive legislation adopted in 1957 if made mandatory would enable protective services to be established and prevent needless placement of many children.

CONCLUSIONS

From information made available to the committee through testimony at the hearing in Fresno, through letters from people working in public and private agencies doing foster home placement of children, and in personal interviews with members of the committee by persons knowledgeable in this field, it is inferred that the following are some of the most important aspects needing attention:

1. Children are being placed in institutions and foster homes because help has not been available to parents or child prior to the time the problem has become so serious that removal of the child from his own home is necessary.

2. In many communities there is a lack of co-ordination between agencies so dual administration of the same case exists. This is expensive, confusing to the child, his own parents, and to the foster parents. In some counties agreements have been reached between departments dealing with children, so that responsibilities are defined and adequate planning is carried out by a single agency. Other counties have been unable to resolve the placement problem by agreement.

3. Occasionally a child remains in placement too long because there is lack of consistent planning for a permanent arrangement for him. This may be partly because there is no definite alignment of authority, supervision, or jurisdiction among the agencies handling his case.

4. Foster parents need consistent help and advice in order to give a child placed with them the care and understanding he needs to develop into a well-adjusted person. This is true not only for the emotionally disturbed children, but for all children who must be placed away from their own homes.

5. Rates paid are insufficient to attract the type of foster parents needed by certain groups of children. Additional pay for services, over and above the going board rate, might encourage additional understanding and intelligent persons to become foster parents.

6. There is resistance by potential foster parents to undergoing annual mandatory chest X-rays Younger foster parents say their bodies are becoming constantly more saturated with atomic radiation. Also if there is not a mobile unit of the Tuberculosis Association available, they must pay $10 each for the chest X-ray. They say these provisions penalize them for doing a service to the community

7. Often the existing foster home becomes a competitive field between public and private agencies, or among public agencies or private agencies. This works to the disadvantage of agencies and children since competitive pressure may result in placing children of different ages, dependent, or those with varying degrees of delinquency in the same home. There does not seem to be real protection for any one agency.

8. Every day some agency is faced with a case where the child could "make it" if there were adequate facilities for:

a. The child who is not able to remain in his own home but not yet ready for referral to the Youth Authority.
b. Teen-age girls who must be placed outside their own homes.
c. Young children of the same family who should remain together.

A small, well-run institution, public or private, would provide an intermediate step in placement This type of foster care could take the child who is unable to accept the close personal relationship of a foster home, in addition to other children who can adjust better in group care A group-care home or institution of this kind, limited to a maximum of 12, and providing constructive care under trained leadership, is needed. Board rates would have to meet the per capita costs of care.

9. The present subvention method of state reimbursement to the counties to pay for foster home licensing does not meet the costs of foster home care It does not reimburse the counties for time of workers spent in locating, studying, eliminating unsuitable candidates, investigating violations or complaints The present method of payment on the basis of a license issued tends to encourage continuing licenses that should be revoked, or issuing a license to an unsuitable home, if counties are more concerned with financial problems than with thorough study of suitability of foster parents

10 The foster home licensing program for children is properly an adjunct of the Children's Division of the State Department of Social Welfare but the present administration of licensing boarding homes for

both children and aged by this division, is administratively unsound. It is also unsatisfactory to have specialized consultation for boarding homes for the aged and boarding homes for children coming from the same source. The skills necessary for recruiting, selecting, training and counseling foster parents are entirely different from those used in locating, program planning, inspecting and investigating homes for the aged

11 Foster homes in which to place so-called delinquent youth are extremely difficult to find. Private agencies are less concerned with delinquency treatment than they formerly were. Foster parents are fearful of taking a boy or girl with severe problems, when there is insufficient staff or staff without specialized knowledge to help them handle the difficult teenager. Some cottage type of care, with a child welfare counselor and psychiatric help, would be of aid in these cases.

12. There is little available factual material on foster home programs in California concerning existing needs, effectiveness of present services, or methods of recruiting. Spot surveys will not give an overall picture A well-planned research project in this field would be of inestimable value to both public and private agencies.

RECOMMENDATIONS

Recommended changes to improve the present foster care program for children in California are generally administrative and policymaking rather than legislative; however, some proposed legislative changes are as follows:

1. Section 740 of the Welfare and Institutions Code lists the persons, associations, organizations or agencies to whom the judge may commit the child for care The result is that the judge is limited. It is recommended that Section 740 of the Welfare and Institutions Code be amended as follows:

> "When any person alleged to come within the provisions of Section 740 of the Welfare and Institutions Code, is adjudged a ward of the Juvenile Court, the Court may make such order with respect to custody and placement of the ward as the Court deems to be in the best interest of the ward and the community. The Court may call upon the services of any public or private agency in making placement and providing supervision."

2. Section 1511, Subdivision (b), Welfare and Institutions Code was amended in 1957 to increase the state's ceiling from $67.50 to $75 per month for participation in foster-home care It is recommended that in the first sentence, after the words, "there shall be paid" strike out the words "the sum of seventy-five dollars ($75) per month," and substitute "a sum of the average paid to all children under similar circumstances, not to exceed an average of more than seventy-five dollars ($75) per month per child."

It is possible that younger children may be cared for adequately for less than $75 On the other hand, it is almost impossible to secure adequate foster homes for teen-agers for $75 per month per child. This amount is to provide for food, clothing, shelter for the child, but does not allow anything for wear and tear on possessions of foster family, or for the services they give to the child.

3 Licensing for foster care of children should be separated from the licensing of foster care for the aged. Licensing of foster care for children should remain in the Division of Child Welfare in the State Department of Social Welfare.

4. Amend Section 1500 to make it necessary that foster homes and institutions taking children up to 18 be licensed Such legislation would afford the older child protection from exploitation. Children between 16 and 18 may now be placed in homes not investigated, licensed, or inspected, and frequently there is no definite plan made for, and little supervision of the child

5 Provide satisfactory substitute examination of foster parents in place of annual chest X-ray.

6 Provide state subsidy to county for receiving home for dependent and neglected children A temporary home is needed for such children prior to placement. A dependent or neglected child should be placed

in homelike surroundings, not in a juvenile hall with delinquent children. There may be times when no children in the county need this care, however it is necessary to have a foster home ready to receive children *day* or *night,* therefor foster parents would need a subsidy to compensate them for maintaining such a facility in constant readiness.

7. Make it necessary for the State to reimburse counties for a fair proportion of the cost of time actually spent in locating, studying, accepting or rejecting, and (if accepted) supervising foster homes. The present state reimbursement of $65 (Sec. 1622 Welfare and Institutions Code) for each new license or renewal of the old license has two discrepancies:

a. Does not actually reimburse counties for the time spent in locating and studying a number of homes in order to get *one.*
b. Puts a premium on licenses issued. This often encourages continuing a license which should be revoked.

If a county does a conscientious job, county money is spent in order to provide a high quality licensing service for the State.

8. Amend Section 1500, Welfare and Institutions Code to make state funds available to counties on a matching basis to help pay the cost of out-of-home care for a person under the age of 18 years, not eligible for ANC funds, whose family is totally unable to provide the amount of money ($150 or more) necessary to pay for out-of-home care for a defective or seriously disturbed child.

APPENDIX A

The resident population in the Fricot Ranch School for Boys on August 30, 1958, by county of commitment, and the total cost per month for each county is indicated below:

Name of county	*Number of wards*	*Cost per month*
Los Angeles	34	$850.00
Kern	22	550.00
Orange	1	25.00
Riverside	2	50.00
San Bernardino	4	100.00
San Diego	11	275.00
Santa Barbara	1	25.00
Ventura	3	75.00
Alameda	27	675.00
San Francisco	17	425.00
Contra Costa	1	25.00
Marin	2	50.00
San Mateo	4	100.00
Santa Clara	3	75 00
Solano	2	50.00
Butte	1	25.00
Sacramento	7	175.00
Shasta	2	50.00
Fresno	1	25.00
Merced	1	25.00
San Joaquin	6	150.00
Stanislaus	1	25.00
Tulare	3	75.00
Calaveras	1	25.00
Monterey	1	25.00
Tuolumne	1	25.00

Total population: 159
Total cost per month: $3,975.00

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REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON SOCIAL WELFARE

CONDITIONS AND PROBLEMS OF CALIFORNIA INDUSTRIES FOR THE BLIND

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LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, February 16, 1959

HON. RALPH M BROWN, *Speaker*
and Members of the Assembly
State Capitol, Sacramento

GENTLEMEN: The Interim Committee on Social Welfare, created by House Resolution 218 of the 1957 Regular Session, herewith respectfully submits its final report based upon verbatim testimony given in three public hearings on Conditions and Problems of California Industries for the Blind.

The report was prepared under the direction of the Chairman, Hon. Carlos Bee, and was adopted by the committee on January 21, 1959.

Respectfully submitted,

CARLOS BEE, Chairman
FRANK LANTERMAN, Vice Chairman
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SUMMARY REPORT OF THREE HEARINGS ON CONDITIONS AND PROBLEMS OF CALIFORNIA INDUSTRIES FOR THE BLIND

May 19, 1958
July 8, 1958
July 24, 1958

CONTENTS

	Page
FOREWORD	7
INTRODUCTION	8
Conditions and Problems of the C. I. B.	8
Summary of Testimony Given in Three Hearings	13
San Diego	13
Los Angeles	20
Oakland	24
Conclusions	28
Sources of Information	29
Appendix	30

FOREWORD

This report is based primarily upon the testimony offered in three hearings at Los Angeles, San Diego and Oakland dealing with the problems of the California Industries for the Blind.

Many of the questions raised in each hearing are not new but most are pertinent and important to an understanding of the problems. The points dealt with are primarily:

(1) Wages and hours;
(2) Production v. nonproduction shops;
(3) Personnel problems;
(4) Management difficulties;
(5) Conditions of shop equipment;
(6) Quality of materials purchased.

Often conflicting statements were made between management and workers concerning the causes of their grievances. Each side presented arguments seemingly sound; but when pressed for specific factual information, could support only a few accusations by verified materials. Misunderstandings between management and the workers appeared to be general in all three shops—especially in the Oakland shop. Testimony in all of the hearings left the impression that there is somewhere an unwholesome influence stirring up unrest between management and the workers.

Problems of the Worker's Guild members in all three shops are, for the most part, the same Low wages, poor equipment, low shop production due to nonproductive workers, or to those on state aid who will work only part time, lack of a steady flow of work through the shops, inferior materials, insufficient sales of shop work, favoritism in the shops, not enough state and county work contracts to take up the slack on U S. Government contracts, lack of employment and social security benefits for the workers, insufficient interest in placing the individual in the job he can do most efficiently, lack of the wide-range training to determine individual skills, and animosity between local and state office management.

INTRODUCTION

CONDITIONS AND PROBLEMS OF THE CALIFORNIA INDUSTRIES FOR THE BLIND

The California Industries for the Blind, established by the 1951 Legislature, and administered by the State Department of Education, operates three industrial workshops. They are: in Oakland, opened as the Industrial Home for Adult Blind in 1886; in Los Angeles, established in 1929 under the State Department of Institutions; and in San Diego, founded in 1932 by the San Diego Braille Club without support from public funds These shops provide sheltered employment to blind and visually handicapped who are unable to get employment in private industry. The shops, known as production centers, manufacture domestic and industrial type of corn brooms, street brooms, pillow cases, mailing bags, sanitary brushes, wet and dry mops.

The shop in Oakland differs from the other two in that some residents of the home work in the shops, although the home and shop are now separate operations. Workers in the Los Angeles and San Diego shops are day-workers who live in the adjacent communities.

On March 15, 1958, these three shops employed 233 blind workers and 39 sighted workers, distributed as follows:

	Oakland	*Los Angeles*	*San Diego*
Blind	105	102	26
Sighted	17	18	4

Almost since the inception of the program there have been problems in management and operation of these centers, as well as fundamental difficulties involved in the training of and efficient shop production by the blind workers.

Studies of the problems have been made by several groups—a Citizens' Advisory Council of businessmen, appointed by the State Department of Finance; the Legislative Analyst; Legislative Committees; and the State Co-ordinating Council on State Services for the Blind. All of these studies have shown unsatisfactory conditions in the shops and all have suggested solutions for at least some of the problems.

Although some of the recommendations have been carried out, serious problems concerned with conditions of employment and functions of the shops still exist. Therefore, it seemed essential for the Assembly Interim Committee on Social Welfare to hold hearings on the specific subjects of these WORKSHOPS for the blind, with the objective of determining and implementing necessary changes which will result in greater benefits to the workers and the management Three hearings were held: One in San Diego on May 19, 1958; one in Oakland on July 8, 1958, and one in Los Angeles on July 28, 1958.

The basic problem shown in all studies of the California Industries for the Blind is whether the shop is expected to be a subsidy plan or an effective production unit. As now operated these shops do not serve successfully either the purpose of a training center, or of an industry where a blind person can find full support. At present aid and production are interwoven. Few blind workers in these shops earn enough to

warrant discontinuance of their assistance payments, even though the shops are subsidized by the General Fund of the State and by citizens who buy products at above market prices

The number of workers employed in the shops receiving public assistance on July 1, 1958, was as follows:

	Oakland workers	*Los Angeles workers*	*San Diego workers*
Total ANB recipients employed	20	88	23
Total ANB funds paid to them	$15,568 48	$81,094 33	$21,103 09
Total APSB recipients employed	58	44	0
Total APSB funds paid to them	$58,570 96	$41,652 68	$

The March, 1958, payroll with the total number of workers it was distributed among was as follows.

Total payroll	$16,255 15	$23,258 96	$5,406.99
No of workers it was distributed among	154	167	32

The array of earnings for March, 1958, is as follows·

	Oakland workers	*Los Angeles workers*	*San Diego workers*
Less than $50	43 *	22	2
51 - 100	32	40	2
101 - 150	38	47	8
151 - 200	24	26	12
Over $200	17	32	8

* Thirty-three of these workers are in residence, each of whom receive room, board, and medical services

The array of hours worked out of a possible 160 for the same period was:

Less than 50 hours	23	14	2
51 to 100	31	16	1
101 to 150	55	76	7
Over 150 hours	45	61	22

The reasons why the workshops have failed to serve the purpose of a training center or of an industry in which blind persons may become self-supporting seem to be many and varied. Studies and reports enumerate:

Lack of proper training equipment and facilities.
The varying degrees of mental and physical abilities among the workers.
Inability to successfully compete with private industry.
The effect of state aid on individual incentive.

Under this last reason it is frequently pointed out that an ANB recipient may earn $50 except income per month, and amounts above the $50 apply as grant deductions (at least the first $11 of exempt income) and apply to special needs. An APSB recipient has the first $1,000 of earned income ($83.33 per month) plus 50 percent of earned income thereafter exempted, and the nonexempt income may reduce the size of the grant It is natural that the worker may not attend or put in a full day's work if his aid is in jeopardy.

The workers give the following reasons for their dissatisfaction with shop conditions.

1. Too much unemployment through arbitrary methods of layoff.
2. Workers do not receive employment benefits when ill or laid off; so, unless they manage to remain on aid they are out of luck This mitigates against a desire to become self-supporting..
3. The earnings are extremely low, sometimes less than $100 per month for the majority of full-time workers.
4. They do not get pay for state holidays or for the days they cannot work due to taking of inventory, whereas civil service workers receive pay for both of these periods
5. At times (Saturdays, evenings, after regular hours, etc.) when CIB workers are required to work overtime to keep the flow of work to production lines unimpaired, they are paid straight time for overtime work They feel they should be paid overtime rates for this work.
6. The workers maintain that the three methods of determining wages are inadequate:
   (a) Piecework;
   (b) Paid by the hour;
   (c) Pay based on a percentage of production

   Most of the workers are paid on a piecework basis if this rate can be established If not, a percentage of production for a given unit or department is established A few workers, generally the more skilled, are paid on an hourly basis The concern of the workers is that all these rates are arbitrarily established and manipulated, and the workers have the feeling that the salaries of the civil service workers in charge of production and sales are taken off the top If there is anything left it is given to the workers
7. The workers complain that too many high salaried civil service employees are receiving their pay from the manufacturing fund There are two funds—The Manufacturing Fund, a revolving fund out of which the wages of the workers are paid, then the General Fund, out of which are paid salaries of the civil service employees Workers say each legislative year the Department of Finance pushes more and more of the cost of the program onto the Manufacturing Fund, leaving a lesser proportion for the workers. Why do they load overhead onto wages, it has been asked. Overhead used to be about 25 percent of the Manufacturing Fund; now it takes 50-60 percent
8. The workers feel strongly that their production is adversely affected by:
   (a) Inadequate separation of the workers who are producers from those who are virtually nonproducers,
   (b) Inadequate sales promotion and too great dependence on government contracts,
   (c) The purchase and use of inferior materials;
   (d) Poor maintenance of equipment and machinery.

It seems necessary to set out clearly the function of the workshops in the California Industries for the Blind.

Can workshops ever be efficient as production units as long as production is held back by fear of loss of aid?

Should nonproductive workers be allowed to remain in the workshops or should they be entirely on aid?

Should opportunity centers of some kind be established for ANB recipients who can't fit into the production of the workshops but who can participate in some nonstandardized type of production and receive some remuneration?

If workshops cannot succeed when they try to be both training centers and production plants, it might be well to consider these possible alternatives:

1. Use the workshops entirely as training centers to qualify blind workers, through specific training and work experience, for employment in private industry.
2. Use the workshops entirely as production plants for qualified blind workers. Let only the productive workers be employed. For the period of their employment do not pay them blind aid; instead subsidize them a clearly defined amount because of their handicap, then pay them over and above that subsidy for their production on an incentive basis. Consider modifying the law in order to provide unemployment insurance during layoffs, and unemployment disability insurance in case of idleness caused by illness; or restore blind aid to them in periods of nonemployment.

   Clearly defined directives should be issued by the administrative agency regarding production standards and the sales program. These directives should be binding on the management of the centers. The purpose should be clearly set forth in the law that the subsidy, plus the possible wages, should enable the blind worker to enjoy the benefits of a first-class citizen.
3. Set up opportunity centers, where advisable, for blind workers who do not wish to enter the workshops on the foregoing terms, and for those unable to qualify for workshop employment. Afford them primarily handicraft work at the opportunity shops, so as not to bring them into conflict with the manufacturing work of the shops.

If opportunity centers are established there should be clearly defined differences between these and the workshops, otherwise it could add another layer to the present situation. The report of the Legislative Analyst suggests the following principles be applied to setting up opportunity centers.

(1) Proof of adequate interest by the local blind.
(2) The operation of the center must be inviting enough to attract from production shops those employees who are unproductive.
(3) Too much reliance must not be placed on a local sponsor's support.
(4) Subassembly and sorting contracts should be secured from local industry that do not conflict with the blind workshops.
(5) Use must be made of the sales facilities of the California Industries for the Blind in disposing of products produced.

Figures on the blind population in California are as follows:

As of March 1, 1958, there was an estimated 26,000 blind or 18 percent of estimated total population (14,160,000) of California. (Less than two-tenths of 1 percent of the total population.)

Thirteen thousand three hundred thirteen, or 5 percent of the total 26,000 blind, are receiving Aid to the Needy Blind (average grant $98.34); and 330, or 1.3 percent are receiving Aid to the Partially Self-supporting Blind (average grant $108.64).

During the current fiscal year it is estimated that Aid to the Blind, including administrative costs, will total $16,823,000, giving a per capita cost of $1.19. Of the $16,823,000, 43.68 percent is state funds; 39.55 percent federal funds, and 16.77 percent county funds.

SUMMARY OF HEARINGS TESTIMONY—

SAN DIEGO HEARING

CALIFORNIA INDUSTRIES FOR THE BLIND—MAY 19, 1958

Dr. Francis W. Doyle, Deputy Superintendent of Public Instruction, State Department of Education, quoted from Section 3300 of the Welfare and Institutions Code which provides that the Department of Education, with the approval of the Director of Finance, may establish manufacturing centers and salesrooms to provide employment and training for blind and other physically handicapped persons. These centers and salesrooms shall be under the management and control of the Department of Education and shall be known as California Industries for the Blind.

The centers now established are located in Oakland, Los Angeles and San Diego. These production centers, commonly known as workshops, are subsidized by the State Mr. Doyle then summarized the work of various committees who have studied the Industries for the Blind. The first extensive study of the Industries for the Blind was made by a joint interim committee of the Legislature created during the 1949 Regular Session. This committee recommended that:

(1) Workshops be administered to serve adult blind who desire full-time industrial work, not state aid, but are unable to go into private industry,
(2) Administrative controls be centralized for maximum efficiency, in accounting, purchase of raw materials, merchandising, also for uniformity in wages, hours, etc.,
(3) Opportunity for participation in group life and health insurance, sick leave and vacation benefits be extended to workers in these workshops,
(4) The State continue to provide buildings and equipment necessary for workshops and a support budget which will permit the Department of Education to secure an adequate administrative staff for each shop.

In 1955, the Citizens Advisory Committee appointed by the Joint Legislative Budget Committee made the following recommendations:

(1) Dissolution of the California Industries for the Blind as a production shop.
(2) Integration of California Industries physical assets and competent personnel into an orientation and training program to place blind adults in private industry.
(3) Place on 100 percent public assistance those blind unable to be trained for private industry.

In March, 1957, the Co-ordinating Council on State Programs for the Blind submitted to the Legislature its recommendations concerning reorganization of the Industries for the Blind. The Co-ordinating Council on State Programs for the Blind was created by the Legislature

in 1951 and is composed of the Directors of the State Departments of Health, Social Welfare and Education. Their recommendations are as follows:

(1) Reorganize the Industries for the Blind into more efficient production centers by employing only those workers who are or who can become efficient producers.
(2) Limit operation to the production of carefully selected articles that can be sold to federal, state, county and city political subdivisions and districts.
(3) Establish opportunity centers to provide work for those who do not have a plan of self support, but who can participate in nonstandard type of production, giving them some remuneration.
(4) Develop procedures for careful screening of workers.

In moving toward these objectives of the co-ordinating council, the Department of Education has:

(a) employed a production engineer,
(b) employed a sales engineer,
(c) budgeted funds for employment of a co-ordinator of opportunity centers,
(d) improved production operation in Los Angeles with resultant wage increase for workers,
(e) held meetings of representatives of all units and agencies concerned with the welfare of the blind to co-ordinate services, and,
(f) requested the Department of Finance to make a study of the administrative pattern, accounting procedure, and ratio of costs charged to the Manufacturing Fund and to the General Fund of the State.

Mr. Melvin Gray, Production Superintendent of California Industries for the Blind, San Diego Center, reported 133 blind and physically handicapped and an administrative staff of 12 civil service people work in the San Diego shop. Eighty-five percent of the work is done by legally blind operators.

Mr. Kilpatrick asked if all the blind people suitable for work are employed.

Mr. Gray said there were 18-20 people on the waiting list. The shop does not have sufficient space to take subassembly work and keep people employed. They now have approximately 30,000 square feet for storage and operations. They need 50,000.

Mr. Sumner asked how much people that work were paid—what is an average hourly earning?

Mr. Gray said there was no hourly or standard rate. Workers are paid on a piecework basis, averaging about $1.15 per hour.

Mr. Sumner: How close to self-supporting are the people that are working steadily?

Mr. Gray: A lot depends on the individuals working. Those that want to work we can most generally work full time, but we are handicapped with those that are on aid and only want to work for a certain length of time. They want to lay off or stay home and say they are sick or something because they have earned too much.

Mr. Sumner: What is your concept of the function of your shop—employment, an opportunity to rehabilitate, or what?

Mr. Gray: To furnish enough employment so that the blind can be self-supporting without having to be on aid. We are hooked up with the Blind Industry of New York. The government purchases in large quantities and the work is allocated to different workshops throughout the United States. Orders come to us three times a year. We have to meet delivery dates on those orders. After that we may be without an order large enough to keep our plant working for 30 to 60 days. Instead of laying off all our crews, we cut down and work them part time to try to keep them employed. If we could get a steady flow of work, the employees could be self-supporting.

Robert Campbell, President of the California Council of the Blind, headquarters at Berkeley, reported that most of the workers in the three shops are not fully self-supporting; the large majority are still receiving public assistance. Many of them do not work full time. Figures given in relation to hourly rate are based on what they would get if they had full-time pay. One of the causes of public assistance for an individual is lack of sufficient work. There are four different classes of workers: those able to do good work, earn full pay and become completely self-supporting; perhaps another 75 percent could be almost self-supporting; others not able to earn quite as much; and finally, those working on jobs merely to supplement their public assistance or to have something to do. A minority of workers contribute to the inefficiency in the shop, and lower the pay rate for all. There should be more selectivity of workers but also an opportunity for those who wish to contribute to their own support to do so—either by subsidy or by providing another place where they can work. Conditions such as poor and old equipment, ineffective maintenance of equipment cause a slowdown of work. One of the greatest factors toward inefficiency in the shop is the fact that public assistance and employment are intermingled.

Workers receiving public assistance grants are permitted to earn only $50 per month without deduction from their grant. Therefore, when they earn almost $50, they either stop working or don't work as hard as they could. This, of course, reduces the efficiency of the shop.

Mr. Bee asked whether the policy should be one of an efficient production shop or one of providing training and experience to enable the blind person to contribute to his own support.

Mr. Campbell thought it should be an efficient production shop, as such it will provide a certain type of training.

Mr. Bee then asked if workshops are planned on an efficient production basis, should opportunity centers of some kind be established for those who can't fit into production.

Mr. Campbell felt such centers should be only for those workers who wish to supplement their public assistance.

Mr. Bee inquired whether there is need for additional control and co-ordination of activities by the central office in Sacramento—the Division of Special Skills and Services, State Department of Education.

Mr. Campbell believes there should be a central control by means of supervision but in such a way that it would not hamper local management.

Mr. Geddes asked if there should be more diversified types of work in the shops so the blind could have training in different fields.

Mr. Doyle thought that in order to give diversified training for private industry, shops would need to run a large trade-training program not in competition with private industry and the State would supplement the budget of the centers. If the purpose of the center is for efficient production, it would be better to select fewer items with a good margin of profit rather than too diversified and competitive work. If the purpose is a training center, then we are not going to talk about production, competing, and making money. Many people feel a blind person can't be trained for private industry in a particular center because the shop is not able to reproduce conditions of outside employment so it is better to train the people on the job in actual industry where they are to be placed. Occasionally a private industry will take relatively large numbers of people into the industry and train them.

Harry Stuart, General Manager, California Industries for the Blind, explained that each center concentrated on certain types of products so there would not be a duplication of equipment or raw material. Materials are all purchased through the State Purchasing Division. A big part of the products in the blind industry program go to the Federal Government. The Wagner Act, established in 1938, states that certain products, about 60, which the Federal Government uses, must be purchased from the workshops for the blind throughout the United States. For that purpose the National Industries for the Blind, a nonprofit organization, was created at that time. They receive orders from the Federal Government agencies and in turn allocate them to blind workshops throughout the Country. Primarily because of location, California receives each year approximately 20 percent of the Federal Government business.

Fred Pearson, Chairman, Advisory Board, San Diego Center, C. I. B., mentioned the great variations of abilities among the blind and therefore the need for a many-phase program to care for them. He would like to see as many as possible employed in private industry because in this way they can more easily become an integrated part of the community. For others who are not employed in private industry he believes sheltered workshops should be production units where the person may become self-supporting, and there should also be opportunity centers for those who wish only to supplement their public assistance and for those who could use this as a therapeutic aid.

Mr. Brookshire, President of the Blind Production Workers Guild, spoke of such problems as a lack of understanding between management and the workers; insufficient work and work allotted spasmodically instead of spread out through the year; poor equipment; low pay; unsureness of the amount of bonus checks; lack of retirement benefits; and vacation pay prorated on amount of money earned during entire past year—two weeks vacation pay in July; one week in December.

Mr. Sumner asked where the bonus pay came from

Mr. Stuart said this is not a profit organization so if there are funds available at the end of the year, it is returned to workers as a special wage payment.

Mr. Ennesser, Secretary-treasurer of the California Industries for the Blind Workers' Guild, referred to a report made by the State Division of Audits concerning operations of the C I. B. dated February 19, 1957.

Mr. Doyle explained this report was made in 1957 but contained problems that arose in 1954-1955 Many things referred to as being so in 1954-55 had been corrected by 1957.

Mr. Ennesser reported that machinery in the shop is antiquated and there is a lack of efficiency by management in setting up work. Workshops have become primarily production shops, but wages paid are not comparable to those in other business If piece work rate is unsuitable for sighted workers, why it is still used for blind? There should not be an hourly rate for all. In either piece work rate or hourly rate for all, the people who do not produce are being overpaid. If all work as a group and pay amounts are figured on number of people and number of hours worked, the good producer is brought down to the level of the substandard worker. "We need more work and a more reasonable distribution of wage setup some way."

Mr. Kilpatrick asked whether C I B was paying all of the earnings of the blind to the blind, or paying for equipment.

Mr. Gray answered that a certain amount of money in any business had to be set aside for equipment and repairs to equipment

Mr. Pouson, member of the Workers Guild and a worker in the center, stated "conditions in the shop are poor—we need better equipment, better understanding with management, more respect than we get. The work is hard; the equipment is bad; the pay is poor "

Mr. Harris, Associate Budget Analyst, State Department of Finance, reported that the Manufacturing Fund is a revolving fund composed of appropriations made through several pieces of legislation over an extended period of time The present fund is an amalgamation of three funds; the Industrial Home for Adult Blind manufacturing fund, the Los Angeles Industrial Workshop manufacturing fund, and the San Diego Industrial manufacturing fund. All of these have a total liability to the General Fund amounting to $550,000. The balances of these three funds were all transferred to a single fund (Chapter 943, Statutes of 1949) and in the Statutes of 1953 was named the California Industries for the Blind Manufacturing Fund. An attempt was made to separate costs which should be charged to production and costs charged to overhead A plan for this went into effect July 1, 1949, and has been amended in 1951, 1953 and 1958. On July 1, 1958 the following plan became effective. The General Fund bears expenses of administration, general office, dining room expense, rents, lights, heat, power, maintenance and upkeep of equipment, except production equipment, and janitorial services; the purchase of office equipment, recreation equipment, dining room, maintenance equipment and automotive equipment for administration The Manufacturing Fund shares the following costs: automotive equipment for merchandising and manufacturing and manufacturing production equipment, maintenance of

production equipment, costs of materials for production, reserves for depreciation on production equipment, salaries of blind and handicapped workers engaged in production, general manager and clerical assistance, salaries of shop superintendents, salaries of instructors and foremen, merchandising costs, truck operations for merchandising and manufacturing, compensation insurance, and storekeeping costs. (Appendix L.)

Mr. Jordan, Senior Administrative Analyst, Office of the Legislative Analyst, Sacramento, pointed out three general areas of problems mentioned so far in testimony.

(1) The workers who are less productive hold back the more productive ones;

(2) The unevenness of scheduled production directly related to the entire sales problem; and

(3) The grievances of workers.

He then gave some significant figures in regard to the problems in California Industries for the Blind Thirty-one percent of the workers of all plants have been with them for 6-10 years; 5 percent over 20 years; 9 percent less than one year. The age distribution is from 20 through 70. In the matter of training, 24 were accepted for outside employment during 1956-57. Sixty percent in all centers are on aid. Average days worked per week 4.5 Oakland, 4.3 Los Angeles and 4.1 San Diego. Average wages of full-time employee $162 Oakland, $196 Los Angeles, and $202 San Diego. The General Fund support cost is in the neighborhood of a quarter of a million dollars. This is directly from the General Fund to support the three institutions. It is distributed among these institutions according to size and number of full-time employees When this sum is converted into cost per worker, the State is subsidizing the Oakland Center in the amount of $833 per worker per year; in Los Angeles $1,261 per worker per year; and $1,857 per worker per year in San Diego. San Diego Center is less productive, a smaller number of workers and less diversification and costs the State more. Sales by customer are as follows:

60 percent go to the Federal Government

23 percent go to the franchise distributors

5.21 percent are absorbed by the State Government and

55 percent by other areas of government such as county, city, school districts, etc.

Roughly 25 percent of sales go into salaries, about 18 percent of this is for the worker, 6 percent for the factory personnel and 1.9 percent for the central office.

Mr. Geddes observed the salaries and wages in the San Diego shop have not seemed to increase in proportion to the rise of living expenses

Mr. Sumner mentioned the possibility of a test in one area to see whether separating productive from nonproductive workers would bring up worker morale and production.

Mr. Jordon pointed out that a well-worked-out plan and careful screening must precede setting up an opportunity center—even there people must be on the job and there must be work turnover. He recalled that although there were 80 petitions to have an opportunity center opened in San Bernardino, the day the center opened only 14 people came and eventually even less came. He believes the most effec-

tive plan would be to have opportunity centers as a separate organization entirely supported by the State from the General Fund where the worker who is unproductive would be placed; and there would be no connection or freedom of movement between the production shop and the opportunity center.

Mr. Zeile, District Supervisor, Vocational Rehabilitation Bureau, San Diego, explained briefly the function of the Bureau of Vocational Rehabilitation in relation to all handicapped groups and the special services the agency has available to the blind as a single disability group. In many areas of the State there are rehabilitation counselors for the blind Their particular function is to enable the blind person to make vocational adjustments toward employment in industry. In answer to questions from committee members, pertaining to news and snackstands operated by the blind, he said the operators are trained by the State Rehabilitation Agency. State funds (approximately $4,000 for newsstand, a little more for snackbar) are used for equipment; title remains with the State. The operator retains all of his profits (about $300 for newsstands). These profits are generally sufficient to remove the operator from blind aid support.

Mr. Bee, in closing, pointed out that serious problems in regard to the blind had been with the State over a period of years as previous reports would bear out.

This committee hopes to make recommendations to the Legislature that will correct some of the inadequacies indicated. However, money has become tight and changes requiring increased financing may not be brought about as rapidly as the committee would wish.

LOS ANGELES HEARING

CALIFORNIA INDUSTRIES FOR THE BLIND—JULY 24, 1958

Mr. George A. Brown, Manager, California Industries for the Blind in Los Angeles, gave some historical background of the development of the Los Angeles workshop He believes that salesmen for blind products should not receive a flat salary but a minimum basic salary plus a commission on the sales he produces. This, he believes, results in stimulating the salesman's interest in competition with other markets, and if prices for blind workshop products are out of line, he recognizes that price adjustment should be made.

Mr. Brown said that prices set by the committee on the purchase of blind-made products in Washington, D C., left little local control over wages. After allowances are made for the cost of materials and factory overhead, the remainder may be allocated to wages and profit, but often there is little left for profit

Some of the blind workers in the Los Angeles shops have secondary handicaps and are unable physically to work 160 hours per month. Although these substandard workers lower the production rate, Mr Brown believes "they will violently protest" being transferred to an opportunity center He believes the inability of the Los Angeles shop to get more workers off blind aid is due to lack of steady full-time employment.

In regard to the Blind Workers Guild, Mr Brown initiated its organization in his workshop and feel its active functioning has been beneficial to workers and management.

Mr. Geddes asked whether Mr. Brown thought the policy should be efficient production or providing training to enable the blind person to contribute to his own support.

Mr. Brown thought there should be a production area that could be self-supporting with no cost to the State, and a separate opportunity area that will not be self-supporting, therefore, would have to be subsidized by the State.

Mr. Lanterman asked if the incapacity of certain individuals caused them to get less wages and whether there has been any suggestion or recommendation that there should be a minimum wage regardless of handicap.

Mr. Brown said many of the blind workers with secondary handicaps cannot put in full time, but would rather be working and drawing 85 cents an hour than be idle, therefore, although 85 cents an hour is not enough, he would like to set that as minimum.

Mr. Lanterman wondered how many people are not even getting 75 cents an hour and suggested we take segregated blocks of people with indications of their additional secondary handicap, and see what the average of their income is per hour—not taking all the groups together—and find out whether or not we have a problem there we might meet We could look upon this as a problem block or unit of employment.

Mr. Brown said he would send a report of this problem in the Los Angeles shop. (See appendix III)

Mr. Kilpatrick referring to a statement by Mr. Brown that a worker, even though not able to earn top wages, may work because he wants to be busy; felt that careful consideration must be given to this fact.

Mr. Lyman Clarno, Blind Workers Guild, gave three basic objectives to be attained First a proper and concentrated training program —a department by itself, under support, where a blind person is trained in not one but many shop operations so his capabilities can be better determined Second, more adequate supervision and inspection of goods —time is lost by a worker due to; (a) faulty operations of one of the workers ahead of him on the project; (b) materials of poor quality that cost the workers loss of time and money, also the operation of faulty machinery. All these things bring down the workers earning capacity in piecework Third and last, a sales market. As the agencies are now constituted, the sales are largely on the "tincup appeal." Blind people feel if properly trained and supervised, they could put on the market an article thoroughly competitive that could be sold on its merits.

There should be some central control but it should not control every local operation.

Mrs. Ann Stanley, guild member, feels there is gross injustice in the management of the center; management is disinterested and inefficient in the handling of workers, production and sales in the Los Angeles Center. Materials workers must use are inferior. Civil service employees have through the years received regular step increases and cost of living increases, whereas the blind workers have been staying in almost static conditions as to their income.

Mr. Bee: The matter of inferior materials purchased for use in the centers was brought out in the hearings in Oakland and San Diego. This would not be the responsibility of either local management nor central management in Sacramento but of the State Purchasing Agent who will testify today.

Mr. Robert Campbell, President of the California Council of the Blind, said his organization represented 41 separate state organizations including three blind worker guilds. The California Council for the Blind has advocated changes in laws to bring about better co-ordination of management and the workers. Problems still exist, much the same in the three shops—Los Angeles, Oakland and San Diego. The main problems seem to be lack of full employment; rate of pay whether for the job, hourly rate or piecework rate is not sufficient to earn an adequate monthly wage; too little attention is given to adequate training and placement of workers. In addition poor equipment and inferior materials hinder production and result in inferior products. The California Council recommends that necessary changes be made in the laws governing California Industries for the Blind so as to provide for a monthly wage to all workers of not less than $190, plus an additional incentive amount. It further recommends changes in law so that blind workers may participate in unemployment insurance and social security benefits.

Mr. Kilpatrick asked for information in regard to a ruling that blind workers were wards of the State.

Mr. Campbell stated this ruling was that because the shops were subsidized by the State, the workers were wards of the State. (See appendix.)

Mr. B. R. Cheyney, State Purchasing Agent, in answer to charges made in all three hearings that poor materials were purchased said: practically all material bought for CIB is purchased on the basis of specification furnished by the agency involved The purchasing department accepts the low bid meeting specifications. When the material arrives at the individual workshop, they assume it complies with specifications unless notified to the contrary. If notified that material does not meet specifications, they have material rejected and replaced. Most of products used by CIB are purchased on the basis of federal specifications. The State purchasing department nor the management of CIB does not have any element of discretion in specifications

In the seven instances during the past three years where it was called to the attention of the purchasing department that material for CIB did not meet specifications, corrections were made.

Mr. Kilpatrick asked who had the responsibility for checking material to vouch for its quality.

Mr. Cheyney said there are a number of state agencies which perform an inspection function on behalf of the agency and the purchasing division if this service is asked for. For example people in the Department of Professional and Vocational Standards have acted on behalf of the State, and made inspections for the California Industries for the Blind.

Mr. Kilpatrick observed that if there is no specified means of checking material it would be wise to authorize and license somebody in the institution to check material on delivery to see that it is within specifications.

Mr. Cheyney agreed but said the Purchasing Division is not staffed to provide such inspection services. It is not discretionary with this division to provide inspection service, at an additional cost to the receiving agency, unless this service is requested by the agency.

Mr. Geddes asked who, specifically, is responsible for checking materials upon delivery?

Mr. Cheyney believes that material should be inspected upon receipt by one of the state agencies qualified to make the inspection Material should either be accepted or rejected at that point. However, such policy and procedure are not within the jurisdiction of the Purchasing Division.

Mr. Lanterman asked when orders originated for large shipments of materials that needed storage space, how in such large orders did one know whether specifications were met unless there was a check.

Mr. Cheyney believed the local organization initiated the requisition, passed it on to the headquarter's office, which either approves or disapproves the request. If approved, it comes to the Purchasing Division for processing. The only way of being sure specifications were met would be inspection upon receipt of the material.

Mr. Lanterman pointed out that there now exists a loophole between ordering, purchasing and delivering. There should be an automatic procedural confirmation of quality of delivered materials—not merely a request at the discretion of a local agency. There should be uniformity of procedure.

Mr. Cheyney felt that in instances where a manufacturer accompanied his shipment with a certificate of compliance, additional inspection would not be necessary.

Mr. Kilpatrick asked the size of state purchasing business in dollars for the year.

Mr. Cheyney answered $92,000,000 during the last fiscal year.

Mr. Kilpatrick then asked how authority for routine inspection could be given the Purchasing Division?

Mr. Cheyney thought the Director of Finance could establish this as a basic policy of the Department of Finance. Legislation would not be necessary.

Mr. Paul Barron, Superintendent of the Los Angeles Center, California Industries for the Blind, said his center requires a certificate of compliance prior to acceptance of materials. Some material has been unacceptable even though accompanied by a certificate of compliance. Sometimes under-standard material is accepted rather than keep people idle for a 30-day period of negotiation for replacement of material. This has happened with yarn and with sheeting. When a supplier consistently sends defective material, they are eliminated from the bid list. Mr. Barron believes quality control is not the responsibility of the Purchasing Division, but of the individual center.

Mr. Lanterman asked Mr. Barron to comment on the charge of "favoritism"—is it the result of trying to separate highly efficient workers from less able?

Mr. Barron thought this applied to earnings of blind and sighted workers, but pointed out that in the mattress factory, the sighted workers made only one cent per hour more than blind workers.

Mr. Kilpatrick asked when faulty material was used rather than keep people idle, is there any redress from the supplier.

Mr. Barron said a claim was filed and the shop recovered whatever it could for defective material. In using this material time is lost by the individual worker who must sort material, so an hour-time rate is set up to pay the worker for his efforts.

Mr. Brown feels the answer to some of the shop problems is mechanization. It is impossible for the blind workshops to compete on hand operations with machine operations. Wages paid will never be standard; workers will never be satisfied. Experiments have shown that blind people do a good job in operating certain types of machinery. Learning to operate modern machinery not only makes for efficient production, but trains a worker for private industry where such machinery is in use.

He does not believe there would be any objection of competition from private business if shops were mechanized for a specially privileged group to maintain their earning capacity. He would like to have the Interim Committee on Social Welfare make recommendations resulting in better service to the blind, improved earnings where needed, a successful sales organization, and more intelligent and practical central control.

OAKLAND HEARING

CALIFORNIA INDUSTRIES FOR THE BLIND—JULY 8, 1958

Lupe Torrez, President of the Blind Workers' Guild of Oakland, said he believed the problems and conditions in the Oakland Center are similar to those in Los Angeles and San Diego, however, Oakland has the unique problem of resident and nonresident workers, and a large number of workers with physical handicaps who are fully sighted working with the blind. The Guild members, he said, feel urgent need of help. They have a list of grievances; they are prepared to testify under oath. He then gave the following statements. There are too many civil service employees on the manufacturing fund; there is improper distribution of work; poor material; poor sales promotion; inadequate machinery and poor maintenance of same, too many nonproductive workers; refusal of officials to grant livable wages to the blind workers while creating more levels of expense in management and administration. Officials also refuse to seek paid holidays, unemployment insurance or compensation, social security, or opportunity for advancement for nearly 160 employees; too many layoffs and too many short months. There is favoritism, racial and personal discrimination; deliberate effort on the part of management to cause dissension among workers; to belittle efforts to organize, ignore requests of workers, and failure to meet with workers to discuss mutual problems. The Guild recommends legislation which will provide Social Security, Unemployment Insurance and Workmen's Compensation for blind workers They further recommend that workshops be placed on a sound production basis, and opportunity centers be established for those who cannot fit into the production unit, but can participate in some nonstandardized work and receive adequate remuneration for their work. The Guild would also recommend a clearer definition of authority, duties and responsibilities between the central office and local management and that blind workers be consulted on adjustments or changes which vitally affect the workers.

Mr. Geddes asked the average wage per month.

Mr. Torrez said it was $116; however, this includes a number of fully sighted handicapped workers who earn over a dollar an hour, while many of the blind earn less than a dollar an hour, and with so few hours work they made far less than $100 per month. In response to a question concerning employer-employee relations, Mr. Torrez said there was a lack of communication between the two groups.

Mr. Sumner asked whether, as a guild organization, the members would be willing to assist in selection of members for a production unit, and those who could not keep up and therefore must go into an opportunity center.

Mr. Torrez said the organization would be willing to take this responsibility but they would hope workers in an opportunity center would have a living wage.

Mr. Rumford asked Mr Torrez to be specific in his reference to persons with whom the Guild had grievances

Mr. Torrez named two men in the central office plus the local foreman and local manager of the Oakland Center In each case he feels promises are made and not kept, and the men in the local office undermine the Guild and show discrimination and favoritism.

Mr. Bee asked if any of the Blind Guild members belonged to the California State Employees Association and if so had this group (CSEA) been asked to represent the Guild in their grievances.

Mr. Mendoza, a worker, replied that the guild members had belonged only for health insurance, and recently it was determined that because the Blind Guild workers are not civil service, they are not entitled to belong to CSEA.

Mrs. Petrie, Mrs. Mendoza, Mr. Costello and **Mr. Thomas Mendoza,** all blind workers in the Oakland Center, concurred in Mr. Torrez's charges of poor working conditions, low wages, inferior material and obsolete machinery in the center.

Mr. Bee asked for more specific information in regard to the supply of poor material

Mr. Mendoza was unsure whether the central office, local office, or state purchasing agent was responsible. He believes that poor material "happens too frequently" and each time it happens it creates two conditions—loss of wages to the blind and a poor product.

Mrs. Catherine Skivers, representing the California Council of the Blind, discussed a number of points brought out in a study she made of problems of the blind in 1956-57 at the request of workers in the three shops—Oakland, Los Angeles and San Diego "One of their biggest problems is that they are wards of the State" (see appendix II) A second problem is the combination of a production center and a sheltered workshop Mrs. Skivers' report covered other points as low wages, poor equipment, criticism of the inefficiency of the local foreman, and of the general manager, and an inadequate sales program.

Mr. David Amour, Production Engineer for the California Industries for the Blind, Sacramento, has been with them about 18 months He worked 12 months on a survey of the production of mattresses in the Los Angeles Center and is now working on a survey of the production of brooms in the Oakland Center. His recommendations will be primarily along the lines of different methods of production—he is not advocating any expenditures other than the normal ones. In the main his recommendations will be routine improvements.

Mr. Geddes asked for specific information on

(1) Lack of standby equipment,

(2) Whose responsibility it is to see that defective equipment is replaced;

(3) Why material is accepted that is not up to specific specifications.

Mr. Amour pointed out that he did not have any executive authority He is directly responsible to Mr. Stuart, the general manager, who is his immediate superior

Mr. Rumford attempted to get an answer from Mr Amour as to whether the broom corn used in the Oakland shop was inferior. After considerable questioning Mr Amour said in his opinion the broom

corn was inferior and "as a matter of fact, we pay more for broom corn than most anybody."

Mr. Rumford stated that as an engineer, Mr. Amour should report to the best of his knowledge and experience conditions of machinery, materials, etc., to his superior.

Mr. Amour in answer to a direct question from Mr. Geddes said "Mr. Copeland buys the broom corn—he is the responsible man."

Mr. Jordan, Senior Administrative Analyst, Sacramento, said there seemed to be a complete lack of communication between management and individual workers. There is a need for periodic meetings where grievances are expressed and something is done about them.

Mr. Bee expressed the opinion that the State of California cannot be involved in an accusation of purchasing inferior materials, therefore the Legislative Analysts should follow this accusation through to its final conclusion and report back to this committee.

Mr. Sumner asked whether the higher prices C. I. B. charged for their products was the reason the State did not buy more.

Mr. Jordan thought this was the primary reason.

Mr. Geddes believes the most important step now is activating some of the recommendations made in the numerous surveys and reports that have been made concerning the problems of the California Industries for the Blind.

Mr. Copeland, at the request of the committee chairman, made some statements in regard to the quality of materials purchased. In regard to broom corn, it is an agricultural product that varies according to seasons, conditions and areas. The factory superintendent, the broom shop foreman, and Mr. Copeland go over samples with the Deputy State Purchasing Agent. They sometimes pick a higher price broom corn than its competitive sample because of some defects in the less expensive corn. In such cases purchase of a higher price corn has to be substantiated to the State Board of Control.

Other materials, he states, are occasionally rejected and adjustments are made by the shipper. Material in articles made for the Federal Government are sampled and tested by the government.

Mr. Bee inquired whether Mr. Copeland investigated problems of the workers and what opinion he had of the guild.

Mr. Copeland stated that he went into the shop "many times a day" and his office is open at all times, therefore he is easily available for discussion of problems. He also said that he has "publicly and privately" supported the workers' guild because he believes it is a good thing. In answer to a question from Mr. Bee concerning the number of people living and working in the center, Mr. Copeland said there are 33 that live in the orientation center, which used to be the old industrial home and training center for the blind. These residents are elderly and can only work a few hours a day. They are working more to keep busy than for a livelihood. When the old industrial home program was integrated into the new program these people were part of it. They get full maintenance in the center. Their low earnings brings down the average of shop. At present there are 178 workers on the payroll; 33 residents, 145 living outside. Seventy-one of the total number are on blind aid. Of these 29 on Chapter I and 42 on Chapter III.

Fourteen of the group are blind with other handicaps; legally blind 81; sighted with other handicaps such as deafness, amputees, spastics 23. Sighted are used in key positions for inspection or in performing some assembly work where sight is indispensable. There are 19 civil service employees. This includes factory supervisors, office staff, janitors, maintenance men, manager and factory superintendent.

Mr. Geddes asked about the numerous complaints from workers of poor management substandard machinery, inferior materials, public relations in the agency and untrained supervisors.

Mr. Copeland said every supervisor was experienced in his work and all are dedicated people The equipment is good. If a machine breaks down it is repaired at once by foreman, maintenance man, or a factory representative During the time a worker's machine is out of commission, the worker may prefer to be idle rather than move to another machine. They are accustomed to a certain machine and have learned its characteristics. Mr. Copeland feels the public relations are as good as he can make them. In regard to inferior material, if he does not get the type he selects, he rejects it or gets an adjustment on it.

Mr. Rumford asked about safety provisions of the shop, also the feeling there was discrimination in the shop.

Mr. Copeland feels safety provisions are good Once a month there is a meeting of the safety committee and there are frequent visits and suggestions from the Industrial Accident Commission. As for favoritism—when workers complain to Mr. Copeland he discusses this with the foreman and factory superintendent Usually the difficulty is due to a misunderstanding. There is a wide discrepancy in the money received by different workers, because some work eight hours, five days a week—others work only part-time Also workers on aid, when they have reached their level of aid may not show up the rest of the month.

Mr. Bee asked Mr Doyle to give his opinion on the grievances in the shops of the California Industries for the Blind

Mr. Doyle said from the time he assumed his present position as Director of the Industries for the Blind a year and a half ago, his immediate concern had been personnel problems and personnal relationship within the Industries for the Blind In Oakland the workers asked him to meet with them. Prior to the meeting, they submitted problems that were bothering them He felt the meeting with the entire group was unsatisfactory so later met with five representatives of the workers. Their primary problem was wages While he is not proud of the wages paid, the wages compare favorably with other subsidized shops throughout the country The main problem is that of operating a production center competitively with handicapped workers of all degrees of productivity, and this complicated by the aid program, and trying to run a business under regulations of the State Government

Mr. Bee pointed out that all improvements did not hinge on financial situations There are numerous conditions such as inferior material, personnal relationships, management problems, he would like to have Mr. Doyle, Mr Patterson, Mr Stuart, and others in authority, correct.

CONCLUSIONS

The committee has given consideration to the following points:

1. **Setting Up Standards of Production.** Screen all workers very carefully to separate the productive from the nonproductive workers Establish production centers for the productive workers, and opportunity centers for the less productive workers Make a separation of the two types of workers mandatory. Put all state aid cases in the opportunity shop. The production shop should be organized, staffed and administered to serve the adult blind who wish full-time industrial work without state aid, but who are unable to secure employment in private industry.

   In subcontract work the workers must be those who can be depended upon to turn out satisfactory work on time, otherwise contracts will not be made or if made, will be revoked

2. **Adjusting Wages on a Standard Basis Used in Many Factories Today:**
   (1) Common labor;
   (2) Specialized labor;
   (3) Expert labor.

   Workshops should make an effort to pay the prevailing wage for the type of work being done, otherwise there will be unfavorable reaction from unions and industry-management, maybe also from the general public toward a shop that offers goods or services for sale or subcontract at a lower price because of lower wages paid to employees

3. **Setting Up a Sound Method of Purchasing and Checking Materials Delivered to the Workshops.** Determine whether goods received are in accordance with specifications.

4. **Carefully Checking All Shop Equipment.** Replace worn out or obsolete equipment now in use with new modern machinery and tools necessary to promote production.

5. **Give the Definite Responsibility of working out controversial matters** within the shops between management and the workers to the state office in Sacramento It appears that a lack of communication between management and workers is the cause of most grievances This should be handled without resorting to legislative action.

SOURCES OF INFORMATION

1. Dr. Francis W. Doyle, Deputy Superintendent of Public Instruction, State Department of Education, Sacramento.
2. Mr. Harry Stuart, General Manager, California Industries for the Blind, Sacramento
3. Mr Robert L. Harris, Associate Budget Analyst, State Department of Finance, Sacramento.
4. Mr. Clinton Jordan, Senior Administrative Analyst, Office of Legislative Analyst, Sacramento.
5. David A. Mour, Production Engineer, California Industries for the Blind, Sacramento.
6. Mr Andrew Marrin, Chief, Bureau of Vocational Rehabilitation, Sacramento
7. Mrs. Lillian McClure, Assistant Chief, Division of the Blind, Sacramento
8. Mr S W. Patterson, Assistant Chief, Department of Education, Sacramento
9. Mr. B R. Cheyney, State Purchasing Agent, Sacramento.
10. Mr Melvin E Gray, Production Superintendent, California Industries for the Blind.
11. Mr. E C Copeland, Manager, California Industries for the Blind, Oakland.
12. Mr. George A Brown, Manager, California Industries for the Blind, Los Angeles
13. Mr. Robert Campbell, President, California Council of the Blind, Berkeley
14. Mr. Fred Pearson, Chairman, Advisory Board, San Diego Center
15. Mr Ernest Leslie, California Council of the Blind
16. Mr. A. E Septinelli, Supervisor of Services for the Blind, Bureau of Vocational Rehabilitation.
17. Mr Alfred Zimmerman, Counselor for the Blind, Oakland.
18. Mr Gene Zelli, Counselor, Vocational Rehabilitation Bureau, San Diego.
19. Mr Clarence A. Chichester, attorney, Oakland.
20. Dr Rodney Beard, Co-ordinator, Rehabilitation Services, Stanford University School of Medicine.
21. Mr Emil J. Arnold, Corresponding Secretary, Blind Concessions Association.
22. Mr William Peck, President, California Blind Concessions Association.
23. Mrs Will Connolly, California Council for Retarded Children
24. Mrs Gladys Daniloff, National Rehabilitation Association
25. Mr John Watson, Sales Engineer, California Industries for the Blind, L A
26. Mr. Paul Barron, Superintendent, California Industries for the Blind.
27. Mr Victor Varon, Accounting Officer, California Industries for the Blind

Workers:

San Diego:

Mr Brookshire
Mr. Ennesser
Mrs. Mary Mevius
Mr L Pouson

Oakland:

Lupe Torrez
Mrs. Grace Petrie
Mr Clarence Costello
Mrs Linda Mendoza
Mr Thomas Mendoza
Mrs Catherine Skivers

Los Angeles:

Mr Lyman Carno
Mrs. Ann P. Stanley
Mr Wardlow Cottom
Mr William G Prooking

Appendix I

THE FOLLOWING PLAN OF ALLOCATION WILL BE IN EFFECT JULY 1, 1958

	Item of expense	*General fund*	*Manufacturing fund*
1	Administrative and general office	xxx	
2	Dining room expense	xxx	
3.	Costs of operation of buildings and grounds		
	a Rent	xxx	
	b Light, heat and power	xxx	
	c. Maintenance and upkeep (except prod equip.)	xxx	
	d. Janitorial service	xxx	
4	Equipment		
	a. Office equipment	xxx	
	b Recreation equipment	xxx	
	c Dining room equipment	xxx	
	d. Maintenance equipment	xxx	
	e Automotive equipment for administration	xxx	
	f Automotive equipment for merchandising and manufacturing		xxx
	g Production equipment		xxx
	h Maintenance of production equipment		xxx
5	Reserves for depreciation on production equipment		xxx
6	Costs of materials for production		xxx
7	Salaries of blind and handicapped workers engaged in production		xxx
8	General manager and clerical assistance		xxx
9	Salaries of shop superintendents		xxx
10	Salaries of instructors and foremen		xxx
11	Merchandising costs		xxx
12	Truck operations for merchandising and manufacturing		xxx
13.	Compensation insurance, January 1, 1953		xxx
14	Storekeeping costs		xxx

Appendix II

OFFICE OF THE ATTORNEY GENERAL
SACRAMENTO OFFICE, August 12, 1958

HON. CARLOS BEE
Member of the Assembly
Hayward, California

DEAR MR. BEE: This will acknowledge your letter of July 31, 1958, in which you inquire whether this office has ruled to the effect that blind workers in the workshops operated by the California Industries for the Blind are designated as wards of the State.

To my knowledge this office has never so ruled. There is enclosed a copy of Opinion No. 50/123 issued on December 19, 1950, which in turn quotes from Opinion 10272 issued on October 15, 1935, stating that the relationship between the workers and the State is "not basically one of employment, but, on the contrary, one involving the performance by the sovereign of its duty to aid and care for the afflicted." I believe that this statement may be the one to which you have reference.

Please do not hesitate to call on us if we can be of service in this or any other matter.

Respectfully,

EDMUND G. BROWN
Attorney General

(Signed)

By IRVING H. PERLUSS
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
Sacramento 14, California
FRED N HOWSER
Attorney General

OPINION of FRED N. HOWSER Attorney General B. Abbott Goldberg, Deputy Attorney General	No. 50-123 Dec. 19, 1950

The Director of Education has asked the following questions with regard to the blind or *other handicapped* persons working in the Training Center for Adult Blind and the Industrial Workshops for the Blind:

1. May the Director of Education grant these persons:
   (a) Bonuses?
   (b) Retroactive increases in wages?
   (c) Vacations with pay?
2. If so, can the payments be made only to workers in an institution which has accrued funds in the Workshops for the Blind Manufacturing Fund?

Our answers are summarized as follows:

1. The director may grant these persons bonuses, retroactive wage increases and vacations with pay.
2. Payments may be made to workers in any institution whether or not such institution has accruals in the Workshops for the Blind Manufacturing Fund.

ANALYSIS

Among the various state institutions for the physically handicapped are the Training Center for Adult Blind, formerly known as The Industrial Home for the Adult Blind (*Welf & Inst Code* Sec 3203) and the various salesrooms and industrial workshops for the instruction of the blind and other physically handicapped persons (*Id* Sec. 3300). Both the training center and the salesrooms and industrial workshops are administered by the Department of Education (*Id* Sec. 3200). To be eligible for admission to either the training center or workshops, a person must be a resident of the State and of "suitable age, character, and qualification" (*Id.* Secs. 3252 and 3303)

The purpose of the salesrooms and industrial workshops is to provide "instruction of the blind and other physically handicapped persons to enable them to contribute to their own support" (*Id* Sec. 3300). The "workers" i e, the blind or physically handicapped persons admitted to receive the benefits of the workshops, are paid wages fixed by the department (*Id.* Sec 3303).

The purposes of the training center are broader than those of the workshops Not only is the training center to provide "instruction of the blind admitted thereto in some trade or trades, to enable them to contribute to their own support," but it is also to provide "a working home for the adult blind, who, after learning a trade or trades, desire to remain at the home as workmen" (*Id.* Sec. 3251). Of these two purposes the first is the more important for the statute states that "the primary object of the home is to give instruction in a trade or trades to the greatest possible number of the blind of the State to enable them to become self-supporting and to effect an equitable geographical distribution of the benefits of the home" (*Id.* Sec. 3253 (i)). The department is also to consider "equitable representation from each county of the State" in admitting persons to the center (*Id* Sec. 3253 (a)). In addition to providing a place of instruction and a working home the center is to provide a home for aged and enfeebled blind persons to the extent that this may be done without conflict with the interests of the center (Id. Sec 3252), but those aged and enfeebled blind who were residents of the center on September 15, 1945, may not be discharged because of their age, enfeebled condition or inability to work (*Id.* Sec. 3261). Thus the center is actually a school, a workshop and home, and a place of retirement Furthermore, the center is a distribution point for industrial homework to blind who are able to work at their residences (*Id.* Sec. 3253 (g)). The rate of wages paid to the "workmen" in the center is fixed by the department (*Id.* Sec. 3251).

In both the center and the workshops some workers are paid on a piecework basis. This is expressly allowed by the statute as to workers in the center (*Id.* Secs 3253 and 3253 (g)), and may be inferred from the general grant of power to fix wages of workers in the workshops (*Id* Sec 3303) The relationship between these workers and the State is as described in Op. 10272 (Oct 15, 1935) as "not basically one of employment, but, on the contrary, one involving the performance by the sovereign of its duty to aid and care for the afflicted." Since the relationship is not one of employment, the workers are not entitled to vacations as of right under Govt. Code Sec. 18050. Our former opinion 2365 (Oct. 12, 1912), holding the workers to be employees and there-

fore entitled to vacations must be considered superseded. Similarly our former opinion 7260 (September 18, 1930) holding that the workers were employees for purposes of workmen's compensation must be considered to be superseded by *McBurney* v. *Industrial Accident Commission,* 220 Cal. 124 (1934), holding that a person engaged in public work as a condition of receiving aid from public funds was not an employee for compensation purposes. Our opinion, NS 3602 (June 21, 1941), to which we have been referred as indicative that the workers are employees, does not so hold and is not inconsistent with the result herein. That opinion holds merely that the "wages" of workers to whom the State has obligated itself are subject to the garnishment procedure available against "a defendant to whom money is owing and unpaid by this State" (*Code Civ. Proc.* Sec. 710). It involves only the status of the workers as creditors of the State, without regard to whether the relationship of debtor and creditor arose out of that of employer and employee or otherwise.

The fact that the workers are not entitled to a vacation as of right under Government Code Section 18050, does not mean, however, that the department may not grant them vacations. In various sections of the Welfare and Institutions Code cited above, the department is authorized to fix wages or compensation. We believe that the power to fix compensation carries with it the power to fix a reasonable vacation with pay to the extent that funds are available. *Brampton Woolen Co.* v. *Local Union,* 112, 95 N. H. 255, 61 Atl. 2d 796 (1948).

The power to provide incentives by bonus plans or retroactive wage increases follows from the power to fix compensation. Since the workers involved here are neither employees nor contractors of the State, the constitutional prohibition against retroactive increases in compensation (Art. IV, Sec. 32) is inapplicable. Similarly, since the general scheme here is for the relief of the handicapped the prohibition on gifts of public funds (Art. IV, Sec. 22) is inapplicable (*Cf.* 4 Ops. Cal. Atty. Gen. 219 (1944)). The essence of the plan is to enable the beneficiaries to become in a degree self-supporting, not to make money for the State, yet the latter result is the one that might follow if retroactive increases or bonuses were absolutely prohibited.

The operation of a vacation plan or bonus or retroactive compensation plans is not restricted to institutions having accrued funds in the workshops for the Blind Manufacturing Fund. Prior to the creation of this fund in 1949 (Stats. 1949, C. 943, p. 1717), there were three separate funds, one for each institution (*Welf. & Inst. Code,* Secs. 3259, 3304 and 3304.5). The creation of the one fund in lieu of the three prior funds indicates a legislative intent to permit operation of the various facilities as a whole, rather than as isolated units; and there is nothing in Welfare and Institutions Code, Sec. 3332, showing that the moneys in the workshops for the Blind Manufacturing Fund must be devoted to the benefit of the particular institution whence they were acquired. This does not, of course, mean that each institution must be treated uniformly or that the same bonus or vacation plan must be used in all. The legislative changes of 1949 seem to be intended to give the Director of Education considerable discretion as to when, how and where such plans are to be used subject to the authority of

the Director of Finance to prevent the accumulation of unreasonable surpluses in the workshops for the Blind Manufacturing Fund (*Welf. & Inst. Code,* Sec. 3332).

Appendix III

An examination of the list of workers indicates that the secondary handicaps consist of arthritis, heart conditions, high blood pressure, diabetes, deafness, chest deformity and nervous condition, paralysis and crippled spine. Age is slowing up two of them, one of whom is 74 and the other 78.

We have 30 blind workers in this category and during the fiscal year ending June 30, 1958, their earnings classified as follows:

Approximately 50¢ per hour	4
51¢ to 75¢ per hour	9
76¢ to $1.00 per hour	4
$1.01 to $1.50 per hour	10
$1.51 or more per hour	3
Total	30

The average for the entire group is 95 cents per hour. Our accounting department reports for the same period 134 workers without secondary handicaps whose average earnings are $1.20 an hour.

In my report to you under date of July 24th I referred to the 44 workers in the mattress department whose earnings, due to volume and modern mechanization, were substantially higher than those in other departments. My monthly reports on this department since the first of the year read as follows:

Month 1958	*Total hours worked*	*Total wages paid*	*Hourly earnings*
January	1,430.5	$2.399 52	$1.67
February	1,952 5	3,708.24	1.90
March	2,977.9	4,451.76	1.49
April	4,460.3	7,856.79	1.76
May	5,502.9	10.316.61	1.87
June	6,067 2	12.328.94	2.03
July	3,443.5	6,067.04	1.76
August	5,255.6	9,212.46	1.75
September	4,707.4	9,103 91	1.93
October	4,404 7	8,469.75	1 92

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REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON SOCIAL WELFARE

Testimony at Public Hearings on
Assembly Bill No. 1582
1957 Regular Session

SOCIAL WELFARE PROBLEMS

MEMBERS OF THE COMMITTEE

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FRANK LANTERMAN, *Vice Chairman*
BRUCE F. ALLEN
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LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE, ASSEMBLY INTERIM
COMMITTEE ON SOCIAL WELFARE
SACRAMENTO, January 26, 1959

Hon. Ralph M. Brown, Speaker
and Members of the Assembly
State Capitol, Sacramento

GENTLEMEN: Our Interim Committee on Social Welfare created by House Resolution No. 218 of the 1957 Regular Session herewith respectfully submits its final report based on verbatim testimony given in three public hearings on Assembly Bill No. 1582, introduced at the 1957 Regular Session of the State Legislature, and referred to the interim committee for further study.

This report was prepared under the direction of the Chairman, Hon. Carlos Bee, and adopted by the members of the committee on January 21, 1959.

Respectfully submitted,

CARLOS BEE, Chairman
FRANK LANTERMAN, Vice Chairman
BRUCE F. ALLEN
DOROTHY M. DONAHOE
BRUCE SUMNER
SAMUEL R. GEDDES
SHERIDAN N. HEGLAND
VERNON KILPATRICK
S. C. MASTERSON
HAROLD T. SEDGWICK

CONTENTS

		Page
I.	Introduction	7
II.	Information Relative to Assembly Bill No. 1582	9
III.	Summary of Hearings Testimony (in Order Presented)	13
IV.	Conclusions and Recommendations of the Committee	24
V.	Sources of Information	28
VI.	Appendix—Charts, Graphs, Etc., Prepared as Exhibits	29

I. INTRODUCTION

The Assembly Interim Committee one Social Welfare was authorized by House Resolution No. 218 to look into problems of social welfare facing the State.

The first problem dealt with was Assembly Bill No. 1582, introduced at the 1957 Regular Session of the State Legislature by Assemblyman William Munnell, and referred to the interim committee for further study.

The measure would have the State exclusively pay for and administer aid to the aged, needy blind, partially self-supporting blind, and needy children programs instead of having the counties bear a portion of these responsibilities.

The committee, headed by Assemblyman Carlos Bee, conducted three hearings in different parts of the State in order to learn the views of the general public, the county directors of welfare, the members of the state board and the State Department of Social Welfare, county supervisors, taxpayer's associations, and other associations and professions concerned with the subject.

The first hearing was held in Oroville on December 13, 1957. Included in this hearing were 16 northern and mountain counties (Area 3, State Department of Social Welfare) of the State. There were nine speakers and two statements from persons unable to be present to present the views of their organizations on this subject.

The second hearing was held in San Francisco on January 6, 1958. Here 13 Bay area and Peninsula counties were represented. (Area 2, State Department of Social Welfare.) Eleven speakers representing their organizations testified, and two resolutions of county boards of supervisors (not present) were introduced.

The third hearing was held in Los Angeles, January 24, 1958. Nine counties in Southern California were covered. (Area 1, State Department of Social Welfare.) Fifteen persons testified: 11 representing organizations, and 4 private citizens.

In each of the hearings the following questions were considered plus additional questions developed during the hearing.

1. Under the proposed shift to the State, would the present system of aid and administration be improved, from the standpoint of
   (a) The aid to recipients;
   (b) Those who administer the public aid;
   (c) The taxpayers; or
   (d) The general public?
2. What would be the saving to the counties?
3. What would be the additional cost to the State?
4. Should state law provide any differential in aid payments as between local areas based on differences in living costs or other considerations? If so, what would be the effect of such differential?

2—L-4079

5. Under the proposal to shift aid and administration of the categorical aids from counties to the State, no provision is made to shift general relief; boarding homes and institutions, adoptions and special services for children. If OAS, AB, ANC, and APSB are removed from responsibility of the counties, how should these programs be handled?

On the basis of testimony offered and materials presented during these three hearings, the members of the interim committee have evaluated the evidence presented; considered the advantages and disadvantages of state administration and financing to the State, the counties, the recipients of welfare aid, and other considerations involved in such a transfer.

Their conclusions and recommendation are stated in Section IV of this report.

II. INFORMATION RELATIVE TO A. B. NO. 1582

MAJOR PROVISION

The major provision of this bill is to transfer *administration* and *financing* of four categorical aids (Old Age Security, Aid to the Blind, Aid to the Partially Self-Supporting Blind, and Aid to Needy Children), from the counties to the State. This would leave in the counties administration and financing of general relief, boarding home care, adoptions, and other services for children.

BACKGROUND

An effort was made in California toward state administration of welfare in November, 1948, when a constitutional amendment, Proposition 4 (Article XXV, State Constitution) was passed by vote of the people and became operative January 1, 1949. This article made several substantive changes in the State Old Age Security System, removed from the Legislature its power to act on Old Age and Needy Blind Programs, and provided complete state administration and financing of these two programs. It also specifically named the particular individual who would become state director of welfare until 1950 when election of a director would take place.

Article XXV left General Relief, ANC, and other programs of services for children with the counties—to finance and administer.

Shifting of county responsibility in the two programs got under way slowly. In order to put Article XXV into operation, it was necessary to establish district offices and staff them. The Attorney General ruled that the Social Welfare Department, the Controller and the counties could lawfully enter into contracts for the temporary conduct by the counties of local office functions in the administration of OAS and AB. So the State operated under two contracts with each county: one with the county auditor to write warrants, and the other with the county board of supervisors for administration of the program.

In April, 1949, only one county had become state administered. In July, 1949, seven counties, and by November, 1949, 37 of the 58 counties were state administered. This experience never reached a period of stabilization on which one could base conclusions as to the effectiveness of state administration of welfare in California.

On November 8, 1949, a special election was held. Article XXV was repealed by the people and the administration and financing of OAS and AB were returned to the counties to become operative March, 1950. At the same time the power to revise these programs was returned to the Legislature.

PRELIMINARY CONSIDERATIONS—PRO AND CON

General

Proponents of state administration believe that the State is better equipped for efficient management and adequate financing. They say state administration would insure uniformity of policy and administrative procedures, eliminate discrepancies in quality of service, distribute costs so that no single area would be forced to carry a disproportionate share of financial burden, and insure better personnel.

Proponents of continued county administration are convinced that such administration is more democratic and that it is more likely to obtain co-operation and support from other branches of local government and from private community groups because it is closer to local conditions. They say it is healthy for a recipient to have local redress for complaints, and for administration to be subject to county grand jury interests.

Cost

It is estimated that it would cost $38,000,000 annually for aid, and $13,300,000 for administration of the programs that would be shifted under Assembly Bill No. 1582. Such a shift would reduce the property tax levy in the counties by the combined amount of $51,300,000. Presumably it would increase state outlays by at least this much.

Uniformity of Administration

Lack of uniformity in assistance practices among the various counties is caused by a number of factors. Among these are differences in cost of living, in unemployment, in incidence of assistance ratios to general population, in the state of local economy and in local habits of thought. In considering why some counties give more welfare services than others, it must be borne in mind that welfare workers' caseloads are frequently in inverse ratio to the fiscal ability of the local government.

Recent statistical reports show the following variations between counties in categorical aid payments.

	Low	*High*
Old Age Security	$69 61	$78.96
Aid to Needy Children (per recipient in family groups)	33.39	47.20
Aid to Blind (includes aid to the Partially-sighted Blind)	78.06	98.32

In all of these categories of aid the State, through supervision, now actively helps to set standards, and there is a point below which counties may not fall.

There is less uniformity in the counties' administration of General Relief, which is supported entirely from county funds. Some counties are more liberal than others in allowances for rent, fuel, light and water. There is also variation in the methods of judging resources when need is being determined. Recent reports show:

General Home Relief per person per month:	*Low*	*High*
(a) In family groups	$8.00	$87 50
(b) In one-person cases	15.50	62.84

Proper and Efficient Operation

The State Department of Social Welfare now carries out its supervisory responsibility by conducting annual administrative reviews of the counties' public assistance programs to determine eligibility of recipients, correctness of payments made to them, frequency and purpose of home visits, the thoroughness with which the assistance job is done, and reasons for differences among counties in administrative costs.

In a state-administered program policies would be determined and procedural instructions sent out by the State Department of Social Welfare to its district offices throughout the State. This would mean the State would spend less time in explaining the WHY of a procedure or policy sent out; it would also mean less local discretion in carrying out state policies.

If some *but not all* of the welfare activities of the counties were transferred to the State, there could be a duplication of services. For example, a family might have one individual getting relief from the county, and an individual getting aid administered by the State. Two workers, one from county and one from State, would call on this family.

Public Support

The people must understand the objectives and needs of the welfare program if they are to vote adequate support.

Under the present system, staffs of the county offices, and local boards of lay participants provide community support

In a state-administered program not identified with the political subdivisions of the State, local advisory boards or committees might provide community backing.

Personnel

In a state-administered program, the state agency would employ the staff in the state and local offices and determine the duties to be performed by the employees. The State would have direct line authority over the staff.

In the present state-supervised, county-administered program, the staffs are hired and personnel decisions made by county agencies.

Of the 58 California counties, 13 operate under individual county-wide civil service plans. The 45 other counties come under the state-administered county merit system set up to bring public welfare employment into conformity with federal regulations. Each county included in the merit system must adopt a five-step compensation plan from a pay schedule set up by the State Department of Social Welfare. Twenty-seven of the 45 have pay plans of their own set up within the standards of the state pay schedule.

On July 1, 1957, a minimum salary schedule of $297 for beginning public welfare workers was adopted by all 58 counties.

Financing Under Present County Administered Plan

The Social Security Act holds the State Government responsible for establishing and carrying out a method of financing a state categorical assistance program from state appropriations and federal grants, or from state appropriations and federal grants supplemented by local appropriations.

In California (state supervised, county administered) provisions for financial participation are:

Old Age Security ($105 max.)	Federal pays one-half of the grant up to a maximum of $60 plus $9. State pays six-sevenths of the remainder County pays one-seventh.
Aid to Partially and Totally Disabled ($105 max.)	Same formulae for federal, state and county governments.
Aid to the Needy Blind ($110 max.)	Federal Government pays one-half of grant up to maximum of $60 plus $9. State pays three-quarters of the remainder. County pays one-quarter.
Aid to the Partially Sighted Blind	No federal participation. State pays five-sixths. County pays one-sixth.
Aid to Needy Children	Federal pays $32 for needy relative; $32 for first eligible child and $23 for each additional needy child. This is a maximum. Of this maximum, federal pays one-half of $32-32-23, plus $5.50 for the needy relative and $5.50 for each eligible child. State pays 67½ percent of the remainder. County pays 32½ percent.

III. SUMMARY OF HEARING TESTIMONY

It is impractical to give all the testimony and arguments the witnesses presented in formal statements and in answers to questions. Much of the testimony was more or less repetitious. The following statements are selected as representative of the points of view expressed, but do not necessarily express the entire arguments made by the witness.

OROVILLE HEARING—DECEMBER 13, 1957

Chairman Carlos Bee announced the purpose of the hearing as in accord with House Resolution No. 218; acknowledged a communication from Assemblyman Munnell, introduced the members of the committee present, and called the first witness.

Mr. George Wyman, Director of the State Department of Social Welfare, pointed out that California is a State of great contrasts in climate, geography, industry, agriculture, socioeconomic factors and culture. Public welfare administration must recognize these variations in meeting individual needs.

California has a long history of "home rule," and welfare administration which is close to the people and therefore most responsive to the will of the people. Whenever the law allows, the State has followed a policy of standard setting which reflects local conditions.

Last year county government spent $76,000,000 for assistance and administration, and a supplimentary amount of $2,674,879 as additional payments for the benefit of recipients, over and above those required by state statutes.

If the State took over administration and financing of the four categorical aids, then the State would have to assume this financial burden in total or in part. This would be inadvisable: (1) as long as the State General Fund situation remains precarious; (2) since this proposal only transfers costs from one group of taxpayers to another without reducing expenditures or resulting in tax savings; and (3) as long as this proposal would not increase benefits for recipients.

State administration will provide centralized uniformity, but at the expense of individual consideration of need as related to community resources. If state administration is adopted, it should include all welfare activities at the local level. Dual administration with State Relief Administration in the 1930's and more recently under Article XXV of State Constitution, were sad experiences. The necessity for close co-ordination of related activities is obvious

The electorate has overwhelmingly supported the principal of state supervision of locally administered public welfare at a special election November 8, 1949, and again in the general election of November, 1952; the last two times they had an opportunity to express themselves directly on this question.

Mr. George McLain, Chairman of the California Institute of Social Welfare, said that it was amazing to have a state of California's population, size, historical background, and social awareness clinging to the archaic, inefficient county administration of state and federal social welfare programs. His organization, the California Institute of Social Welfare, has for years advocated streamlining administration of these programs. Under the present system of administration there is duplication of operation which is a gross waste of taxpayers money and also brings confusion with this "trickle down" method of policy making. When new laws, rules and regulations made by Congress, the State Legislature, State Board of Social Welfare, and State Department of Social Welfare hit the 58 different county welfare directors, they may each have different interpretations.

Under state administration a more clear-cut uniform policy can be established by those who administer it, and great savings will be possible by doing away with costly duplication of personnel and equipment.

A great burden will be removed from the county taxpayer and recipients of public assistance could expect equal treatment in every political subdivision of the State. If the State took over gradually from the counties, the shift of personnel as well as careload could be accomplished without undue hardship. The four categorical aids and the medical care program should be assumed by the State. The County General Relief Program should continue as a county function until such time as there may be federal participation.

Chairman Carlos Bee asked how the financing of the program would be done if it was put back at the state level. The counties share of the Old Age Security Program is roughly over $50,000,000.

Mr. McLain replied that since 1945 there has never been any increase by the State Legislature on franchise tax, bank tax, corporation tax.

Chairman Bee then asked whether it would be wise for the State Legislature to override people of the State without giving them an opportunity to vote inasmuch as the people have already turned it down.

Mr. McLain felt former campaigns against state administration were distorted and the general public were not aware of the real issue when they repealed the measure in 1949.

Mr. Kilpatrick asked Mr. McLain if his interest was primarily in the tax program.

Mr. McLain said that he was not primarily interested in where the source of funds would come from to pay for taking over by the State of the county administration—he is thinking of the efficiency of operation and justice to elderly and blind people.

Mr. Kilpatrick was inclined to believe this should be a statewide administered program—his reason being that this would wipe out inequities of administration.

Mr. Lyle Platt, Welfare Director of Yuba County, representing the County Welfare Directors Association, stated that the County Welfare Directors Association believe that since 1950, the inception of the County Welfare Policy Committee, they have developed a very sound and workable state-county team approach to the welfare problem in

California and strongly advocate the continued administration of all welfare programs at the county level under state supervision. They feel that county administration is the best economically; it is the cheapest to operate. They also feel that it is a benefit to the recipient of aid for the reason that we can give better and quicker service to him.

Mr. Samuel Geddes asked Mr. Platt if he would send to the committee a report of administrative costs in all the counties during the year 1957, in order that the committee could compare these with administrative costs in other states.

Assemblyman Masterson brought out that in 1941 the Legislature cut income taxes from 15 percent to a low of 6 percent and if re-established to higher brackets as it existed prior to 1941, that would bring in $15 million a year. He also made the point that the big cost to the counties is the administrative cost.

Mr. A. C. Pryor, member of the Tehama Board of County Supervisors, and of the Welfare Committee of the State Supervisors Association—talked about the difficulties in county government because of only one source of income—the ad valorem tax. He would like to have some source of revenue that might revert to the counties with no more strings attached than in our gasoline tax on our county road system. Actually the supervisors do not administer the welfare programs unless they are in complete and full charge and in many cases this is not so because regulations come from the Federal Government and the State, and their interpretations may not necessarily be those of the supervisors.

Mr. S. C. Masterson: The fact that any assumption of taking the tax off the ad valorem taxpayers in the county and increasing the levels of inheritance tax or state income tax back to what it was before the cut in 1949, would affect the same taxpayer is not true; it would be a different group of taxpayers. If the State and Federal Governments assumed the whole burden from taxes they collect, it would be a sound principle that they should also be responsible and have control over administering the funds they are collecting and paying out.

Mr. Minton, Welfare Director of Shasta County: Actual performance is at the county level. It would seem impractical to administer a local program from an area remote from practice. Inevitably there would be some duplication of effort; cost in terms of staff and time, also delay in completion of service to the recipient could be of great concern; delay in processing and routing of documents, checks, etc.

SAN FRANCISCO HEARING—JANUARY 6, 1958

Mr. Ronald Born, Director of Public Welfare for the City and County of San Francisco: The division of responsibility proposed by Assembly Bill No. 1582 would result in a greatly increased total cost of administration because of the duplication of offices and staff in not only every county, but in every community of the State due to the provision for State and county each to administer parts of the total program.

More important still is the disadvantage to persons needing public welfare services. Such a program has to be close to the people so they can obtain services quickly. Application for one of the categorical aids, in a high percentage of cases, requires emergency indigent aid

pending investigation of eligibility for categorical aid and receipt of their first categorical aid warrant. Also counties frequently use indigent aid funds to supplement categorical aid grants.

In addition payments would need to be made for services and facilities now available free in counties, such as office space in county offices and departments. This would make a more costly program.

In order to make any valid comparison with other states, (state administered or county administered) it is necessary to know what services are performed, what salaries are paid, the laws and the way they are administered, and many other facts. Unless a close analysis is made of figures from other states, the use of such figures can be very misleading.

Assemblyman Hegland: How many dollars out of every $100 goes for total administrative costs?

Mr. Born: In San Francisco the total costs of operation runs about 7 percent of the total expenditures. That includes child welfare service programs, the foster home placement of children and the licensing of boarding homes and institutions. About $93 goes in direct assistance to people receiving public assistance.

Mrs. Myrtle Williams, Secretary-treasurer of the California Institute of Social Welfare: Spectacular population gains have placed a back-breaking burden on county governments Rising taxes have been followed by staggering increases in assessments. Property taxpayers are demanding relief. What better place to start relief from tax burden than in county administration of California's welfare programs. Where else can the State Legislature say to the people, here is $76,000,000 you won't have to pay every year?

This administrative shift (county to state) would lift a crushing burden from county taxpayers, streamline the administration of welfare programs and assure aid recipients of uniform humane treatment in every county in the State.

Mr. Hegland: If you put the cost to the counties—the ad valorem taxpayer—at $76,000,000, is it your proposal that a substantial portion of these funds be transferred as an expenditure against the General Fund of the State?

Mrs. Williams: Yes.

Mr. Hegland: If the $76,000,000 charge against the ad valorem taxpayer is eliminated, how will we pick up this additional expenditure? It's going to cost the State several million dollars under state administration. Is this $76,000,000 all for administration and none for direct relief?

Mrs. Williams: This $76,000,000 is for administrative costs. I am quite sure you won't have to pick up any additional cost. These costs could be absorbed out of the State's "rainy day" fund. No tax increase would be necessary.

John P. Corey, Acting Director, Sacramento County Public Welfare Department, presented the viewpoint of the Board of Supervisors, Sacramento County, in which he concurs.

They are opposed to the trend away from local government to larger units of government. Welfare is an individualized service to members of the community. There would be difficulty in co-ordinating services remaining in local county welfare departments and state agency serv-

ices in the community. There would be added cost of a duplicating superstructure and difficulty in recruiting adequate staff for two units. In a sense it is a shift of the tax burden from one group of taxpayers to another, although there is an overlapping of the two groups so the tax burden shift is not complete.

Mr. Hegland: There would be increased cost to the State Government?

Mr. Corey: No doubt about it because they will have to take over the county's share of expenses.

Mr. C. A. Stewart, Director of Public Welfare, San Joaquin County: A resolution passed by the county board of supervisors opposes the measure The approximate administrative cost for San Joaquin County is approximately 6 percent of total welfare cost.

Father James B. Flynn, Associate Director of Catholic Social Welfare of San Francisco, presented views of the priest directors of Catholic Social Welfare of the Archdiocese of San Francisco, as well as the opinions of the Directors of Catholic Welfare Bureaus throughout the State of California relative to Assembly Bill No. 1582

He urged support of the present system of county administration of public assistance coupled with state supervision of these programs. The philosophy of local government, better interpretation of local needs by local people, the effect this drastic change would have upon the tax pattern within the State, and the fact that the people of the State rejected, by their vote, a former plan for state administration, all seem sound reasons for opposing Assembly Bill No. 1582.

Newton R. Holcomb, Chief, Division of Administrative Services, State Department of Social Welfare, Sacramento: A detailed statement of welfare expenditures in California broken down by federal, state and county figures for 1956-57 shows county figures as just under $76,000,000 of which better than $54,000,000 is for assistance and about 21½ million dollars is for administration.

Mr. Hegland: You'd have to pick up $76,000,000 at the state level?

Mr. Holcomb: The State would have to pick up the costs, I assume. We have to deduct from this the County General Relief costs, child welfare services, adoption, boarding homes and institutions and other programs which would run approximately $25,000,000, so the amount would be about $50,000,000.

Mr. Kilpatrick: To what extent does the Federal Government participate in administration?

Mr. Holcomb: On a 50-50 basis with respect to those functions directly related to federal programs. The actual percentage varies according to the kind of program you have in a given county. The receipts from the Federal Government for administration total $15,500,000 in 1956-1957.

Colonel W. E. Carpenter, Legislative Representative of Alameda County, presented the views of the Alameda County Board of Supervisors relative to Assembly Bill No. 1582. The Board of Supervisors of Alameda County does not concede that the proposed centralization of administration or complete uniformity in every phase of administration will relieve the taxpayers' burden, be more efficient, fair or equitable either to the taxpayer or to recipients of aid.

The effect of Assembly Bill No. 1582, if enacted into law, would be to require counties to continue to maintain welfare departments while a superdepartment was created by the State at group expense to perform some of the functions which county departments have been performing. The board of supervisors does not believe it is necessarily appropriate nor right that aid payments be completely uniform in all of the 58 counties; local conditions should be taken into account, and this can best be done by local administration. The Alameda County Board of Supervisors therefore go on record as opposing the passage of Assembly Bill No. 1582.

William Golden, Director, Contra Costa County Welfare Department: One of the major purposes of the proposal contained in Assembly Bill No. 1582 is to provide some relief for the county taxpayer. That relief will not be found through transfer of administration of these programs to State but there are ways the committee might explore of lessening the burden without transferring administration. The Legislature could consider some financial participation by the State in the administrative costs of all programs. (Administrative costs are now shared equally by federal and counties—no participation by State.)

1. This could be done by a division such as this: federal 50 percent, county 25 percent and State 25 percent. This would be an additional cost of some $10.000,000 in state funds, but would relieve the counties because of the broader tax base used to meet the cost.
2. State participation in cost of general assistance; for example, sharing equally with the counties would also provide substantial relief to ad valorem taxpayer.
3. A realignment of state and county shares in all the assistance programs would lessen the burden on the county.

Mr. Lanterman: The City of Sacramento, and the county administration jointly, on the half-cent increase in sales tax, worked out a formula whereby the city contributed about 30 percent to the county out of their increase in proportion to their assessed value and the joint operation came up with a 67-cent reduction in county taxes in Sacramento County, which would lead me to believe that some of the counties could do very well if they would follow the same program and they wouldn't be quite so hard-pressed.

J. M. Wedemeyer, Director, Santa Clara County Welfare Department, appeared at the request of the board of supervisors to present resolutions expressing their opposition to changes embodied in Assembly Bill No. 1582. Their opposition is based on the belief that such a major shift of responsibility as proposed could be justified only if it would result in a better service to the community; better help to those who receive direct benefits in resolving conditions which put them in this position; or a more efficient and less costly system. We do not think these conditions could be met.

Rehabilitation of families and individuals is the community's primary concern. Successful effort in this field is dependent upon the closest co-operation and co-ordination of many functionally specialized services. Most of these services are now locally administered and the task of co-ordination rests in the local community.

Mr. Geddes suggested there might be some classification of counties according to population. In small population counties the State might render services which would be prohibitive in counties having a large population.

Mr. Wedemeyer thought no matter what size a county may be, a state agency has to operate through the local setup and the relationship of that local setup to other community activities is most vitally important.

Mr. Kilpatrick wondered how it is possible to meet local need in counties as large as San Bernardino or Los Angeles with their great expanse of territory.

Mr. Wedemeyer advised bringing services to local communities in the larger counties by establishing outservice offices in these communities so services will be kept close to the people.

Frank E. White, Director C. I. O. Community Services of Northern California, in San Francisco, stated it has been the policy of the State C. I. O. for many years to advocate the entire health and welfare program of the State and counties be placed under state administration. That is because we believe it can be administered more efficiently and more equitably under direction of the State. We know that 69 percent of the cost of government is borne by sales tax, so we think it would be a saving to the communities if welfare was transferred to state administration and have the corporate structure bear more of the burden of welfare.

Mr. Lanterman asked are you in favor of transferring all aspects of welfare now under county direction, such as indigent aid, etc. to the State and "let the State pick up the tab?"

Mr. White: "This is the position of the C. I. O. that all public welfare programs be administered by the State."

Mrs. Tadini Bacigalupi, a member of the State Welfare Board, said when a law is enacted the State Welfare Department puts that law into policies and before any policy is adopted there is long discussion throughout 58 counties by the supervisors association and welfare directors association. The state board asks the county directors and supervisors for their comments. The staff of the state board makes their statements of how they feel a certain matter should be decided. Nothing is adopted until there is a meeting of the minds. Once adopted there cannot be any basic variation because of state supervision.

LOS ANGELES HEARING—JANUARY 24, 1958

Mr. William A. Barr, Superintendent of Charities of Los Angeles County, stated there are three considerations that transcend all others in an analysis of general merits of state, versus state and county administrations.

1. A report of California's previous experience with state administration showed that state administration costs increased by 44 percent under state administration.
2. In all California history there has never been a period when there has been such unanimity of support for the existing administration of welfare program.

3. Administrative control is close to the primary area of operation. If there is a desire to shift administrative costs from county taxpayers to the state level, this could be done without transferring administrative framework by provision for state participation in administrative costs of welfare; and a major change in administrative responsibility inevitably introduces a high transfer cost.

Mr. Geddes asked, isn't there a duplication that goes on with county administration and the State?

Mr. Barr believed there is practically no duplication since the State does not technically administer.

Mr. Lanterman remarked, the costs of administration are directly related to the scope of the program, the amount of the program as to grants, the extent of the restrictions imposed upon the program as a basis of need, and there is no recovery program as there is in many of the states in which that fund then decreases the administrative cost as an overhead.

Roscoe Lyda, Director of San Bernardino County Welfare Department. "The San Bernardino County Board of Supervisors wishes to be on record in strongly favoring the continuance of local county administration of all categorical public assistance programs." He gave 7 reasons they consider as valid in support of their opinions. "I am aware reasons are not new but do affirm what has already been said."

Mr. Hegland: It appears from figures here that about 8 percent of the total cost of the welfare program is spent for administration in San Bernardino County. Some other counties seem to go as high as 13-14 percent. How is it that San Bernardino is twice as efficient as some other counties?

Mr. Lyda: We attempt to administer our department in a business-like fashion in accordance with modern business methods and practices.

Mr. Lanterman: I presume part of the factor would be local conditions. The number of recipients, the workload per case worker, etc.

Mr. Lyda: We have over 9,600 recipients—caseload in OAA is 325 cases per worker.

Mr. Geddes: In California our budget has gone up 541 percent while the population has increased 58 percent. We have to curtail somewhere in administrative cost. Seems we are getting loaded down with duplication of work and agencies are running too high as far as manpower is concerned.

Mr. Lyda: In San Bernardino County we have a well established firm workload measurement and yardstick by which we staff the entire department. It is relating caseloads to what you have to decided will be the maximum amount of work your employee is capable of handling.

Mr. Masterson: Your county runs 7 percent in administrative costs for September. Others run as much more than twice that amount in their costs. Do you publish your figures of caseload requirements so others might emulate your example?

Mr. Lyda: The County Board of Supervisors is kept currently informed on caseload cost trends, personnel matters and such. The press of course has access to that. We do nothing further.

Mr. Masterson: This is the first fruitful matter of reduction of costs we have come upon. I would appreciate it if you would forward

an analysis of the manner in which your department is administered and the caseload requirements. (See Appendix.)

Mr. Lanterman pointed out that Los Angeles with 5,600,000 population and some 18 district offices and San Bernardino with 464,000 population and five offices could not be compared because the magnitude of the job in Los Angeles would explain the difference in administrative cost.

Mr. Lyda then presented a statement from the San Bernardino County Council of Community Services supporting the principle of local administration and recommending continuation of the present system.

Mr. Robert T. Anderson, Chief Administrative Officer representing Riverside County, Department of Public Welfare, presented a statement from the county board of supervisors favoring the present system of local administration of public welfare in California.

Mr. Masterson asked for information concerning caseload standards in Riverside County.

Mr. Anderson agreed to forward this material. (See Appendix.)

Frank Gardner, Welfare Director, California Institute of Social Welfare: "We do not believe state administration was given a fair and true test." Mr. Gardner pointed out that his organization believed there would be "improved efficiency of social welfare under state administration"; that every property tax bill in the State of California would be reduced if the county share of the actual caseload—or a total of approximately $76,000,000 were paid by the State instead of local property taxpayers; that 58 county welfare departments mean widespread injustice to recipients because the laws put into effect under supervision of the State Department of Social Welfare are "callously interpreted" by the counties as they see fit. He then gave several examples in which county and state interpretation of welfare laws were at variance.

Max Eddy Utt, Chairman, State Chamber of Commerce Committee on State General Fund Finance, referred to the present effectiveness of local administration of public assistance programs. He stated the division of administration of public service programs would be costly by reason of duplication of offices, administration, and other facilities. This was positively proved in 1949. There is a need for co-operation between various county departments, district attorney, and other agencies. This would need to be continued. The existing state-county co-operation provides for the most effective administration. It is time-tested and should be continued.

Paul Sheedy, General Council, Property Owners Tax Association: The association expresses its very strong disapproval of the proposed transfer of welfare administration as provided by Assembly Bill No. 1582 from the counties to a state agency.

Tom Bell, Director of Kern County Welfare Department, stated the Board of Supervisors of Kern County opposed the adoption of Assembly Bill No. 1582. In response to questions from Assemblyman Hegland, Mr. Bell stated that there are three major factors causing costs of administration to vary among counties: (1) philosophy of personal service in addition to money grant; (2) whether or not there are district offices; and (3) salaries and wages.

Mr. Hegland then asked whether it was the philosophy of some counties to interpret state legislation more liberally and more expensively than do other counties.

Mr. Bell thought this was true.

Hugh Brown, representing the California Taxpayers Association and the Los Angeles Chamber of Commerce, said the C. T. A. is firmly opposed to a transfer of the administration of public welfare program or any part of the programs—from the counties to the State. Mr. Brown then said, in answer to question from Assemblymen Hegland and Masterson, that if caseload per worker was lower, we might get a more efficient administration of the categorical aids with lower case costs.

Mr. Masterson said, "good and adequate administration results in lower program costs."

Mr. Lanterman suggested that New York State has a more economical administration from the standpoint of total caseload and money spent for welfare due to low caseload per social work so needs of recipient are more efficiently determined through personal knowledge of worker. However, he pointed out, comparison of New York and California is not necessarily fair because of differences geographically, historically, and because of work done by private charities and foundations in New York.

Newton Holcomb, Chief of Administrative Services, Division of the State Department of Social Welfare, reported that on the basis of 1956-57 actual costs, the amount transferred from county government to the State under Assembly Bill No. 1582 would have been $50,500,000 plus a little better than $2,600,000 in county supplemental assistance or a net total savings to the county of about $53,000,000. If we projected this for 1958-59 in terms of expenditures of county funds that would be transferred to the State it would be almost $61,000,000.

In 1948, just prior to the transfer of OAS and ANB to the State, the average cost per case month was $3.08. In 1949 this jumped to $4.06.

The problem of administrative costs is extremely interesting not only to states but to the Federal Congress. They have been pressing federal agencies for an explanation of the remarkable differences in costs between states. There are indications that there will be new federal legislation which will attempt to control the amount of federal money that's expended for administration of welfare programs.

The probable reason that the federal agency, although studying the problem, is unable to give any clear-cut answer is because of the difficulty in comparing one state against another due to wide variations in laws, methods, etc.

In California salary costs comprise 70 percent-80 percent of all administrative costs. This proportion is approximately the same in each county.

A study, based on quantitative measurements of a pilot group of eight counties shows that the differences in administrative costs are generally due to:

a. Time expended per case;
b. Pay rates;
c. Professional and clerical staff time distribution;
d. Nonpersonal service costs.

Two programs, OAS and ANC, represent approximately 70 percent of local costs for program administration. In the study of eight counties, it was found that in one county with an average monthly caseload of 3,686 OAS clients, the administrative cost per case was $5.11. In another county with an average monthly caseload of 3,434 OAS clients, the administrative cost per case was $3.33.

In ANC the average caseload in one county was 466, and the administrative monthly cost per case was $29.39. In another county with an average ANC caseload of 454, the average administrative cost per case was $11.32.

We know where the variations are and where the differences are; the problem is to get at the quality side of it. Quantitative data doesn't tell whether a county is doing a good job or a bad job. We are now engaged in a study of qualitative things, an analysis of total processes and their effectiveness.

IV. CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

A. Proponents of Assembly Bill No. 1582 took certain positions which ought to be summarized here:

1. Uniformity. The proponents say when Congress makes "certain laws" pertaining to the public assistance program and passes these on to the state for acceptance and administration, the State Legislature makes the necessary changes in the Welfare and Institutions Code and turns the new laws over to the State Department of Social Welfare and the State Board of Social Welfare for administrative rules and regulations. This should assure a well-run adequate efficient administration.

But, say the proponents, these new laws, rules and regulations are passed on to 58 different county welfare directors and their bosses, the county supervisors, to administer. There are 58 different sets of ideas and interpretations on how the program should be run.

County welfare departments and other county officials can and do defy state department regulations and decisions of the State Social Welfare Board in their efforts to retain as much local autonomy as possible, the proponents argue. Time and again county welfare directors have used the columns of their local newspapers to ridicule or denounce welfare laws passed by the Legislature or welfare regulations adopted by the State Social Welfare Board. There are many examples of gross defiance of federal and state law at the county level, the proponents say.

Why is this permitted? The State Department of Social Welfare, supposed to exercise control over county welfare policy, does not care to invite the wrath of the county welfare directors or the county supervisors by challenging them on basic welfare issues, according to the proponents.

The State Department issues a Manual of Policies and Procedures for the guidance of the 58 county welfare departments. This manual contains rules and regulations adopted by the State Welfare Board to carry out provisions of the Welfare and Institutions Code of California: most counties also issue manuals of policies and procedures containing county interpretations of the welfare laws which are often at variance with those of the State. It is this county versus state policy which causes chaos and inefficiency, say the proponents.

2. Possible Economy. The State Department supervises the Social Welfare programs, but the individual counties are responsible for the administration of the programs County taxpayers foot the bills for 58 separate county welfare departments. This administration alone totals $21,633,942, all of it paid by property owners who pay their taxes to the county tax collector. Added to this is the county share of the actual caseload—a total of approximately $76,000,000. This includes general relief and all other programs. This cost is annually charged directly against local taxpayers. Each and every property tax bill would

be reduced if this $76,000,000 were paid by the State instead of by the local taxpayers, say the proponents.

Certainly, the advocates say, the State has a much broader tax base and the cost of administering public assistance programs can be levied much more equitably over a larger group of taxpayers with the result that it will cost less per individual taxpayer.

In 1949, under Article XXV of the State Constitution (later repealed) which transferred aid to needy aged and blind from the counties to the State, the State Legislature increased the sales tax from 2.5 percent to 3 percent, reasoning that this was necessary to meet state fiscal requirements under the new law. This extra one-half cent in sales tax netted the State some $53,000,000 in additional revenue annually. When Article XXV was repealed, the State did not scale the sales tax down again to 2.5 percent, so morally, proponents of Assembly Bill No 1582 say, there's an obligation upon the part of the Legislature to use some of that money "toward picking up the tab from the counties. Not since prior to 1945 has there been any increase by the State Legislature in the franchise tax, the bank tax, the corporation tax, etc., while there has been a tremendous increase in all the other taxes"

On a centralized basis, all accounting, disbursing and statistics can be handled through the use of IBM equipment in the State Department, and can serve all counties, both large and small, on the same basis of economy as can be accomplished in a local unit. Centralization permits the consolidation of the overhead expenses of administration.

B. The members of the Interim Committee on Social Welfare, however, believe that a stronger case has been made against Assembly Bill No. 1582 as follows:

1. Divided Responsibility. Assembly Bill No. 1582 provides for a division responsibility between county and State. It would transfer the administering and financing of four categorical aid programs to the State Government (aid to the aged, to needy blind, to partially self-supporting blind, and to needy children). This would leave the 58 counties responsible for the administration of general relief, adoptions, child welfare services, medical care programs, licensing of boarding homes for children and adults, institutional licensing, and certain other programs. In consequence, the effect of Assembly Bill No. 1582 would be to require the county to continue to maintain welfare departments, while a state superdepartment with duplicating offices and staffs would perform some of the functions which the county departments now perform This dual administration could only result in confusion, duplication of effort and additional annoyance and cost to the taxpayers.

2. Costs. California has twice experienced direct state administration of welfare: first under the State Relief Administration, 1934-1941, and second, with respect to programs for the aged and blind, from January, 1949, through March, 1950 (14 months). In 1951 a report by the Senate Interim Committee on Social Welfare on the 1949-50 experience, said that total *administrative costs* increased by 44 percent under state administration.

It has been estimated that the counties spend $76,000,000 a year[1] in assistance and administration of the four categorical aid programs which Assembly Bill No. 1582 would switch to state administration, and that the figure will rise to $90,000,000 in 1959. From this, some may jump to the conclusion that Assembly Bill No 1582 would lift that much of the burden from property taxpayers in the counties. This assumption, however, requires examination.[2]

The total relief bill must be paid by Californians in some way or another, whether the four categories of aid are county or state-administered; and the taking of an additional burden of such dimensions by the State might necessitate new state taxes that would impinge to some degree on the county taxpayers.

Moreover, there is every reason to believe that the total cost of welfare administration would increase if parts were transferred from counties to the State. This would be true because of the costliness of setting up wholly new state offices, which would compete for staff with the county offices, and because of the practical certainty that tax dollars would not be husbanded any more carefully by the State than local tax dollars are now husbanded by county administration.

It remains true, of course, that the proposed shift to the State would diffuse the cost of administration of these four categories over a wider tax base than the mere property tax now reaches. But this effect could be achieved more directly, and more economically, by giving a state subsidy to counties for welfare administration rather than taking over parts of the program.

3. Uniformity of Administration. The proposed legislation seeks to promote uniformity of administration on the assumption that the present method of administration is unfair to the recipients of aid who have a right to expect the law to be administered the same way in every county. State law and rulings by the State Department of Social Welfare now require a certain degree of uniformity, but there are opportunities to exercise latitude in dealing with local conditions which vary widely from county to county. Placing all administration under state control could very well result in ignoring local conditions for the sake of uniformity, and then would in all probability make the whole program more costly and probably subject to greater criticism than at present. Flexibility of local administration, seems more desirable and humane than unswerving adherence to a statewide uniform standard for uniformity's sake alone. The proposed uniformity will not relieve the taxpayers' burden, be more efficient, fair or equitable to the recipient of aid.

4. Co-ordination of Services. To operate effectively, sound social-welfare programs require co-ordination with other public and private services. County administration now permits this needed co-ordination of functions through close working relationships with the district attorney, county probation officers, schools, recreation facilities, county health departments, clinics and county hospitals. Private agencies are usually staffed, organized and operated on a county basis, and so their

[1] Fifty-four million dollars + for assistance; 2½ million dollars for administration.

[2] Based on actual costs, 1956-57, the amount that would have been transferred from counties to State was $50,000,000 plus $2,600,000 in county supplemental assistance which presumably would not have been paid by counties if Assembly Bill No. 1582 had been passed, so a net saving to the counties would have been approximately $53,000,000.

services are also more effectively co-ordinated with the total county welfare program than they would be with a divided program.

General relief, which comes wholly out of county coffers, is an important adjunct to the categorical-aid programs and is used for emergencies pending the investigation of eligibility for categorical aid; also to supplement categorical-aid grants. This must be administered under the same agency as the categorical aids if it is to serve its proper purpose.

5. Local Government. California has a long history of home rule, protected by constitutional provisions which give localities and citizens a wide and important participation in their State Government. This has insured a high degree of local interest in the administration and financing of welfare programs. A welfare program will be more consistent with local requirements and individual needs when administered locally by people who have a local interest and responsibility than when administered impersonally by individuals not having local responsibility, and unfamiliar with changing conditions.

The important function of county grand juries in investigating the operation of county welfare departments would cease under provisions of Assembly Bill No 1582 so far as four major categories of aids are concerned, and thereby remove a very important local control now in effect.

6. Welfare Staffs. There is now a nonpolitical system of staffing welfare offices. A merit system or State Civil Service System operates in all counties. (13 civil service—45 merit system.) A shortage of qualified social workers to staff local offices makes it seem doubtful that enough workers could be secured to staff state and county offices in a dual administration. Dual administration would result in competition of staffs and services.

The experiences of the brief period of state-administered aged and blind programs in 1949-1950, showed that transfers of administration are not only expensive but are destructive to orderly development of the program and employees' morale.

RECOMMENDATIONS

1. Based on the testimony presented during the three statewide hearings as set forth above, this committee cannot recommend for the enactment of Assembly Bill No. 1582. The study of this measure, however, leads the committee to make two further recommendations.
2. It shall be mandatory for every welfare worker dealing directly with a recipient of assistance or relief in a county department of public welfare, to explain carefully to such recipient his right of appeal if he is displeased with the action of the county board of supervisors, or any change in his status. He should know the method is not one of court procedure, but an informal hearing before the State Welfare Board where he may, if he wishes bring counsel of his own choosing, or he may appear in person without counsel.
3. It shall be mandatory on the State Department of Welfare to seek to improve the quality of welfare work being done by present personnel in county welfare departments through developing and recommending local programs of on-the-job training, and requiring that all persons on the job avail themselves of this training.

V. SOURCES OF INFORMATION

Wyman, George—State Director of Social Welfare
McLain, George—Chairman of the California Institute of Social Welfare
Lyle Platt—Welfare Director of Yuba County
A. C. Pryor—Member of the Board of Supervisors of Tehama County
Jane Joyce—Welfare Director of Butte County
Bill MacDougall—General Counsel and Manager for the County Supervisors Association
Joseph F. O'Neill—Welfare Director of Lassen County
Alfred Hailparn—Welfare Director of Placer County
John M. Bernard—County Executive Officer of Placer County
William A. Barr—Superintendent of Charities of Los Angeles County
Roscoe Lyda—Welfare Director of San Bernardino County
Robert T. Anderson—Chief Administrative Officer of Riverside County
James Evans—Legislative Representative of the California Institute of Social Welfare
Frank Gardner—Representing the California Institute of Social Welfare
Max Eddy Utt—Chairman of the State Chamber of Commerce Committee on State General Fund Finance
Mrs. Julia Nye—Private citizen
Paul Sheedy—General Counsel of Property Owners' Tax Association
Thomas Bell—Welfare Director of Kern County
Hugh Brown—Representing California Taxpayers' Association
Newton R. Holcomb—Chief of Administrative Services Division, State Department of Social Welfare
Mrs. Dessie Rodabaugh—Private citizen
Stefan J. Fisher—Pensioner
Philip M. W. Becker—Pensioner
Ronald H. Born—Welfare Director of the City and County of San Francisco
Myrtle Williams—Secretary-Treasurer of the California Institute of Social Welfare
John P. Corey—Acting Director of Sacramento County Welfare Department
C. A. Stewart—Public Welfare Director of San Joaquin County
Father James B. Flynn—Associate Director of Catholic Social Service
Colonel William E. Carpenter—Legislative Representative of Alameda County
William G. Golden—Welfare Director of Contra Costa County
J. M. Wedemeyer—Welfare Director of Santa Clara County
Frank E. White—Director of CIO Community Services of Northern California
Mrs. Tadini Bacigalupi—Member of the State Social Welfare Board

VI. APPENDIX

1. Chart showing Administration of Categorical Aid Programs in the United States as of December 31, 1957.

2. Summary of Public Welfare in California for August, 1958.

3. Analysis of the Administration of San Bernardino County Welfare Department. (Prepared at request of committee.)

4. Caseload standards in Riverside County.

ADMINISTRATION OF CATEGORICAL AID PROGRAMS[1] IN THE UNITED STATES

STATE ADMINISTRATION—26 STATES, 3 TERRITORIES

Arizona[2]
Arkansas
Connecticut
Delaware
District of Columbia
Florida
Idaho
Illinois
Hawaii
Kentucky
Louisiana
Maine
Michigan
Mississippi
Missouri
Nevada[2]
New Hampshire
New Mexico
Ohio
Oklahoma
Pennsylvania
Puerto Rico
Rhode Island
South Dakota
Tennessee
Texas
Vermont
Washington
West Virginia

COUNTY ADMINISTRATION—STATE SUPERVISION 23 STATES, 1 TERRITORY

Alabama
Alaska
California
Colorado
Georgia
Indiana[2]
Iowa[2]
Kansas
Maryland[3]
Massachusetts[4]
Minnesota
Montana
Nebraska
New Jersey[5]
New York[6]
North Carolina
North Dakota
Oregon
South Carolina
Utah
Virgin Islands
Virginia[6]
Wisconsin
Wyoming

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[1] Old Age Assistance, Aid to the Blind, Aid to Dependent Children and Aid to Permanently and Totally Disabled
[2] No Aid to Permanently and Totally Disabled Program
[3] Administered by counties and Baltimore City.
[4] Administered by cities or towns; Aid to Blind is state administered
[5] Aid to Dependent Children is state administered.
[6] Administered by counties or cities

TABLE 1A

SUMMARY OF PUBLIC WELFARE IN CALIFORNIA FOR AUGUST, 1958
RECIPIENTS AND AID PAYMENTS

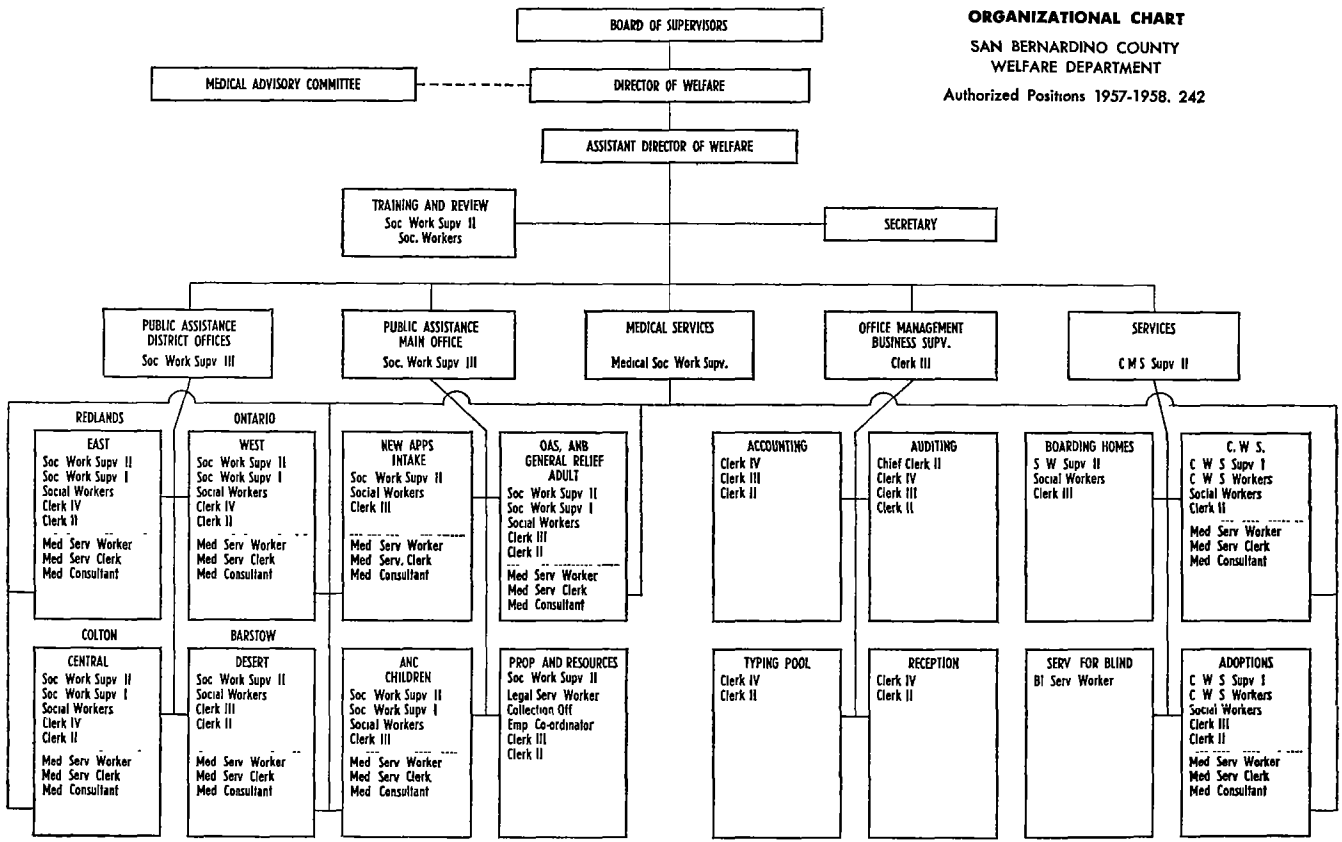
Program	Recipients			Aid payments			Average monthly payments*		
	August 1958	July 1958	August 1957	August 1958	July 1958	August 1957	August 1958	July 1958	August 1957
Old Age Security—cash grant	265,554	265,838	263,870	$20,731,912	$20,790,490	$19,888,318	$78 07	$78 21	$75.37
Vendor payments—Medical Care Fund				1,861,861	1,671,854		7.00	6 28	
Aid to Needy Blind—cash grant	13,596	13,540	13,184	1,339,486	1,334,273	1,213,669	98.52	98 54	92.06
Vendor payments—Medical Care Fund				100,993	84,215		7.42	6.21	
Partially Self-supporting Blind—cash grant	296	322	325	31,787	34,115	31,140	107 39	105 95	95.82
Vendor payments—Medical Care Fund				830	737		2 80	2 29	
Aid to Needy Children—Total Children—Cash Grant	188,891	188,156	154,977	10,190,759	10,180,264	7,844,246			
Children in family groups—cash grant	177,671	176,864	144,991	9,456,897	9,434,977	7,214,496	53.23	53.35	49.76
Family group cases—cash grant	64,736	64,716	52,488				116 09	145.79	137.45
Vendor payments—Medical Care Fund				615,539	636,681		9 46	9 78	
Total recipients in family groups—cash grant	229,837	228,685	187,035				41 15	41 26	38 57
Vendor payments—Medical Care Fund							2 62	2 72	
Children in boarding homes and institutions—cash grant	11,220	11,292	9,986	733,862	745,287	629,750	65 41	66 00	63 06
Vendor payments—Medical Care Fund				19,851	19,109		1.77	1 69	
Aid to Needy Disabled	3,858	3,559		294,728	271,570		76 39	76 31	
General Home Relief—Total persons	64,286	73,949	51,857	1,651,180	1,824,725	1,334,774			
Family cases	10,814	13,157	8,538	705,604	885,929	497,864	65 25	67.34	58.31
Persons in family cases	44,562	53,913	33,413				15 83	16.43	14.90
One-person cases	19,724	20,036	18,444	945,576	938,796	836,910	47 94	46.86	45.38
Total Cash Grants				34,239,852	34,435,437	30,312,147			
Vendor Payments—Medical Care Fund				2,599,074	2,412,596				
Grand Total				$36,838,926	$36,848,033				

* Vendor payment averages are based on total persons in caseload eligible for medical care

ORGANIZATIONAL CHART

SAN BERNARDINO COUNTY
WELFARE DEPARTMENT

Authorized Positions 1957-1958. 242



FISCAL OPERATIONS—WELFARE DEPARTMENT 1957-58 FIRST HALF

July Through December, 1957

	First half	Average number recipients	Average grant	Total cost	Budget for year	Remaining balance	Percent expended first half
Old Age Security	1956-57	9,613	$74 14	$4,276,185 66	$9,132,000 00	$4,855,814 34	46 83
	1957-58	9,790	76 71	1,505,647 78	10,056,000 00	5,550,352 22	44 81
Aid to Needy Blind—Including APSB	1956-57	546	90 62	297,030 80	649,550 00	352,519 20	45 72
	1957-58	552	95 93	317,509 15	730,500 00	412,990 85	43.70
Aid to Needy Children	1956-57	1,696	14 86	1,263,975 43	3,124,000 00	1,860,024 57	40 46
	1957-58	5,346	17 80	1,533,875 64	3,345,000 00	1,811,124 36	45.86
ANC—Boarding Homes	1956-57	236	53 33	75,569 75	190,000 00	114,430 25	39 77
	1957-58	290	59 62	103,891 86	260,000 00	156,108 14	39 96
Indigent Relief	1956-57	1,106	25 17	167,033 63	400,000 00	232,966 37	41 76
	1957-58	1,169	22 33	153,156 33	400,000 00	246,843 67	38 29
Total	1956-57	16,197		$6,079,795 27	$13,495,550 00	$7,415,754 73	45 05
	1957-58	17,147		$6,614,080 76	$14,791,500 00	$8,177,419 24	44 73
Maintenance and operations				$46,502 68	$110,450 00	$63,947 32	42 10
Salary—Regular				$430,055 10	$1,048,275 00	$618,219 90	$41 03
Extra				$1,173 93	$4,000 00	$2,826 07	$29 35

RECOMMENDED WELFARE DEPARTMENT WORKLOAD MEASUREMENTS AND YARDSTICKS, REVISED JANUARY 1, 1958, SAN BERNARDINO COUNTY

"It has been the practice of the welfare department in co-operation with your office to establish specific workload measurements and yardsticks to which the personnel staffing is correlated. In turn, the county board of supervisors has evaluated welfare department additional positions requests and other personnel needs in relation to the mutually agreed upon workload yardsticks and measurements. From time to time it has been necessary to revise and adjust these yardsticks. Revisions to current workload yardsticks are recommended. New welfare programs, changing emphasis in welfare administration, reassignment of duties and other influences require readjustments.

The welfare department administrative staff has made a comprehensive and detailed study of present employee work assignments, duties and responsibilities, individual caseloads, pending appliactions, effects of budget clerk operations, and other miscellaneous factors influencing the personnel staffing pattern. The method of analysis, findings, conclusions, and recommendations for revision have been clarified and discussed with your assistants. I respectfully request your affirmation of approval to the following changes in workload yardsticks and measurements. Overall you will note an increase in social worker caseloads, ratio of social workers to clerks, etc. Yardsticks are intentionally set at a maximum. Experience may indicate the need for downward revisions. It is my considered opinion, however, that the recommended changes are realistic and that the yardsticks are reasonable at this time."

COMPLETED CASES—CASELOADS PER SOCIAL WORKER

By Welfare Aid Program (No Intake)

OAS		
	Old	275
	New	325
ANC		
	Old	75
	New	85
IR		
	Old	75
	New	100
ANB		
	Old	228
	New	175
BD. HOME		
	Old	165
	New	200
DAY CARE		
	Old	111
	New	150
DESERT DISTRICT—INTEGRATED CASELOADS		
	Old	150
	New	165

NEW APPLICATIONS—INTAKE CASES PER WORKER

By Welfare Aid Program

OAS-ANB		
	Old	25
	New *	30
ANC		
	Old	15
	New †	25
IR		
	Three field applications per day per worker. (No change.)	
BD. HOME		
	Old	16
	New	16

* Pending OAS-ANB applications per worker are not to exceed 45
† Pending ANC applications per worker are not to exceed 35

RATIO OF SOCIAL WORK SUPERVISORS TO SOCIAL WORKERS

PRESENT ___ 1 supervisor to 7 social workers NEW _ 1 supervisor to 6 social workers

RATIO TYPISTS (TRANSCRIBERS IN POOL) TO SOCIAL WORKERS

OLD _____ 1 typist to 4 social workers NEW ____ 1 typist to 5 social workers

RATIO BUDGET CLERK TO SOCIAL WORKER

Recommended
1 budget clerk to 8 social workers

/s/ HAROLD ZENZ

Approved: ROSCOE LYDA
Welfare Director

Administrative Officer
December 30, 1957

Date December 30, 1957

COUNTY WELFARE DEPARTMENT

The grand jury committee on welfare held several conferences with the welfare director in order to obtain a current picture of the operation of the *San Bernardino County* Welfare Department.

In response to the committee's request, Welfare Director Roscoe Lyda compiled a comprehensive and detailed report, setting forth information desired by the committee concerning the number of persons aided, the amount of funds handled and the total number of welfare employees. The director's report also explained federal, state and county relationships from the fiscal as well as administrative aspect of Public Welfare Assistance. The department's efforts to rehabilitate the handicapped and to obtain employment for the unemployed is also considered in the overall report.

ORGANIZATION AND STRUCTURE

The welfare department is organized to provide welfare public assistance and related services to the entire area of San Bernardino County, some 20,000 square miles. The county board of supervisors is legally responsible to the State of California for the implementation of the California public assistance programs, and in turn, delegates the detail and administration to the welfare department. In order to provide effective economical service to this large area, the welfare department has established district offices in Redlands, Colton, Ontario and Barstow. Small suboffices are also located in rural areas where part-time office hours are maintained.

FUNCTIONS

The San Bernardino County Welfare Department, under policy direction of the board of supervisors, has responsibility for the administration of the public assistance programs in San Bernardino County. These programs are: Old Age Security, Aid to Needy Blind, Aid to the Partially Self-Supporting Blind, Aid to Needy Children, Aid to the Totally Disabled, Medical Care and Indigent Relief. In addition, the department is responsible for the licensing of boarding homes for the care of children and aged persons, for the Child Welfare Services Pro-

gram, and the County Adoption Service. The department offers counseling and referral service to other community agencies when its programs cannot meet the needs of the applicants.

Federal grants-in-aid are received for administration of the department, Old Age Security, Aid to Needy Blind, Aid to Needy Children, Aid to the Totally Disabled, Medical Care, and Child Welfare Services programs under condition that they be administered according to the Federal Security Act. The State of California, through the State Department of Social Welfare, likewise participates in these programs financially and supervises the county administration of them, as well as the Prevention of Blindness program, Aid to the Partially Self-Supporting Blind, the county adoption service and licensing of boarding homes for children and aged. The State does not supervise the Indigent Relief program which is supported solely from county tax revenues.

PERSONNEL AND TRAINING

The welfare department budget provides for the employment of a total staff of 242 persons. However, since the county contracted with the California Physicians' Service to act as fiscal agent for the welfare director under the new medical care program, it has not been necessary to fill all budgeted positions. The staff presently employed totals 214 persons, including 136 professional personnel and 78 clerical personnel.

Previous grand juries have recommended higher salary scales and greater attention to turnover of personnel. This has been done and there has been a sharp drop in personnel turnover. The total turnover rate in 1954 was 31 3 percent in contrast to 19 9 percent in 1956. The welfare department is composed of two employee groups, social workers and clerical workers, which normally throughout the State have a high rate of turnover. The state average for social workers is 36 percent in comparison to a turnover of 17.5 percent for social workers in San Bernardino County. The turnover rate for clerical workers has been reduced from 44.2 percent in 1954 to 25.4 percent in 1956.

Substantial savings to the county taxpayer will accrue as a result of this continuing downward trend in personnel turnover.

The welfare department conducts a well defined and administered in-service training and staff development program. These training programs are continuous and geared to meet the practical needs of the welfare employees to the end of helping the employee to improve himself with the objective of giving the public the most effective economical service possible.

PUBLIC ASSISTANCE

As indicated previously, the welfare department administers the Old Age Security, Aid to Needy Blind, Aid to Needy Children, Aid to the Disabled, Indigent Relief, and Medical Care program. The welfare department has analyzed and evaluated the social and economic characteristics of recipients of the above aids. Overall, it can be said the recipients of welfare aid have very little income, property or resources and depend almost entirely on the public assistance programs for support.

The welfare department emphasizes services to welfare recipients over and above financial aid. Key personnel of the welfare department

have taken an active part in creating community interest and services for the aged, blind and needy children, along the line of improved recreational opportunities, medical care, housing, etc.

A review of fiscal and social audits of the San Bernardino County Welfare Department completed by federal, state and county auditors indicates that the department is in excellent fiscal condition. All moneys including revenues and expenditures are accounted for. As an example of sound accounting and control, all welfare aid payments are reconciled and balanced prior to issuance the first of each month of the individual welfare checks.

The welfare department takes a very positive approach to the Aid to Needy Children program as it pertains to enforcement of support from deserting parents. The district attorney's office and the welfare department are closely co-ordinated in dealing with this problem. San Bernardino County is reported to have one of the most effective failure to provide enforcement programs in the State. In the Fiscal Year 1956-57, 616 failure to provide complaints were filed. A total of $619,274.67 was collected as support payments. Similarly the district attorney and the welfare director co-operate in the matter of identifying and prosecuting cases of welfare fraud. For the period beginning August, 1955, to the present 21 welfare fraud cases were filed and 16 convictions have been secured. Other cases are now pending.

REHABILITATION AND EMPLOYMENT

The committee finds that the employment of an employment co-ordinator is paying dividends. Previous grand juries recommended this specialization function and as a result, an employee is assigned as an employment co-ordinator of job opportunities and is very active in referring welfare employable recipients to employment. As an example of the savings to be had by specializing in job placements from July, 1956 through June, 1957, there was a total of 73 welfare cases closed because of employment. Projected out, the savings in welfare costs will amount to $72,108 annually.

The Prevention of Blindness Program administered by the welfare department, continues to result in tremendous savings in human welfare and money. Eighteen (18) persons had their sight restored by surgery during the past fiscal year. Five blind persons were placed in employment, five more are under training for placement in jobs.

The child welfare and Adoption Services Programs are operating efficiently. The preventive and protective services decrease the need for welfare aid.

WELFARE CASELOADS AND COSTS

The welfare department aids on an average of 16,000 persons at a total cost in excess of $1,000 per month. The cost to the local San Bernardino County taxpayer amounts to approximately $135,000 per month

The welfare department is operating well within its department fiscal budget. Due to current economic conditions and to recent liberalizing state welfare legislation, caseloads and costs are increasing locally as well as state-wide. The only exception is that the Indigent Relief which

shows a downward trend in San Bernardino County. The Indigent Relief program is administered by the county with no federal or state restrictions or supervision.

RECOMMENDATIONS OF WELFARE DIRECTOR

The welfare department is a most complex and complicated department, which assumes the responsibility of solving the perplexing problems of families and individuals who have not been able to solve their own problems. While the committee feels the department is headed by competent and capable personnel, still they will never completely solve all these problems. In an effort to help along these lines, the committee asked the welfare director for any suggestions he might have as to how the grand jury may be of help to his department. The following suggestions were submitted:

1. That the grand jury consider giving formal encouragement to other public and private agencies and the various social planning councils to continue their efforts toward assisting the handicapped to become self-supporting, providing social services, etc., to the end that such services decrease or prevents the need for Public Welfare Assistance.
2. That the welfare subcommittees of the grand jury bring to the attention of the welfare director information when reports are received regarding welfare abuses, complaints, and suspicion of fraud in individual cases in order that the welfare department may get the facts and take early steps to remedy the problem.
3. That the grand jury insofar as practical interpret to the public the operation and functions of the welfare department pointing out the steps that the county has taken to administer the welfare program in accordance with modern business methods and practices and department efforts to hold welfare costs to realistic levels.
4. That the grand jury emphasize to the public the amount of money spent on welfare, the source of the money, the number of persons aided and the reasons why a tremendous amount of public tax money is spent on welfare.
5. That the grand jury encourage the board of supervisors to continue its policy of establishing salaries in accordance with prevailing rates of pay, high qualifications as a condition of employment and the requirement of a high standard of individual employee work performance.

SAN BERNARDINO COUNTY
GOVERNMENTAL PARTICIPATION IN WELFARE AID COSTS
December, 1957

1. Old Age Security

a. Formula:

Federal share	½ of first $60 plus $9
State share	6/7 of balance
County share	1/7 of balance

b. Maximum grant:

$105 (no income)

Federal share	½ of $60 plus $9 =	$39.00
State share	6/7 of bal 6/7 of 66 =	56.57
County share	1/7 of bal. 1/7 of 66 =	9.43
		105 00

c. Maximum grant·

$89 (income $16 and over)

Federal share	½ of $60 plus $9 =	$39.00
State share	6/7 of bal. 6/7 of 50 =	42.86
County share	1/7 of bal. 1/7 of 50 =	7.14
		89.00

d. Active San Bernardino County Old Age Security Cases:

December, 1957	9,908
Federal share of payments	$365,092 32
State share of payments	345,594.52
County share of payments	57,603 67
	$768,290 51
Average grant	77.54

2. Aid to Needy Children

a. Formula:

Maximum state *basis*—Varies from $145 for one eligible child to $371 for nine eligible children plus $5 each all over nine children.

Maximum federal *basis*.—$32 for needy relative caretaker, $32 for first child, $23 for each additional child, plus $5 50 each for caretaker and children

b. Average San Bernardino County Case: one caretaker and three eligible children

Maximum state *basis*	$215
Maximum federal *basis*	110

c. Federal share of grant $215 (caretaker and three children)

One-half of maximum basis or ½ of $110 = $55 plus $22 =	$77 00
State share of grant is 67½% of remainder· 67½% of $138 =	93 15
County share of grant is 32½% of remainder: 32½% of $138 =	44.85
	215.00

d. Active cases (ANC) San Bernardino County, December, 1957 2,002

Total children		5,663
Federal share of aid paid	$134,111 36	
State share of aid paid	95,430 89	
County share of aid paid	45,986.72	
Total aid paid	$275,528.97	
Average grant per case	$137.63	
Average grant per child	48 65	

3. Aid to Needy Children in Boarding Homes

a. No federal participation in Boarding Home Payments
State share of Boarding Home Payments: 67½% of maximum of $75 per child.
County share of Boarding Home Payments: 32½% of $75

Thus, a Boarding Home Payment of $75.00 would be
50.63 state share and
24.37 county share
$75.00

b. Boarding Home Cases, San Bernardino County, December, 1957 — 305 children

State share of payments	$11,380.10
County share of payments	7,202.27
Total	$18,582.37

4. Aid to Needy Blind

a. Formula:

Federal share	½ of first $60 plus $9 per case
State share	¾ of balance
County	¼ of balance

b. Maximum grant:
$110 (no income)

Federal share	½ of $60 plus $9 =	$39.00
State share	¾ of bal. ¾ of 71 =	53.25
County share	¼ of bal. ¼ of 71 =	17.75
	Total	$110.00

c. Maximum grant: $99 (income $11 and over)

Federal share	½ of $60 plus $9 =	$39
State share	¾ of bal. ¾ of 60 =	45
County share	¼ of bal. ¼ of 60 =	15
	Total	$99

d. Active Aid to Needy Blind Cases, San Bernardino, December, 1957 — 547

Federal share of aid payments	$21,051.20	
State share of aid payments	24,916.65	
County share of aid payments	8,305 55	
Total aid paid	$54,273 40	
Average grant		$99.22

5. Aid to Partially Self-supporting Blind

a. Formula: No Federal Participation

State share	⅚ of grant to maximum of $110
County share	⅙ of grant to maximum of $110

b. A $110 grant would be paid from funds as follows:

State share	⅚ of $110 =	$91.67
County share	⅙ of 110 =	18.33
	Total	$110.00

c. Aid to partially self-supporting blind cases
San Bernardino County, December, 1957 — 3

State share	$275	
County share	55	
Total aid	$330	
Average grant		$110

6. Aid to Totally Disabled

a. Formula:

Federal share	½ of first $60 plus $9
State share	6/7 of balance up to $105 maximum
County share	1/7 of balance up to 105 maximum

b. A grant of $105 would be paid from funds as follows:

Federal share	½ of $60 = $30 plus $9 =	$39.00
State share	6/7 of balance of $66 =	56.57
County share	1/7 of balance of $66 =	9.43
	Total	$105.00

c. Active Aid to Totally Disabled, San Bernardino County, December, 1957 8

Federal share of aid payments	$305 50	
State share of aid payments	313 29	
County share of aid payments	52.22	
Total aid paid	$671.01	
Average grant		$83.88

7. Summary of Aid Paid in San Bernardino County, December, 1957

	Federal share	*State share*	*County share*	*Total*
Old Age Security	$365.092.32	$345,594.52	$57,603 67	$768,290.51
Aid to Needy Children	134,111.36	95,430 89	45,986.72	275,528.97
ANC, Boarding Homes		11,380.10	7,202.27	18,582.37
Aid to Needy Blind	21,051.20	24,916.65	8,305 55	54,273 40
A.P.S.B.		275.00	55.00	330.00
Aid to Totally Disabled	305.50	313.29	52 22	671.01
	$520.560.38	$477,910.45	$119,205.43	$1,117,676.26
General Relief (all county money)			29,298 50	29,298.50
			$148,503.93	$1,146,974.76

8. Administrative Costs

Federal share	$39,628.65
State share	7,119.75
County share	51,359.48
Total	$98,107.88

9. Total Costs for December, 1957

Aid payments	$1,146,974.76
Administrative cost	98,107.88
Total	$1,245,082.64

Administrative Costs are 8.55 percent of aid costs

CASELOAD STANDARDS IN RIVERSIDE COUNTY

December 1, 1957

Old Age Security cases____ 7,050—Total monthly aid expenditure_____$542,368.73

Total cost of administering OAS program for same month_____ 42,714.52

Because of wide geographical area, caseload standards will vary to some degree by locality. Generally speaking in Riverside City where population is concentrated, the Old Age Security caseload standard will run approximately 250 cases per worker, plus intake applications (which average about five per month per worker) within the geographical district served by that worker. In Riverside County we do not have a separate division to receive new applications; therefor, the social worker is assigned a given district and carries continuing cases and takes all new applications within her geographical district. In the cities outside of Riverside our caseload is approximately 47 percent of the total, and caseload standards will run about 25 cases per worker less, because of travel time and other factors, such as inexperience of social worker currently assigned. Here again the worker carries responsibility for intake as well as continuing cases.

Aid to Needy Children__929 family cases (2,755 children).

Total monthly expenditure__$134,110.13—Cost of administering_____$20,244.04

Caseload standards for each social worker have been kept at an optimum figure, recognizing the responsibility of the worker for planning with her client for employment and for rehabilitation. The caseload per worker will run about 50 to 55 cases, plus intake applications (averaging 5 per month). In addition to the above cases there are 171 children receiving Aid to Needy Children who are placed in boarding homes and institutions The monthly aid expenditure for this group totals $10,074 42 The cost of administration, based on the same month of expenditure was $1,625

Aid to Needy Blind__351 cases—Total monthly aid expenditure_____$34,816.04

Cost of administering based on same month of expenditure_____ ____ ___$2,283 14

Caseload standards are different from other aid programs. In Riverside County there is a special Bureau for the Blind, and this unit located in Riverside City serves all of the communities outside of Riverside City proper, except Indio and Blythe. Because of distance these are not served from the central unit. The Blind Bureau is headed by a social worker, Grade III, who supervises two other workers. The grade III worker carries 75 cases, and the two workers carry approximately 125 cases each, plus applications, averaging about four per month.

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ASSEMBLY INTERIM COMMITTEE REPORTS
1957-1959

VOLUME 20 NUMBER 4

REPORT OF THE

ESCHEAT SUBCOMMITTEE OF THE COMMITTEE ON JUDICIARY

House Resolution No. 224, 1957

PERTAINING TO

ABANDONED PROPERTY—STATE ACQUISITION AND RECOVERY BY RIGHTFUL OWNER

Report Prepared by
STANLEY V. ANDERSON

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January, 1959

Published by the
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OF THE STATE OF CALIFORNIA

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TABLE OF CONTENTS

	Page
Letters of Transmittal	
Committee	4
Subcommittee	5
Preface: Treasure Trove	7
I. Introduction: Windfall	9
II. Extent of Potential Revenue	11
A. Experience of Other States	11
B. New Sources Available in California	11
III. Impact on Holders of Abandoned Property	14
IV. Benefit to Owners	15
V. Relations With Sister States and With the Federal Government	16
A. State Reciprocity	16
B. The Federal Problem	16
VI. Conclusion	17
Proposed Legislation	
Assembly Bill No. 16	18

LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON JUDICIARY
SACRAMENTO, January 12, 1959

Hon. Ralph M. Brown, Speaker of the Assembly
and Members of the Assembly
Assembly Chamber, Sacramento

GENTLEMEN: Enclosed is the report of the Subcommittee on Escheat of the Assembly Interim Committee on Judiciary.

During the interim this subcommittee has gathered and examined previous studies of the subject of abandoned property, including earlier bills introduced in the California Legislature, the statutes of sister states, and the writings of scholars in the field. Moreover, four hearings were held in which potential benefits and possible problems were assayed. The results of this effort are distilled in the report, and culminated in the recent introduction of Assembly Bill No. 16, 1959, which is appended. The report is brief yet comprehensive, and deserves the careful consideration of the Legislature.

Respectfully submitted,

BRUCE F. ALLEN, Chairman

SUBCOMMITTEE LETTER OF TRANSMITTAL

January 12, 1959

HON. BRUCE F. ALLEN, *Chairman*
Assembly Interim Committee on Judiciary
California Legislature
State Capitol, Sacramento, California

DEAR MR. ALLEN: Pursuant to your directive and in conformance with the provisions of House Resolution No. 224 of the 1957 General Session, the Subcommittee on Escheat herewith submits its report.

The subcommittee considers the subject of abandoned property to be particularly timely in view of the current prominence of the revenue needs of the State. The subcommittee has concluded that a comprehensive abandoned property law would provide a significant source of new revenue to the State, and without new or increased taxes. The subcommittee further suggests that the State of California has not kept pace with developments in this field in other states, a rare phenomenon which should be promptly remedied. Finally, the subcommittee believes that greater efforts should be made to locate owners of abandoned property and that holders of abandoned property should be required to deliver such property to the State.

The subcommittee sincerely invites you, the members of the Interim Committee on Judiciary, the Members of the Legislature and the public to join with the subcommittee in sponsoring and enacting this proposed legislation.

It should be emphasized that Assembly Bill No. 16 as introduced, being based on the Uniform Act, is not meant to represent in every aspect a final judgment as to the specific needs of California.

The subcommittee wishes to express its appreciation to Professor William J. Pierce of the University of Michigan Law School for his kindness in coming to California to advise the subcommittee, to the Attorney General's Office, particularly to Deputy Attorney General John F. Hassler for his valuable assistance in research and in the editing of this report, and to the California Legislative Internship Program for making available to the subcommittee the services of Mr. Stanley V. Anderson.

Respectfully submitted,

ALLEN MILLER, Chairman
Subcommittee on Escheat

PREFACE: TREASURE TROVE

Adventure is where you find it. The days of Long John Silver and the buried Spanish doubloons are gone, but their modern counterpart might be *you*—and your attic.

When Mary Kate Murphy died in 1875, she left $940.59 and a $2 stock subscription for membership in the Hibernia Savings Bank of San Francisco (Probate No. 103, San Luis Obispo County). On December 3, 1947, the bank sued for declaratory relief and settled with the estate for $94,059.51 (Probate No. 345344, San Francisco). Even John Silver could not have expected this return—his treasure chest did not gather interest.

Hidden away in trunks and boxes in many American attics are pieces of paper—stock certificates, bonds, leases—which today represent considerable wealth to their owners. Hundreds of millions of dollars in unclaimed value have been added to stock certificates in "worthless" corporations, corporations later merged into more affluent firms or whose "dry hole" began spouting black gold. Perhaps one out of every 10 shares of "worthless" stock is an ugly duckling waiting to be discovered as a gilded swan.

The owners of this treasure, when found, have often been in need of medical attention, urgent business capital—or a trip to tropical shores.

But the corporations holding the property are under no obligation to seek out the owners. One main purpose of the proposed abandoned property statute is to bring the records of ownership to official attention, to run advertisements in newspapers, and to write letters to owners' last addresses.

We want to train a searchlight on the end of the rainbow.

I. INTRODUCTION: WINDFALL

The State of California has a rare opportunity to establish a continuing source of revenue requiring no new taxation. An estimated 30 to 100 million dollars could be realized through enactment of a comprehensive abandoned property statute.[1] For many years, in one form or another and always hit-and-miss, California has had laws relating to unclaimed property. Different types of property have different cut-off dates, but in all types affected by law the true owner one day loses his right to recover from the State. In that sense, the laws are truly characterized as "escheat." The law now proposed for enactment in California would repeal existing legislation and substitute a comprehensive statute which is custodial in nature. The State would never become the true owner. The State would always hold property for claim of the persons entitled or their heirs and assignees. Pending claim, the State would have the use of funds. Experience shows that a relatively small percentage of owners come forward and claim their interests. Under the proposed law, every reasonable effort will be made to inform the absent owner of his forgotten assets.

Present California law providing for state acquisition of abandoned property is of very limited scope. With minor exceptions, only the estates of intestate and heirless decedents, the excess funds of dissolved corporations, and unclaimed general bank deposits are covered. (Unclaimed real property is effectively taken care of through tax sales.)

Completely ignored[2] are abandoned safe deposit boxes, unclaimed insurance benefits, undeliverable public utility deposit refunds and excess rate refunds, abandoned special bank funds (such as cashier's checks and traveler's checks), ownerless shares of stocks with their resultant dividends, escrow funds, and other trust accounts.

> "For the banks, life insurance companies, utilities, and corporations that hold this property, it proves a windfall; in a real sense it is found money."[3]

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[1] Testimony to this effect was given by Mr. Gordon Cox, Vice President and General Manager of W C Cox and Company, an international probate search firm, at a public hearing of the Assembly Interim Committee on Judiciary, Subcommittee on Escheat, held at Los Angeles on June 11, 1958 At the same hearing, Mr S N West of the probate investigation firm of Weller & Weller stated that "It is possible that the State of California can add $5,000,000 or more each year to [its revenues]"

[2] Section 1578 of the California Code of Civil Procedure permits, but does not require, the delivery of miscellaneous unclaimed property to the State, its procedures are cumbersome At a public hearing of the Assembly Interim Committee on Judiciary, Subcommittee on Escheat, held at Los Angeles on February 20, 1958, it was stated by Deputy Attorney General John F Hassler that "To my knowledge the provision has never been used"

The February hearing covered the subject of escheat generally Subsequent hearings, in April, June, and October of 1958, investigated the impact of proposed legislation on the following industries insurance companies (April), corporations (June), and banks and public utilities (October).

[3] Jerome J Shestack, "Disposition of Unclaimed Property—A Proposed Model Act," 46 ILLINOIS LAW REVIEW (Northwestern University) (1952), p 48.

Even when such funds are of no use to the holders (e g., the contents of forced safe deposit boxes), expenses of storage and bookkeeping are incurred. By requiring delivery of valuable unclaimed property to the State, the holders would be free from such expense. They would also be given protection which they do not now have against later claims by owners.

Finally, the proposed legislation provides for notice to owners both by mail and by publication. At the present time, the extent of efforts made to locate missing owners varies from firm to firm and from industry to industry.

Thus, the proposed Uniform Disposition of Unclaimed Property Act would serve three purposes: (1) revenue to the State; (2) convenience to holders of abandoned property; and (3) location of more missing owners.

II. EXTENT OF POTENTIAL REVENUE

A. EXPERIENCE OF OTHER STATES

1. *New York* adopted an abandoned property law in 1944. In the succeeding 13 years, $38,500,000 was realized,[4] of which roughly 12 percent was later paid out in claims. The cost of collection was 2 to 2½ percent of the amount obtained.

2. *Michigan* supplemented existing legisation comprehensively in 1947. Revenue from this source since that date has been nearly $7,500,000, of which $1,000,000 was returned to owners. It has been estimated that 50 to 60 percent of this revenue is attributable solely to the 1947 legislation.[5]

3. *Massachusetts* realized almost $2,500,000 in 1950, the first year of its new moderately comprehensive statute. Refunds have been approximately 10 percent of the amounts received.

4. *Pennsylvania* had revenue from its fairly comprehensive statute of nearly $5,000,000 in the seven-year period from 1943 to 1950.[6]

5. Four states, all neighbors of California, have adopted the Uniform Disposition of Unclaimed Property Act since it was approved in 1954 by the National Conference of Uniform Law Commissioners.[7] These states are *Arizona, Utah, Oregon,* and *Washington.*

B. NEW SOURCES AVAILABLE IN CALIFORNIA

The present escheat statute in California traces back over 100 years. Since the first such law was passed in 1852, $12,000,000 has been placed in the School Land Fund, the interest from which is used for the public schools. In the year 1945, California received escheat revenue in the amount of $201,000.[8] By way of contrast, New York received $2,144,000 in 1949, $3,500,000 in 1950,[9] and $4,413,000 in 1957.[10]

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[4] As of June 30, 1957. Some of the individual sources were as follows

Banks	$18,787,000
Insurance companies	2,849,000
Condemnation awards	1,641,000
Utilities	511,000
20-year Court and Trust Funds	3,206,000
Unknown distributees	1,624,000
Money orders and traveler's checks	3,501,000

[5] The New York and Michigan figures were supplied by Professor William J. Pierce of the University of Michigan Law School at the public hearing on February 20, 1958, *op. cit.* Michigan has seen an increase in the amount recovered annually due to the gradual uncovering of new sources Most other states have found that the first year's recovery was much larger than that of subsequent years

[6] *Figures on Massachusetts and Pennsylvania, along with the much smaller amounts* recovered by states which have not adopted any comprehensive legislation, are found in "Abandoned Chattels and Intangible Things as a Source of Revenue," 42 IOWA LAW REVIEW (Spring, 1957), pp. 399-411.

[7] See 9A UNIFORM LAWS ANNOTATED (1957), pp 250-274. Some states, including New York, adopted the Uniform Act prior to the commissioners' action

[8] "Abandoned Chattels and Intangible Things as a Source of Revenue," *op. cit.*, p. 402 fn

[9] Shestack, *op. cit*, p. 50, fn 13

[10] Testimony of Professor Pierce at the public hearing on February 20, 1958, *op. cit.*

Michigan received $1,522,000 in 1957.[11] Some of the new sources which California might tap in order to rival her sister states are as follows:

1. *The insurance industry* offers the State of California a potential initial revenue of perhaps one million dollars. One life insurance company alone holds unclaimed automatic nonforfeiture benefits from industrial policies issued in California in the amount of $650,000 to $750,000.[12]

2. *Corporate stocks and dividends* represent a significant, if indeterminate, source of potential revenue. A single illustration of such a source is found in one corporation which holds $180,000 in unclaimed dividends and has $200,000 outstanding in uncashed dividend checks.[13] The value of the stock underlying these dividends must also be taken into consideration.

Some corporations follow the practice of transferring assets to concerns which they have acquired, thus increasing the value of the outstanding stock of the acquired concern, sometimes by as much as 1,000 percent. Owners of this stock have often destroyed or lost it, after long considering it worthless.

3. *Public utilities* also hold unclaimed funds. Three airlines, for example, have $122,000 which they obtained after raising fares in a manner which was later held to be unauthorized.[14] It is possible that conditional rate increases may be granted to other utilities, only to be later revoked. This has happened in the past. The customer who uses a pay telephone or rides a public bus is not likely to demand the return of the excess charge, even though he is permitted to do so. While the individual amounts are small, the aggregate can be quite large; it was $800,000 in the Market Street Railway Company case.[15] Southern California Gas Company's predecessor once had a rate increase denial rebate fund of $221,000.

Customer deposits represent another important source of revenue. Preliminary investigation indicates that public utilities now have nearly one million dollars in unclaimed service deposits.[16]

4. *Banks* offer a variety of possible sources of revenue.

   a. Regular *savings and checking accounts* are subject to escheat under present law after 20 years' inactivity.

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[11] *Loc. cit.*

[12] Testimony to this effect was given by Leland B. Groezinger, legislative representative for the Life Insurance Association of America, at a public hearing of the Assembly Interim Committee on Judiciary, Subcommittee on Escheat, held at San Francisco on April 30, 1958.

[13] Testimony to this effect was given by Harrison McKusick, manager of the Stock Transfer Department of the First Western Bank and Trust Company, at a public hearing of the Assembly Interim Committee on Judiciary, Subcommittee on Escheat, held at Los Angeles on June 11, 1958.

[14] Testimony to this effect was given by Everett C McKeage, Chief Counsel for the Public Utilities Commission of the State of California, at a public hearing of the Assembly Interim Committee on Judiciary, Subcommittee on Escheat, held at Los Angeles on October 16 and 17, 1958.

[15] *Market Street Railway Company* v. *Railroad Commission of the State of California* (1946), 28 C. 2nd 363, 171 P. 2nd 875. The City and County of San Francisco was awarded this fund on the ground that its citizens had paid the money and that the fund was part of the bargain in which the city purchased the line Significantly, the court held the State not entitled because the Legislature had previously repealed an express provision of law and failed to re-enact its counterpart.

[16] Testimony to this effect was given by Harry Cooper, Special Agent of the Department of Justice of the State of California, at the public hearing on October 16 and 17, 1958, *op. cit.*

b. *Cashier's checks, certified checks, money orders,* and *banker's drafts* would be covered under proposed legislation. One bank alone is holding at present $1,218,000 in outstanding value in these categories, all of which have been dormant from 5 to 20 years.[17] Other banks also have such funds in undetermined amounts.

c. Dormant *trust funds* and *escrow deposits* would also be included under the proposed statute. One bank holds $165,000 from a single source—unclaimed oil royalty checks [18]

d. The contents of abandoned *safe deposit boxes* represent an important source of new revenue The items in those which contain valuables are at present of no use to anyone. It is estimated that 1,500 boxes are forced open each year in Los Angeles County alone for nonpayment of rent. One Los Angeles bank has forced open 2,300 boxes in the last 10 years.[19] It is difficult to evaluate the potential of revenue from this source.

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[17] Testimony to this effect was given by Walter Bruns, Vice President of the Bank of America, at the public hearing held on October 16 and 17, 1958, *op cit.*

[18] *Loc cit.*

[19] Testimony to this effect was given by Edward Corbin, Vice President of the Security First National Bank, at the public hearing held on October 16 and 17, 1958, *op. cit* Mr. Corbin stated that 53 percent of these boxes had nothing, 40 percent had no value, and 6.7 percent (154 boxes) contained contents of some value. The State would not take custody of items of negligible value.

III. IMPACT ON HOLDERS OF ABANDONED PROPERTY

The proposed legislation would require every person holding such property to file a report annually with the State Controller, listing the name and last known address of the owner and a description of the property. As a convenience to holders, items under $3 may be reported in the aggregate. Items are presumed to be abandoned when they have been unclaimed for seven years.[20] The State Controller may decline to receive property of a value less than the cost of notice and sale.

The most significant benefit which the proposed law would give to holders is that they will be relieved of all further liability for any property they deliver to the State under the statute.

An incidental advantage will inure to those corporations whose stocks are possessed by many missing owners and who have experienced difficulty in effecting reorganization due to the absence of the requisite number of voting shares. The corporation will be able to purchase from the State and thereby return their stock to active voting status.

[20] Unclaimed property distributed in dissolution of a business association is presumed abandoned after two years

IV. BENEFIT TO OWNERS

The proposed act instructs holders to exercise due diligence in locating owners. More important, it directs the State Controller to publish notice of abandoned property in a local paper and to mail a notice to the last address of the owners of abandoned property of a value of $25 or more.

Even though a statute of limitations may have run against the owner vis-à-vis the holder, the State is not precluded from taking custody. Once the State has taken custody there is no time limit within which the owner has to make his claim. The experience of other states is that most claims are made very soon after the abandoned property is taken into state custody. All properties are converted into cash by the State, at public sale, and no interest accrues to the owner. Receipts are deposited in the proper funds and a sufficient amount is maintained in a revolving fund for payment of claims The State asserts no ownership of abandoned property, and is ready at all times to make proper payment. Thus, the delivery proposed in this law is "custodial" rather than "permanent."

No greater protection could be given to the owner of abandoned property than is proposed in this legislation. He is given more effective notice, both by holders and by the State, and may claim his property, or its equivalent in money, at any time.

V. RELATIONS WITH SISTER STATES AND WITH THE FEDERAL GOVERNMENT

A. STATE RECIPROCITY

The proposed act declares that it is not to apply to property already recovered by other states. It further provides that, in the future, the State of California will not receive property to which another state has jurisdiction, if that other state has a similar statute, and if that other state makes reciprocal provision for the benefit of California. Thus, all abandoned property will be subject to recovery by one state and one state alone. Holders of abandoned property will not be subject to more than one claim.

B. THE FEDERAL PROBLEM

One of the incidents of state sovereignty is the exclusive power of escheat. There is no corresponding federal power. While the states are entitled to abandoned property held by the Federal Government, there is no procedure available for discovering such property. The National Association of Attorneys General has drafted a proposed federal bill (S. 3937, 85th Congr. 2nd Sess.) which would direct the Comptroller General of the United States to search federal records for such information and to convey it to the appropriate state when the governor certifies that local law requires compensation to the Federal Government for the costs of search and holds the Federal Government harmless from later claims by owners. The problem was purposely avoided by the drafters of Uniform Disposition of Unclaimed Property Act for want of proper federal legislation. A strong effort will be made to assure passage of a bill similar to that introduced at the last session.[21] The law proposed for California contains provisions enabling participation under federal law should the latter be enacted.

[21] Testimony on the federal problem was given by Attorney General Edmund G Brown, Chairman of the Committee on Escheats of the National Association of Attorneys General, at the public hearing held on February 20, 1958, *op cit*
Another related problem is that the federal courts consider themselves to be equally competent with the states as custodians of abandoned property, awaiting the appearance of owners. Thus, a statute working in ultimate escheat, with transfer of title to the state itself, might be necessary to effect state possession of such property.

VI. CONCLUSION

No better statement of the advantages which would accrue from the adoption of a comprehensive delivery statute than that given by the Uniform Law Commissioners themselves: [22]

> "The Uniform Disposition of Unclaimed Property Act, if adopted by the states, will serve to protect the interests of owners, to relieve the holders from annoyance, expense, and liability, to preclude multiple liability, and to give the adopting state the use of considerable sums of money that otherwise would, in effect, become a windfall to the holders thereof."

[22] 9A Uniform Laws Annotated, *op. cit*, p. 252

PROPOSED LEGISLATION

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 16

Introduced by Messrs. Miller, Hanna, Burton, Francis, Bruce F. Allen, Biddick, Bradley, Ralph M. Brown, Busterud, Crawford, Crown, DeLotto, Lunardi, O'Connell, Sumner, and Thelin, with co-operation and support of Senator Fred Farr.

January 6, 1959

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Chapter 7 to Title 10 of Part 3 of the Code of Civil Procedure, relating to disposition of unclaimed property.

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

SECTION 1. Chapter 7 is added to Title 10 of Part 3 of the Code of Civil Procedure, to read:

CHAPTER 7. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

1600. This chapter may be cited as the Uniform Disposition of Unclaimed Property Act.

1601. As used in this chapter, unless the context otherwise requires:

(a) "Banking organization" means any bank, trust company, savings bank, or a private banker engaged in business in this State.

LEGISLATIVE COUNSEL'S DIGEST

A. B. 16 as introduced, Allen Miller (Jud.). Uniform Disposition of Unclaimed Property Act.

Adds Ch. 7, Title 10, Part 3, C. C. P.

Provides that the holders of intangible personal property unclaimed for designated periods, shall file a report of the same with the State Treasurer, who must publish notice thereof, except as to minor amounts, and provides for the transfer of custody of such property to the Treasurer, with provision for its recovery by the rightful owner.

Corrected 1-9-59

(b) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, or investment company engaged in business in this State.

(d) "Holder" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

(e) "Life insurance corporation" means any association or corporation transacting within this State the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

(g) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Utility" means any person who owns or operates within this State, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

1602. The following property held or owing by a banking or financial organization is presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this State with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this State toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this State, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this State or on written instruments issued in this State on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within seven years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this State on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven years from the date on which the lease or rental period expired.

1603. (a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this State. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

1604. The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this State, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this State, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the date it became payable in accordance with the final determination or order providing for the refund.

1605. Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a co-operative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this State; or

(b) It is held or owing by a business association doing business in this State, but not organized under the laws of or created in this State, and the records of the business association indicate that the last known address of the person entitled thereto is in this State.

1606. All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this State, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned.

1607. All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(a) If the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this State; or

(b) If it is held by a business association, banking organization, or financial organization doing business in this State, but not organized under the laws of or created in this State, and the records of the business association, banking organization, or financial organization indicate that the last known address of the person entitled thereto is in this State; or

(c) If it is held in this State by another person.

1608. All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this State, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years is presumed abandoned.

1609. All intangible personal property, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in this State in the ordinary course of the holder's business and has remained unclaimed by the

owner for more than seven years after it became payable or distributable is presumed abandoned.

1610. If specific property which is subject to the provisions of Sections 1602, 1605, 1606, 1607, and 1609 of this code is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this State and subject to this chapter if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this State by a holder who is subject to the jurisdiction of this State.

1611. (a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the State Treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of three dollars ($3) or more presumed abandoned under this chapter;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under three dollars ($3) each may be reported in aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the State Treasurer prescribes by rule as necessary for the administration of this chapter.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1st of each year as of June 30th next preceding, but the report of life insurance corporations shall be filed before May 1st of each year as of December 31st next preceding. The State Treasurer may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The

holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this chapter shall include all items of property that would have been presumed abandoned if this chapter had been in effect during the 10-year period preceding its effective date.

1612. (a) Within 120 days from the filing of the report required by Section 1611, the State Treasurer shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this State in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this State, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this State.

(b) The published notice shall be entitled "notice of names of persons appearing to be owners of abandoned property," and shall contain·

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the State Treasurer.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the second published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the State Treasurer to whom all further claims must thereafter be directed.

(c) The State Treasurer is not required to publish in such notice any item of less than twenty-five dollars ($25) unless he deems such publication to be in the public interest

(d) Within 120 days from the receipt of the report required by Section 1611, the State Treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars ($25) or more presumed abandoned under this chapter.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice

the property shall be placed in the custody of the State Treasurer to whom all further claims must be directed.

1613. Every person who has filed a report as provided by Section 1611 shall within 20 days after the time specified in Section 1612 for claiming the property from the holder pay or deliver to the State Treasurer all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in Section 1612, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the State Treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

1614. Upon the payment or delivery of abandoned property to the State Treasurer, the State shall assume custody and shall be responsible for the safe keeping thereof. Any person who pays or delivers abandoned property to the State Treasurer under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the State Treasurer pursuant to this chapter may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the State Treasurer shall forthwith reimburse the holder for the payment.

1615. When property is paid or delivered to the State Treasurer under this chapter, the owner is not entitled to receive income or other increments accruing thereafter.

1616. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the State Treasurer.

1617. (a) All abandoned property other than money delivered to the State Treasurer under this chapter shall within one year after the delivery be sold by him to the highest bidder at public sale in whatever city in the State affords in his judgment the most favorable market for the property involved. The State Treasurer may decline highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the State Treasurer pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all

persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of title.

1618. (a) All funds received under this chapter, including the proceeds from the sale of abandoned property under Section 1617, shall forthwith be deposited by the State Treasurer in the general funds of the State, except that the State Treasurer shall retain in a separate trust fund an amount not exceeding twenty-five thousand dollars ($25,000) from which he shall make prompt payment of claims allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the general funds, the State Treasurer may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.

1619. Any person claiming an interest in any property delivered to the State under this chapter may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the State Treasurer.

1620. (a) The State Treasurer shall consider any claim filed under this chapter and may hold a hearing and receive evidence concerning it. If a hearing is held he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(b) If the claim is allowed, the State Treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

1621. Any person aggrieved by a decision of the State Treasurer or as to whose claim the State Treasurer has failed to act within 90 days after the filing of the claim, may commence an action in a court of competent jurisdiction to establish his claim. The proceeding shall be brought within 90 days after the decision of the State Treasurer or within 180 days from the filing of the claim if the State Treasurer fails to act. The action shall be tried de novo without a jury.

1622. The State Treasurer, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

1623. The State Treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this chapter.

1624. If any person refuses to deliver property to the State Treasurer as required under this chapter, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

1625. (a) Any person who wilfully fails to render any report or perform other duties required under this chapter shall be punished by a fine of ten dollars ($10) for each day such report is withheld, but not more than one thousand dollars ($1,000).

(b) Any person who wilfully refuses to pay or deliver abandoned property to the State Treasurer as required under this chapter shall be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or imprisonment for not more than six months, or both, in the discretion of the court.

1626. The State Treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of this chapter.

1627. This chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this chapter.

SEC. 2. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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Report of the

SUBCOMMITTEE ON MARKETING AND TRADE PRACTICES

of the

ASSEMBLY INTERIM COMMITTEE ON JUDICIARY

House Resolution No. 224, 1957

GASOLINE OCTANE IDENTIFICATION

Report Written by

RICHARD PERRY BYRNE

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March, 1959

Published by the

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OF THE STATE OF CALIFORNIA

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SUNRICH
GASOLINE
100 SUPER ETHYL
We Give
BLUE CHIP
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100 OCTANE
GASOLINE
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SHELL
OVER
100
OCTANE
'59
MOBILGAS SPECIAL
OPEN SUNDAYS
REGENT
GASOLINE
HIGHEST OCTANE
EVER
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TABLE OF CONTENTS

	Page
Letters of Transmittal	4
Committee	4
Subcommittee	5
Findings and Recommendations	7
Report of Subcommittee	9
I. Introduction	9
II. Present Regulation	10
A Minimum Specifications for Gasoline	10
B. Control of Misleading Advertising	10
III. Manufacturers' Practices	12
IV. Comprehensive Grading System	12
V. Octane Identification	13
A. In General	13
B. Background	13
C. "The Consumer Should Know What He Is Purchasing"	13
D. Research Method Specified	14
E. Octane Identification and Gasoline Price Wars	15
F. Undue Emphasis on Octane?	15
G. Future Need for Octane Identification	15
H. Cost of Administration	17
VI. Conclusion	18
Proposed Legislation	19
Assembly Bill No. 700	19
Appendix	21

LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, March 3, 1959

HON BRUCE F. ALLEN, *Chairman*
Assembly Interim Committee on Judiciary
State Capitol, Sacramento

DEAR MR. ALLEN: Pursuant to your directive and in conformance with the provisions of House Resolution No. 224 of the 1957 General Session, the Subcommittee on Marketing and Trade Practices herewith submits its report on Gasoline Octane Identification.

The subcommittee hopes that the report of its activities will be of value and aid to this Legislature in its task of enacting desired legislation and invites you, the members of the Interim Committee on Judiciary, the Members of the Legislature and the public to join with the subcommittee in sponsoring and enacting the legislation which is proposed herein.

Respectfully submitted,

THOMAS J. MACBRIDE, Chairman
Subcommittee on Marketing and
Trade Practices

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HOWARD J. THELIN
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SUBCOMMITTEE LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON JUDICIARY
SACRAMENTO, March 3, 1959

HON. RALPH M. BROWN, *Speaker of the Assembly*
and *Members of the Assembly*
Assembly Chamber, Sacramento, California

GENTLEMEN: Enclosed is the report of the Subcommittee on Marketing and Trade Practices of the Assembly Interim Committee on Judiciary.

During the interim this subcommittee studied the possibility of establishing a method of grading gasoline so that the motorist can better know the quality of the gasoline he is purchasing. The subcommittee held one hearing on November 17 and 18, 1958, at the Capitol, at which testimony was received from members of the petroleum industry, retail service station dealers, and the Bureau of Weights and Measures of the State of California regarding the grading of gasoline The results of this study are set out in the report together with recently introduced Assembly Bill No. 700 which incorporates the subcommittee's recommendation.

Respectfully submitted,

BRUCE F. ALLEN, *Chairman*

Actual Research octane rating, left to right: 93.4, 85.8, 90.8, 85.2 Atlas Self-Service, 4250 E. Compton Boulevard, Compton, California. Los Angeles County test numbers 9165, 9166, 9167, 9168.

Actual Research octane rating, left to right: 90.3, 95.6, 95.7, 73.4 S & H Service, 4302 E Third Street, Los Angeles, California Los Angeles County test numbers 8751, 8752, 8753, 8754

FINDINGS AND RECOMMENDATIONS

A. FINDINGS

The Subcommittee on Marketing and Trade Practices of the Assembly Interim Committee on Judiciary, having investigated the field of the grading of gasoline and having held a hearing on November 17 and 18, 1959, at the Capitol at which testimony on the subject was received, makes the following findings:

1. The octane rating of gasoline—*i e*, its antiknock quality—has become the accepted method by which the gasoline consumer who is interested in the performance of his automobile measures gasoline quality.

2. Many gasoline retailers have employed misleading advertising techniques that represent that the gasoline they are selling is of a higher octane rating than it actually is.

3. While the Business and Professions Code generally prohibits the use of misleading advertising, there are, in fact, few prosecutions because prosecuting agencies are reluctant to initiate proceedings without a specific section relating to gasoline advertising.

4. The control of misleading gasoline advertising is made more difficult by the fact that there are two different accepted methods of determining octane rating. However, one method—the Research Method—is used almost universally by gasoline manufactures and advertisers.

5. The cost of implementing a program of octane identification that will attempt to eliminate misleading gasoline advertising is minimal in relation to the benefit that would accrue to the public.

B. RECOMMENDATIONS

The subcommittee makes the following recommendations:

1. The octane rating of the gasoline being dispensed from each dispensing device should be required to be prominently displayed on said gasoline dispensing device.

2 For purposes of gasoline advertising, the Research Method for determining the octane rating of gasoline should be specified as the method by which the octane number of gasoline must be determined.

3. A specific section should be enacted making it unlawful to use numerals in connection with the sale of gasoline in such a manner as to lead the gasoline consumer into believing he is purchasing a gasoline with a higher octane rating than he actually is.

3—L-4089

Actual Research octane rating: 98.4. Hal Stevens Service, South First and Alma, San Jose, California. Los Angeles County test number 9795

REPORT OF SUBCOMMITTEE

I. INTRODUCTION

"Best Buy Is Boron Over 100 Octane."[1] "Now! *Over* 100 Octane."[2] "100 Super Ethyl."[3] "Now! More Octane Per Dollar."[4] "Still the *Leader* 100+"[5] "Unconditional Guarantee. Highest Octane Ever."[6] "Over 100 Octane."[7] "*Still* the Only 100 Octane."[8] "Increased Octane."[9] "You get octane so high your engine can't knock unless it's out of tune."[10]

These representations are only a few of the numerous claims designed to meet and stimulate the "octane appetite" of the gasoline consumer. He can turn in almost any direction and be met with a number that is supposedly the cure-all to his motoring worries. In some cases it's a number standing by itself. In other instances it's a number and an additive such as TCP,[11] Petrox,[12] or Boron.[13] In a third situation it's a number and some special gasoline feature such as climatic tailoring, quick starting, protection against vapor lock or detergent action. However, in almost every instance, a number is present.

The motorist might well ask just what these octane numbers are all about and what they should mean to him. Is octane really a test of gasoline quality or is it a sales gimmick dreamed up to trap the unwary and gullible? If octane isn't really a reliable test of quality, is it possible to establish a comprehensive method for grading gasoline that will make it easier for the consumer to know he's buying top quality gasoline? If octane is as important a factor as it's represented to be, is there adequate protection available under existing law to assure him that he is getting as high an octane as he's led to believe he's getting? Or is it now possible for sharp operators to mislead him into believing he's getting one octane when, in fact, he's really getting another?

It is the purpose of this report to explore the field of marking and grading gasoline, to attempt to answer the above questions, and to recommend a workable solution that will help to inform the gasoline consumer of what he is buying.

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[1] Richfield billboard, 16th Street and American River Bridge, Sacramento, California, January 26, 1959.

[2] Associated billboard, Alhambra Boulevard and P Street, Sacramento, California, January 26, 1959

[3] Sunrich Station, Stockton Boulevard and Ninth Avenue, Sacramento, California, January 26, 1959

[4] Signal Station, 12th Street and G Street, Sacramento, California, January 26, 1959

[5] Associated station, Stockton Boulevard and Ninth Avenue, Sacramento, California, January 26, 1959.

[6] Regent pump at Regal station, 12th Street and F Street, Sacramento, California, January 26, 1959

[7] Mobilgas station, 16th Street and E Street, Sacramento, California, January 26, 1959

[8] Associated station, Alhambra Boulevard and P Street, Sacramento, California, January 26, 1959

[9] Shell station, Alhambra Boulevard and Folsom Boulevard, Sacramento, California, January 26, 1959.

[10] *Shell News*, Sacramento, California, January 28, 1959, 7 30 a m

[11] Shell's additive

[12] Texaco's additive.

[13] Richfield's additive

II. PRESENT REGULATION

A. Minimum Specifications for Gasoline

All gasoline must meet certain minimum requirements as set out in the Business and Professions Code, Section 20780.[14] This section does not attempt to determine quality with respect to performance but sets standards for gasoline purity, *i.e.*, whether the material has been adulterated or mixed with another substance to create a product other than gasoline.[15] There are no other specifications prescribed by law that gasoline must meet.

B. Control of Misleading Advertising

False advertising claims that attempt to mislead the consumer into believing he's buying a fuel superior to that that he is actually purchasing are presently controlled by the general provisions of Division 7, Part 3, Chapter 1 of the Business and Professions Code. Section 17500[16] makes it unlawful for any person, firm, corporation, or association, or any employee thereof, to make or disseminate untrue or misleading statements. Section 17534[17] makes it a misdemeanor to violate Chapter 1 and Section 17535[18] authorizes the attorney general or any district attorney to enjoin violations under Chapter 1.

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[14] **Section 20780. Specifications.** "Gasoline" as defined in this chapter means any liquid petroleum product which conforms to the following specifications

(a) [*Freedom from water and suspended matter*] It shall be free from water and suspended matter

(b) [*Discoloration*] A clean copper strip shall not show more than extremely slight discoloration when submerged in the gasoline for three hours, at 122 degrees Fahrenheit, the test being conducted in accordance with the standard test therefor

(c) [*Distillation limits*] It shall distill, within the following limits, when tested in accordance with the standard test therefor, using the low distillation thermometer

1 When the thermometer reads 167 degrees Fahrenheit, not less than 10 percent shall be evaporated

2 When the thermometer reads 284 degrees Fahrenheit, not less than 50 percent shall be evaporated

3 When the thermometer reads 392 degrees Fahrenheit, not less than 90 percent shall be evaporated

4 The end point shall not be higher than 437 degrees Fahrenheit

5 At least 95 percent shall be recovered as distillate in the receiver from the distillation

6 The distillation residue shall not exceed 2 percent

[15] Testimony of Albert M Dreith, Petroleum Products Chemist of the Bureau of Weights and Measures, State of California

[16] **Section 17500. Making or disseminating untrue or misleading statement unlawful.** It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this State, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading

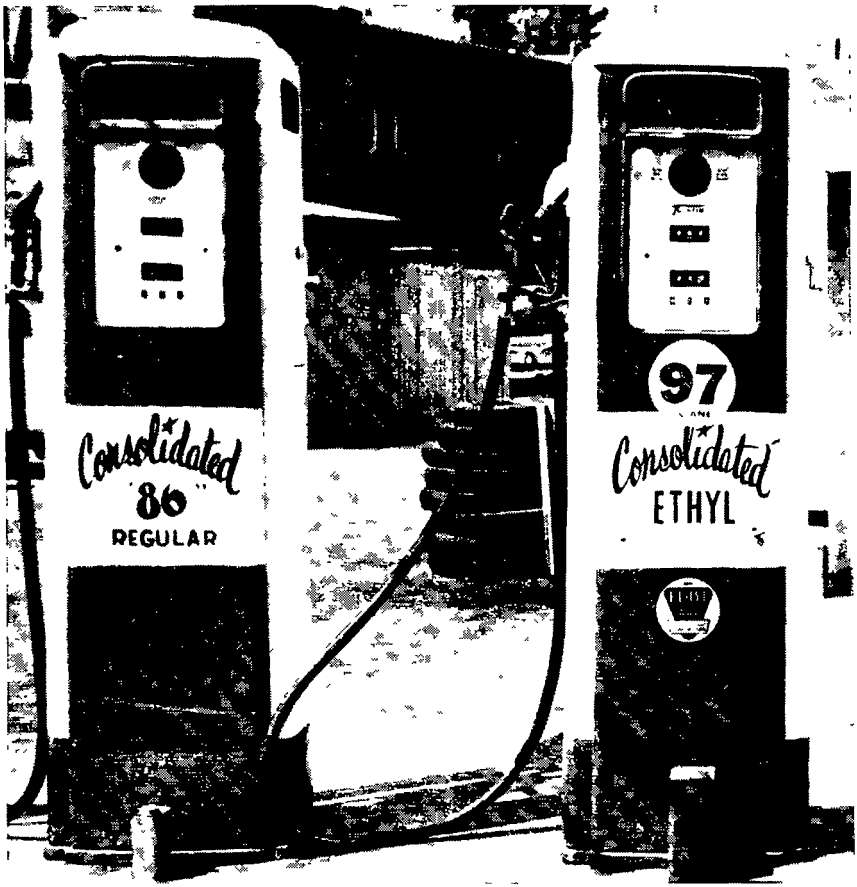
[17] **Section 17534. Violation a misdemeanor.** Any person, firm, corporation, partnership or association or any employee or agent thereof who violates this chapter is guilty of a misdemeanor

[18] **Section 17535. Injunction against violation**

[*Enjoining of violation authorized*] Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction

[*Initiation of actions*] Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this State in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public

There is no specific section that applies to the use of false or misleading advertising of gasoline and all prosecutions for such violations must be made under the above general chapter.



Actual Research octane rating left to right 84 6 and 94 2 Consolidated Oil Co., 1465 Glendale Boulevard, Los Angeles, California Los Angeles County test numbers 8003 and 8001.

III. MANUFACTURERS' PRACTICES

Once a gasoline meets the minimum standard prescribed by Section 20780, there is no further marking or grading required by law. However, in practice, manufacturers set quality standards themselves, usually dividing their gasoline into a lower-priced "regular" quality—*e.g.*, Richfield's "High Octane," Standard's "Chevron," Union's "7600," General Petroleum's "Mobilgas"—and a more expensive "ethyl" quality—*e.g.*, Richfield's "100 Plus Boron," Standard's "Chevron Supreme," Union's "Royal 76," General Petroleum's "Mobilgas Special." A few companies even offer a third "super ethyl" quality.

In addition to these differentiations, several manufacturers also claim that their gasoline is superior because it contains a particular additive—*e.g.*, TCP, Boron, or Petrox—or gasoline feature—*e.g.*, climatic tailoring, quick starting, protection against vapor lock, detergent action.

Since World War II, there has been an increased emphasis on the octane rating of gasoline—*i.e.*, its antiknock characteristics. Gasolines of lower octane do not perform properly in high compression engines, resulting in a pinging or knocking sound that can be detrimental to the engine.[19] With the advent of high-powered automobiles, the octane rating of gasoline has been stressed in advertising by most gasoline manufacturers as an important, if not *the* most important, factor in determining quality.[20]

IV. COMPREHENSIVE GRADING SYSTEM

The possibility of establishing a comprehensive grading system for gasoline was discussed at the subcommittee hearing on November 17 and 18, 1958, at the Capitol. Representatives from General Petroleum Corporation,[21] Union Oil Company of California,[22] Standard Oil Company of California,[23] Richfield Oil Corporation,[24] The Texas Company,[25] Shell Oil Company,[26] and the Bureau of Weights and Measures of the State of California [27] opposed such an overall grading system as being too difficult to establish and enforce Their position was that there are too many different chemical elements, too many variables and too much experimentation in the field of gasoline manufacturing to enable the State to set out, in statute form, what elements would have to be present for quality rating "A," for quality rating "B," and so on. It was also felt that such standards, if adopted, would be rapidly outmoded and might even hamper the further development of gasoline by withdrawing incentive to produce a superior product or by even expressly restricting some methods of improvement.

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[19] Testimony of Albert M. Dreith, Petroleum Products Chemist of the Bureau of Weights and Measures, State of California.

[20] For examples of such advertising see frontispiece and appendix

[21] Clyde Port, General Sales Manager, General Petroleum Corp.

[22] Robert R. Rath, General Sales Manager—Dealer Sales, Union Oil Co. of California At the time of the hearing, Mr. Rath was on special assignment reporting to the vice president in charge of marketing.

[23] Coyle Briggs, General Sales Manager, Standard Oil Co. of California, and President, Standard Stations, Inc

[24] James T. Foster, General Sales Manager—Retail Operations, Richfield Oil Corp

[25] S C. Osborn, Manager, Los Angeles Sales Division, The Texas Company.

[26] A J. Fabris, Shell Oil Company, appearing for Selwyn Eddy, Vice President, West Coast Marketing Divisions, Shell Oil Company.

[27] James E. Brenton, Chief of the Bureau of Weights and Measures, Department of Agriculture, State of California.

V. OCTANE IDENTIFICATION

A. In General

As an alternative to a comprehensive system for grading gasoline, the subcommittee considered an octane identification proposal that would require the octane rating of all gasoline being dispensed from every pump or dispensing device to be prominently displayed on the dispensing device. This proposal was not an attempt to establish a comprehensive grading system—in fact, there would be no further requirements added to existing gasoline specifications—but was merely a method of informing the consumer of the true octane rating of the gasoline he desired to purchase.

B. Background

Octane number is the yardstick accepted by both the consumer and producer, by which the anti-knock quality of gasoline is measured.[28] The consumer is most aware of its importance when he doesn't have it —that is, when his automobile begins to perform improperly by pinging or knocking.

It was early recognized that gasoline engines with higher compression ratios were the key to gasoline efficiency.[29] However, engineers were limited by the knocking tendency of the fuels then available when they were used in high compression engines.[30] After extensive experimentation and investigation, octane was developed to eliminate the knock.[31] The octane scale was first established in 1927 and "premium" gasolines were about 72 while "regular" gasolines were in the high 50's [32]

Since that time, in an effort to obtain improved engine performance and efficiency, there has been a parallel rise in both the production of fuels of increasing octane number and engines of a greater compression ratio. Today, many commercial engines are at 10/1 and going higher in compression ratio and many "premium" fuels are at 100 octane number.[33]

C. "The Consumer Should Know What He Is Purchasing"

James E. Brenton, Chief of the Bureau of Weights and Measures of the State of California, Douglas Oil Company of California,[34] the California Federation of Service Stations, Inc.,[35] and individual gasoline retailers [36] supported the octane identification proposal on the ground that it would protect the consumer from misleading gasoline advertising, especially regarding octane numbers, and make it easier for the consumer to know the octane number of the gasoline he is purchasing.

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[28] *Technical Notes,* Ethyl Corporation handout, Rev. 949

[29] Campbell, *Looking Ahead in Fuels for Automotive Transportation,* 65 SAE Journal 41, 43 (December, 1957); Caris and Nelson, *17/1 Compression Ratio Gives Peak Efficiency for Gasoline Engines,* 66 SAE Journal 28 (September, 1958).

[30] Campbell article, *supra,* at p 43.

[31] *Ibid*, at p 44.

[32] *Ibid*, at p 45.

[33] *Ibid.,* at p. 48.

[34] Robert L. Tollefsen, Secretary and General Counsel, Douglas Oil Co. of California.

[35] John A. Touhey, Executive Secretary, California Federation of Service Stations, Inc.

[36] Thomas Walker, Union Oil Co. of California, San Fernando, Coy Ayres, Richfield Oil Corp, Bakersfield; O'Dell Grady, The Texas Co, Merced; Harold Harris, General Petroleum Corp. San Jose; T M. Stocker, Union Oil Co of California, San Diego; Ralph Clark, General Petroleum Corp, Los Angeles

At present, the consumer is faced with many representations regarding the octane number of gasoline that are either misleading or untrue.[37] Mr. Brenton submitted the findings of several tests run by the bureau on dealers who were advertising their gasoline by using numbers that implied octane rating but who were not expressly stating that these numbers were octane.[38] The tests indicated that the octane rating of the gasoline being sold was below that implied in the dealer's advertising. When the dealer was confronted by this variation, he often replied that the numbers were not meant to be the octane rating of the gasoline at all but were merely the names of the fuel. See appendix for examples of this type of misrepresentation.

Mr. Brenton also pointed to other situations where dealers were guilty of express misrepresentation because they stated that the gasoline they were selling was one octane number when, in fact, it was not.[39] See Appendix for examples of this type of misrepresentation.

Mr. Brenton stated that both of these situations are widespread and occur daily throughout the entire State. While both of these forms of misrepresentation may constitute violations of existing penal statutes, as a practical matter, many local prosecuting agencies are unwilling to proceed without a specific section referring to the misleading use of octane numbers.[40]

D. *Research Method Specified*

There are two accepted standard methods used to determine the octane rating of gasoline—the Research Method and the Motor Method.[41] However, there is no requirement that a gasoline manufacturer use either method to determine octane rating for advertising purposes. The result is that both methods are in alternative use where the ratings apply best.

According to Mr Brenton, many city and county prosecuting officials refuse to initiate prosecutions against gasoline retailers who employ misleading gasoline advertising practices because they feel that convictions, in the absence of a stipulated method of determining octane rating, would be extremely problematic.[42]

Mr. Brenton states that the marketing practice and trade custom of the petroleum industry have been to advertise octane rating by using the Research Method and he recommends that this method be officially adopted by statute as the method that gasoline marketers must use to determine the octane rating of their gasoline for advertising purposes.[43]

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[37] See letter dated February 18, 1959, from James E Brenton set out in Appendix

[38] *Ibid*

[39] *Ibid*

[40] *Ibid*

[41] See letter dated February 24, 1959, from James E Brenton set out in Appendix

[42] See letter dated February 18, 1959, from James E Brenton set out in Appendix

[43] See letter dated February 24, 1959, from James E Brenton set out in Appendix

E. Octane Identification and Gasoline Price Wars

Gasoline price wars may begin when one dealer lowers his price below that of his competitors. This usually results in an increase in his sales volume. His competitors, who begin to lose customers, retaliate by lowering their prices and the war is on.

Since there is no present requirement that the octane number of the gasoline being sold be posted on the pump, the consumer interested in octane has no way of knowing whether the dealer who originally lowered his price is selling gasoline of a lower octane than his competitors or not, and he is therefore frequently attracted by price alone. The problem is magnified if the cut rate dealer is using misleading advertising to imply that his octane is as high, or higher, than that of his competitors.

If the dealers are required to post the octane rating on their pumps, a dealer who reduces his price but who is selling gasoline of a lower octane than that of his competitors will normally not affect the market. A reduced price for a lower octane will not interest a motorist who is seeking a certain octane fuel for use in his automobile.

The octane identification requirement will protect the consumer in price wars of this nature from being misled into believing that he is getting gasoline of an octane rating different than what he is seeking.

F. Undue Emphasis on Octane?

At the subcommittee's hearing, opposition to the octane identification proposal was voiced [44] on the ground that octane is only one element of many to be considered in the evaluation of gasoline quality and that the octane identification proposal would give octane an undue emphasis that it did not warrant.

Those favoring the proposal stated that octane is already a foremost consideration in the consumer's mind, due to both his desire for the best possible engine performance and the emphasis placed on it in the advertising campaigns of gasoline manufacturers and marketers. Albert M. Dreith, Petroleum Chemist for the Bureau of Weights and Measures, stated that gasoline consumers are primarily interested in the performance of their automobiles and since octane is the chief performance characteristic present in gasoline, octane rating is foremost in their mind.[45]

Regardless of whether the octane identification requirement might give octane some undue emphasis, those favoring the proposal felt that any such disadvantage would be more than compensated for by the advantages that would accrue to the consumer by cutting down misleading advertising and giving him the confidence of knowing that the octane he believes he's purchasing is, in fact, the octane he's actually getting.

G. Future Need for Octane Identification

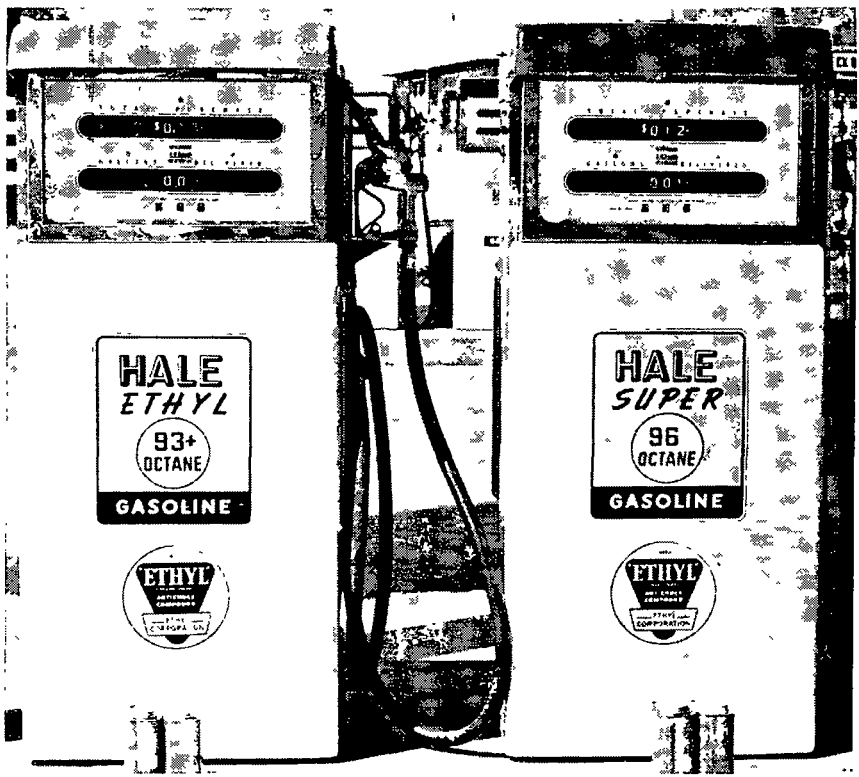
At the hearing, Coyle Briggs, general sales manager of the Standard Oil Company of California, voiced his thought that ". . . there is some reason to expect that the emphasis on horsepower has ended, and

[44] General Petroleum Corp., Union Oil Co. of California, Standard Oil Co. of California, Richfield Oil Co., The Texas Co., Shell Oil Co. and Marc D. Leh, an independent petroleum marketer.

[45] Testimony at hearing.

[that] it might even shift in the other direction. One of the large manufacturers has reduced his engine demand this year and is recommending regular gasoline while another has increased his engine demands to an all time high. The third major one has held the line. . . . The mounting public acceptance of small cars will have its effect also on the requirements of gasoline."[46] In accord with Mr. Briggs' position is an article that states that the trend is toward lower compression ratios in automobiles—from an average compression ratio in 1958 of 9.5/1 to an anticipated figure of 9.2/1 for 1959.[47]

While some feel that there will be a reversal of the octane requirements in the future, there are others who feel that compression ratios and octane numbers will climb even higher. Albert M. Dreith, Petroleum Chemist for the Bureau of Weights and Measures, stated that he felt compression ratios and octane needs would continue to rise[48] and cited several recent articles to substantiate his position.[49]



Actual Research octane rating, left to right: 91 0 and 93 7. Hale Serve Yourself, 9701 East Valley Boulevard, Rosemead, California. Los Angeles County test numbers 8396 and 8397.

[46] Testimony at hearing.
[47] Jones, *Fewer Cars Will Need Premium Fuels in 1959*, 67 SAE Journal 115 (January, 1959).
[48] Testimony at hearing.
[49] Campbell, *Looking Ahead in Fuels for Automotive Transportation*, 65 SAE Journal 41, 48 (December, 1957); Caris and Nelson, *17/1 Compression Ratio Gives Peak Efficiency for Gasoline Engines*, 66 SAE Journal 28 (September, 1958); Kavanagh, MacGregor, Pohl and Lawler, *97 + Octane Fuels Give Best Mileage Economy*, 66 SAE Journal 28 (October, 1958).

Regardless of whether the trend toward high compression engines is beginning to slow down or not, it appears that the gasoline consumer will always be interested in knowing the octane rating of the gasoline he is purchasing. This is especially true in light of a case submitted by James E. Brenton that showed that gasoline advertised as "tetra ethyl" actually had an octane number of 73.4, a number so low that most modern cars—even those that only require "regular" gasoline—could not operate properly.[50] According to Mr. Brenton, such examples occur regularly and constitute a hazard to all motorists, whether they own American or foreign cars with either high or low compression ratios.

The octane identification requirement would offer all motorists the assurance that they are getting the octane rating they need in their automobile to eliminate the pinging or knocking that causes their car to perform improperly and that may even result in damage to their engine.

H. Cost of Administration

The approximate cost of administering the octane identification proposal was set out in a letter from James E. Brenton, dated February 20, 1959.[51]

The initial outlay would be approximately $26,878. This includes the purchase, freight, and installation of two ASTM-CFR Research Method units for determining the Research octane rating of gasoline samples taken from gasoline dispensing devices. At the present time, the State does not own its own unit for determining octane rating and the Bureau of Weights and Measures must have its samples tested where it can—either from members of the petroleum industry itself who own these units or from Los Angeles County, who also owns such a unit.

Besides the initial cost, the annual cost of carrying out the program would be approximately $18,911.73 This figure includes the employment of two additional men by the Bureau, the cost of shipping gasoline samples from the field to the petroleum laboratories for testing, and laboratory, maintenance, travel, and telephone expenses

[50] See Appendix
[51] Letter set out in full in Appendix

VI. CONCLUSION

James E. Brenton, Chief of the Bureau of Weights and Measures of the State of California, summarized the advantages to be gained from enacting the octane identification proposal into law, as follows:

> ". . . [I]t is our opinion that the motorists of California—the people who are footing the bills—have a most certain right to know what they're purchasing. And in connection with that right to know, I concur 100 percent with . . . [the] . . . recommendation, made to your committee yesterday, concerning the desirability of placing on each dispensing device the octane number of the gasoline being dispensed from such device.
>
> "The requirement concerning placing the octane number on the dispensing device would not, in any manner, change the minimum requirements for gasoline now contained in [the code]. It would not require any additional specifications to those standards It would simply be a plain unqualified statement that the gasoline being dispensed from this dispensing device had a certain octane." [52]

[52] Testimony at hearing

PROPOSED LEGISLATION

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 700

Introduced by Messrs. MacBride, Bruce F. Allen, Masterson, Miller, Burton, Crawford, Hegland, Lunardi, Schrade, Sumner, Thelin, Unruh, and Williamson

January 26, 1959

REFERRED TO COMMITTEE ON MANUFACTURING, OIL, AND MINING INDUSTRY

An act to add Sections 20710, 20852, and 20894 to the Business and Professions Code, relating to petroleum products

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

1 SECTION 1. Section 20710 is added to the Business and
2 Professions Code, to read:
3 20710. "Octane number" or "octane rating," when used
4 in this chapter, means the American Society for Testing Mate-
5 rials research octane number of the fuel, which is:
6 (a) If below 100, the nearest whole number that matches
7 the knock characteristics of the fuel when compared by the
8 method described in the latest published Standard Method
9 D 908 adopted by the American Society for Testing Materials.
10 (b) If above 100, the whole number, corresponding to the
11 engine rating determined in milliliters of tetraethyl lead in
12 iso-octane as contained in the table "Conversion of Milliliters
13 of Tetraethyl Lead per U. S Gallon in Iso-octane to Octane
14 Numbers Above 100," as published in the latest American
15 Society for Testing Materials Standards on Petroleum Prod-
16 ucts and Lubricants, rounded off to the nearest whole number

LEGISLATIVE COUNSEL'S DIGEST

A B 700 as introduced, MacBride (M, O, & M L). Petroleum products

Adds Secs. 20710, 20852, and 20894, B. & P. C.

Requires dispensing devices from which gasoline is sold at retail to bear a sign stating the octane rating of the gasoline Prohibits use, in connection with the name or merits of gasoline, of numerals which do not relate to octane rating unless the octane rating exceeds such numerals or the numerals refer to price or cannot reasonably be confused with octane rating

(c) Antiknock values ending in five-tenths octane numbers, as determined by subdivisions (a) and (b) of this section, shall be rounded off to the nearest even whole number.

SEC. 2. Section 20852 is added to said code, to read:

20852. There shall be prominently displayed on every dispensing device, from which gasoline is being sold at retail as a fuel for internal combustion engines, a sign or label, placed so as to be read in connection with the brand name, trademark, or trade name of the gasoline, consisting of the words "minimum octane number" or "octane number," together with arabic numbers identifying the octane rating of the gasoline.

The letters and numbers used in connection with this sign or label shall be of not less than one inch in height with a stroke of not less than one-eighth inch in width.

SEC. 3. Section 20894 is added to said code, to read:

20894. If a petroleum product is offered for sale or advertised for sale as gasoline, no numerals shall be used in connection with the trade name or the brand name, or the words "no brand," or in connection with the merits of the product, unless such numerals relate to the actual octane rating of the fuel. Nothing in this section prohibits:

(a) The use of numerals to indicate the price of the product;

(b) The use of numerals when the octane rating of the gasoline exceeds such numerals; or

(c) The use of any numeral in such a manner that it cannot reasonably be confused with the octane rating of the product.

APPENDIX

STATE OF CALIFORNIA
DEPARTMENT OF AGRICULTURE
February 18, 1959

MR THOMAS J MACBRIDE, *Chairman*
Subcommittee on Marketing and Trade Practices
Member of Assembly, Eighth District
State Capitol, Sacramento, California

DEAR MR. MACBRIDE: This letter concerns the several photographs which you requested that were taken as part of our investigation in connection with the advertising medium where numerals are used as part of the brand name and where numerals are used to indicate the knock characteristic of the gasoline being offered for sale.

You will note that in some instances where the numerals are part of the brand name the connection between the numerals and the knock characteristic of the gasoline is through implication, there being no specific reference to the octane number of the fuel being offered for sale In other instances, the numerals as indicated are part of the advertising where definite claims are made concerning the knock characteristic of the fuel

On the back of the respective photographs, you will find noted the actual knock characteristic of the particular gasoline as determined, using the research method.

With particular reference to your question concerning the possibility of prosecutions under the present law, it is the opinion of county and city prosecuting officers that due to the lack of a specific law concerning knock characteristics and a stipulated method of determining such characteristics, the success of a prosecution, in the case of a jury trial, would be extremely problematic and because of this lack of specific legal reference, they are in the majority of cases, unwilling to initiate a prosecution.

Sincerely yours,

J. E. BRENTON, Chief
Bureau of Weights and Measures

STATE OF CALIFORNIA
DEPARTMENT OF AGRICULTURE
February 20, 1959

MR. THOMAS J. MACBRIDE
Member of the Assembly, 8th District
State Capitol, Sacramento, California

DEAR MR. MACBRIDE: This letter concerns your recent request concerning estimated increased costs on the budget of this [b]ureau applicable to Gasoline, Distillate and Oil, providing the provisions as contained in Assembly Bill No 700 become a part of the laws of this State.

In order to present as clear a picture as possible, I shall divide the probable increase[d] cost into two groups The first group includes the original cost of the required equipment which will be a cost that is non-recurring. The second group includes an increase over the present budget and will be an annual expense.

Group I

2 ASTM—CFR Research Method Units, each $8,250, FOB Waukesha, Wisconsin, total cost	$16,500.00
Freight on these two units, total weight 6,060 pounds at $6 25 per hundred pounds, total	378 00
Installation of the two units and maintenance equipment, i e chain hoist and adjustment tools, cement blocks, exhaust system, mufflers $5,000 per unit, total cost	10,000 00
Total of the three line items above	$26,878 00

Group II

SALARIES AND WAGES—2 full time operators for the Research Units, 1 operator to be located at 8116 Seville Avenue, South Gate, California, and the other in the Petroleum Products Laboratory in Sacramento, employee monthly salary $493, annual total salary per operator, $5,916	$11,832 00
FREIGHT, CARTAGE AND EXPRESS—To cover costs of shipping gasoline samples from field to petroleum laboratory, an increase of $140 over the present budget	140.00
TELEPHONE, LONG DISTANCE TOLL CHARGES—Field investigations concerning misrepresentation oftentimes necessitate long distance telephone calls to headquarters for information, advice and co-ordination of enforcement. A $100 increase is recommended for this item, total increase	100 00
TRAVEL—IN-STATE—Should the provisions as contained in Assembly Bill No 700 become a part of the laws of this State, it is not anticipated that this new activity will require any additional field investigators However, it is our opinion that the field investigators we now have will receive a considerable number of additional complaints concerning the accuracy of octane numbers as advertised It will also be necessary to pay occasionally the traveling expenses (court cases) of the two laboratory employees in Sacramento and of the two employees in South Gate Based upon our expenditures during the first seven months of the current budget year, it is our estimation that the increased cost of traveling will be	3,000 00

LABORATORY—An increase of $1,000 over the present budget It is estimated that the additional cost of $1,000 in this particular item will be required to pay the cost of purchasing approximately 3,000 1-gallon samples of "Premium Gasoline" per year	$1,000 00
3,000—1 gallon sample cans, total cost	416 78
1—55 gallon drum of normal Heptane	624.00
10—55 gallon drums of Iso Octane	1,250 00
1—55 gallon drum of Benzene	48.95
Parts needed in connection with maintenance of two CFR Research Units, i e. valves, valve guides, needle bearings, rocker arm parts and rings, estimated annual cost per unit, $250, total cost for two units	500 00
Total of Group II items	$18,911 73

With particular reference to the cost per unit of the ASTM—CFR Research Method Unit which we have listed as $8,250 each, we wish to quote from the letter received by this office from the Waukesha Motor Company wherein they commented concerning the price as follows:

"For the present, and, until the national pattern on material and wages becomes more stabilized, we are making all quotations and are accepting all orders subject to prices in effect at the time of shipment."

You will note that they are not guaranteeing current quotations and stipulate that they are accepting all orders subject to prices as may be in effect at the time of shipment.

The total cost of group I and II is $45,789.73.

Sincerely yours

J E. BRENTON, *Chief*
Bureau of Weights and Measures

STATE OF CALIFORNIA
DEPARTMENT OF AGRICULTURE
February 24, 1959

MR. THOMAS J. MACBRIDE, *Chairman*
Subcommittee on Marketing and Trade Practices
Member of Assembly, Eighth District
State Capitol, Sacramento, California

DEAR MR. MACBRIDE: This letter concerns your inquiry as to the reason for the recommended use of the Research Method in determining the knock characteristics of a motor fuel for use in spark ignition engines.

There are two accepted ASTM (American Society for Testing Materials) standard methods that are used for the purpose of determining the knock characteristics of fuels used in spark ignition engines.

The two methods known as the Motor Method and Research Method are both standardized and are in alternative use today where the ratings apply best.

In our opinion, the marketing practice and trade custom of the petroleum industry in the State of California have been to advertise the knock characteristics of motor fuels used in spark ignition engines by numbers determined through the use of the Research Method.

At the present time the laws of this State do not contain any provision relative to the determination of the knock characteristics of a motor fuel, and any statement or claim concerning the knock characteristic of a motor fuel is subject to question.

Due to the fact that the knock characteristics, as advertised, have been determined through the use of the Research Method, it is, in our opinion, logical that if a method is to be officially adopted, it should be the Research Method.

Sincerely yours,

J. E BRENTON, Chief
Bureau of Weights and Measures

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ASSEMBLY INTERIM COMMITTEE REPORTS
1957-1958
VOLUME 20 NUMBER 6

FINAL REPORT OF THE

TRAFFIC ACCIDENT CONSEQUENCES SUBCOMMITTEE OF THE COMMITTEE ON JUDICIARY

TO THE CALIFORNIA LEGISLATURE
(House Resolution 192, 1957)

MEMBERS OF THE SUBCOMMITTEE

JOHN A. BUSTERUD, *Chairman*

WILLIAM BIDDICK, JR.
RALPH M. BROWN
RICHARD T. HANNA
S. C. MASTERSON
ALLEN MILLER
JOHN A. O'CONNELL
BRUCE SUMNER

April, 1959

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

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Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

CONTENTS

	Page
Letter of Transmittal	5
Enabling Resolution	7
Preface	9
Summary of Recommendations	10
Investigations and Findings	11
I. The Problem of the Uninsured Motorist	11
a. Compulsory Liability Insurance	12
b. Unsatisfied Claim and Judgment Fund	13
c. Insurance Against Uninsured Motorists	14
d. "Compensation Without Fault" Plans	15
II. Licensing of Juveniles and Reporting of Juvenile Offenses	16
III. More Stringent Licensing Examinations	16
IV. Reporting of Illnesses Affecting Driving Ability	17
V. Driver Improvement Program	17
Appendices	
A. Amendment to the Insurance Code	19
B. Amendment to the Vehicle Code	22
C. Amendment to the Vehicle Code	24
D. Amendment to the Welfare and Institutions Code	25
E. Amendment to the Vehicle Code	27

2—L-4440

LETTER OF TRANSMITTAL

April 15, 1959

HON. BRUCE F. ALLEN, *Chairman*
Assembly Interim Committee on Judiciary
California Legislature
State Capitol, Sacramento

DEAR MR. ALLEN: In accordance with your directive and in pursuance of the provisions of House Resolution No. 192 of the 1957 General Session of the California Legislature, your Subcommittee on Traffic Accident Consequences herewith submits its report.

Contained herein are the subcommittee's findings and recommendations which resulted from its various meetings and public hearings.

The subcommittee wishes to express its appreciation to Professor John W. Cowee, Vice Chairman of the Department of Business Administration, University of California, for his kind assistance in gathering background material for the subcommittee and his devoted work during subcommittee meetings; and to Robert Zimmerman, Legislative Intern, who prepared the report of the subcommittee. The subcommittee also wishes to thank the various officials from the Department of Motor Vehicles and representatives of the insurance industry, who assisted us greatly in this study.

Respectfully submitted,

JOHN A. BUSTERUD, *Chairman*
Subcommittee on Traffic Accident Consequences
RALPH M. BROWN
S. C. MASTERSON
JOHN A. O'CONNELL
WILLIAM BIDDICK, JR.
RICHARD T. HANNA
ALLEN MILLER
BRUCE SUMNER

HOUSE RESOLUTION NO. 192

By Messrs. Busterud, Sumner, Masterson, and Weinberger:

Relative to an interim study of traffic accident consequences

WHEREAS, Vehicular traffic on California highways in recent years has outgrown all estimates and expectations while the number and severity of traffic accidents in this State has concurrently grown to catastrophic proportions; and

WHEREAS, Such accidents each year take a tragic toll in personal injuries, deaths, and property damage; and

WHEREAS, This toll constitutes a major economic loss, and results in grave social dislocations throughout our State; and

WHEREAS, A very high percentage of the cases heard by the courts of this State arise out of traffic accidents, and a corresponding proportion of tax burden to maintain those courts results therefrom; and

WHEREAS, Traffic accident litigation is a primary cause of congested court calendars and delays in the administration of justice; and

WHEREAS, Judgments in personal injury cases are often inadequate to compensate for the economic loss and frequently are uncollectable in cases where the defendant is not insured or are only partially collectable where he is underinsured; and

WHEREAS, The unfortunate victims of traffic accidents frequently sustain grievous personal sufferings and economic loss in medical expenses, lost earnings, broken families, damaged and destroyed property, and other consequences of such accidents; and

WHEREAS, Studies made by responsible agencies indicate that in many instances the economic losses sustained by these victims are not recovered, because their injuries and damages are inflicted by uninsured motorists; and

WHEREAS, Although commendable emphasis has been and continues to be directed to safety measures designed to reduce the number of such accidents, a high volume of such accidents in an unavoidable consequence of our industrial society, and immediate attention must be directed to solving the economic, social and legal problems thereby created; and

WHEREAS, It is the desire of this Assembly to explore thoroughly all aspects of the foregoing problems and any related matters in order to provide a factual basis upon which legislation may be based; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Interim Committee on Judiciary is authorized and directed to ascertain, study, and analyze all facts applicable to:

(a) The nature and extent of the economic losses and social dislocations arising out of traffic accidents in this State;

(b) The degree to which such economic losses and social dislocations are arising out of accidents caused by uninsured motorists;

3—L-4440

(c) The proportion of such losses and dislocations caused by uninsured motorists which are not compensated by insurance or otherwise;

(d) The state of the laws by which the responsibility for such accidents is measured or assigned, as well as the operation, effect, administration and enforcement of such laws;

(e) Various methods designed to assure the availability of funds needed to alleviate the burden of the losses and dislocations, giving emphasis to methods which will preserve and encourage private enterprise, including proposals designed to provide systems of compensation for such losses and dislocation;

(f) Other problems related to the administration of justice in personal injury actions; and be it further

Resolved, That the committee is directed to report thereon to the Assembly at the 1959 Regular Session, including in the report its recommendations for appropriate legislation.

PREFACE

This subcommittee was created to find a solution to the problems of financial loss caused by the motorist who is uninsured or who is otherwise not financially responsible for damage he may cause in an automobile accident. During the 1957-1959 interim period the problem was studied with the intention of seeking legislation to eliminate or minimize the losses to the people of California who are involved in accidents with uninsured or financially irresponsible motorists.

The subcommittee reviewed the plans of compulsory insurance and unsatisfied judgment and claim funds in effect in such states as Massachusetts, New York, and New Jersey, as well as proposals that are not now in effect in any state. The subcommittee held its organizational meeting in San Francisco on September 18, 1957 It then met and studied the various proposals in two briefing sessions, October 18, 1957, in Sacramento, and November 1, 1957, in Berkeley; and subsequently held public hearings in Los Angeles, August 25, 1958; in San Francisco, September 22-23, 1958; and in Sacramento, January 26, 1959.

At a number of these meetings and hearings, the subcommittee was assisted by Professor John Cowee, Vice Chairman of the Department of Business Administration, University of California, who during a portion of 1958 served as consultant to the subcommittee. Albert A. Ehrenzweig, Professor of Law, University of California, also performed valuable services for the subcommittee in outlining his proposed plan for "Full Aid Insurance." At the public hearings the subcommittee heard testimony of representatives of the insurance industry, officials of the California Department of Motor Vehicles, a considerable number of people who were victims of accidents involving uninsured motorists, and other interested persons.

This report consists of the findings of the subcommittee on possible solutions to the problems of the uninsured or financially irresponsible motorist. The appendices are legislation proposed by the subcommittee to implement its recommendations, and other legislation that ties in with these findings.

SUMMARY OF RECOMMENDATIONS

1. The subcommittee finds much merit in a plan for an unsatisfied claim fund similar to the Unsatisfied Claim and Judgment Fund Law now in effect in New Jersey. Actuarial information on this law, which was substantially amended in 1958, is not sufficiently complete to warrant a recommendation at this time of a similar law for California. The subcommittee therefore recommends continuing study of the Unsatisfied Claim and Judgment Fund, including its actuarial and administrative costs. Ideally, the administrative costs and the fund itself should be paid for with fees levied on uninsured motorists, but even if insured motorists were required to contribute to the administrative costs of such a fund, this proposal would be a fair one to them.

2. The subcommittee recommends the following as a temporary solution to the problem of the uninsured or financially irresponsible motorists: Legislation should be introduced requiring that all automobile liability insurance policies sold in California contain a provision for financial protection against bodily injury caused by uninsured and financially irresponsible motorists (see Appendix A for proposed legislation). Some insurance companies now include a mandatory provision of this nature, while others offer the coverage by endorsement. All insurance companies that do not now offer this protection should be compelled to do so either as a basic part of the policy or subject to rejection by the insured. Such a program should be given ample test to determine its cost to the insured driver.

3. The subcommittee recommends detailed study of various plans for "compensation without fault" in automobile accident cases. These plans make sweeping and basic changes in the concept of tort law. While these plans and the changes they bring about may prove desirable, they must be thoroughly studied before they can be recommended for enactment into law.

4. The subcommittee recommends full reporting of all juvenile traffic offenses to the Department of Motor Vehicles, to provide information on which to base license suspensions and revocations in the case of repeating offenders. The subcommittee endorses in principle the provisions of Assembly Bill No. 719 (Miller). (See Appendix B.)

5. It is recommended that more stringent driver examinations be given to all applicants. The tests should include more thorough eye examinations. A road test should be required at least every 10 years, upon license renewal. The subcommittee endorses in principle Assembly Bill No. 2075 (Marks), which makes mandatory for every driver a road test every 10 years. (See Appendix C.)

6. A majority of the subcommittee recommends better reporting to the Department of Motor Vehicles of illnesses—both mental and physical—which seriously affect one's ability to drive. Such reporting should be confidential. (See Appendix D.)

7. The subcommittee recommends that the Driver Improvement Program of the Department of Motor Vehicles be given statutory recognition and be expanded; and that the department conduct driver improvement schools in various portions of the State where the need is apparent. The subcommittee further recommends legislation stating that a driver convicted of a violation of the Vehicle Code may, as a part of the penalty, be compelled to attend driver improvement school. (See Assembly Bill No. 1857 (Busterud), Appendix E.)

INVESTIGATIONS AND FINDINGS

I. THE PROBLEM OF THE UNINSURED MOTORIST

The Subcommittee on Traffic Accident Consequences has sought a solution to the problems arising from traffic accidents in which uninsured or financially irresponsible motorists are involved. Under present California law, a motorist need not prove his ability to pay for damages or injuries he may cause in a traffic accident until he has had one accident. Only after an accident must he prove financial responsibility for future accidents by posting a bond or proving that he has public liability insurance.

Currently there are approximately 7,000,000 licensed drivers in California. About 88 percent are covered by public liability insurance; perhaps another 8 percent have either posted a bond or are otherwise capable of proving financial responsibility. Thus in California about 4 percent, or 280,000 motorists, are financially irresponsible in the event they are involved in a traffic accident. Actually, not all injuries resulting from accidents involving this 4 percent group result in hardship to those injured. In many cases medical payment provisions and other forms of accident and health insurance provide some protection to those injured.

The subcommittee heard testimony from several people who have been involved in traffic accidents with uninsured or financially irresponsible drivers. These persons' testimony was similar in that in all cases the individual was severely injured, hospitalized, and in some cases unable to work for several years, as a result of traffic accidents. Similarly, in all cases the persons who had caused the injuries through their negligence had been uninsured and were otherwise unable to prove financial responsibility. None of the persons who testified before the subcommittee had been able to collect property damage or medical expenses resulting from their accidents with uninsured drivers. In some cases the persons at fault were not even taken to court because the victims had been reliably informed that the negligent drivers were financially irresponsible; thus they would not have been able to collect even if judgments in their favor had been rendered. Financial loss to the victims of these accidents ran into many thousands of dollars.

Other states have established procedures looking toward a solution of the problems arising from accidents involving the uninsured and financially irresponsible motorist. The subcommittee has collected information from these states with an eye to choosing the best solution to the problem for California.

Some states have enacted compulsory liability insurance laws, while others have established unsatisfied claim and judgment funds in order to solve the problem. Still other states have used a variation of one or both plans to insure against loss from financially irresponsible drivers. The subcommittee also considered two other plans, which have

been developed in theory but not put into effect in any of the United States. These are the "compensation without fault" plan and a modification of it, the "full aid insurance" plan. The former plan has been in effect for some years in the Province of Saskatchewan, Canada, with mixed results.

a. Compulsory Liability Insurance

Massachusetts, New York and North Carolina have compulsory insurance laws. In Rhode Island, insurance is compulsory for all motorists who are minors, and in Illinois, insurance on trucks is compulsory.

Information gathered by the subcommittee on the operation of the laws for compulsory insurance indicates that some basic problems created by the uninsured motorist have not been solved by compulsory insurance laws. Witnesses testified that the program as operated in Massachusetts has tended to increase insurance costs greatly and to limit severely the coverage offered to the State's motorists. Witnesses also objected to political rate-fixing, which they maintain exists in states having compulsory insurance.

Other problems not solved by the compulsory insurance laws include: (1) no provision for accidents involving uninsured out-of-state motorists; (2) no provision for accidents involving in-state motorists who fraudulently claim to be covered by insurance; (3) no provision for hit-and-run accidents, or accidents involving stolen cars; (4) accidents involving automobiles operated without permission, or unregistered vehicles.

Testimony indicated that in order to properly administer a program of compulsory insurance in California, a procedure would have to be developed to determine whether or not a motorist is covered by insurance. Furthermore, a system would be needed to inform the Department of Motor Vehicles immediately following expiration of a motorist's policy, if the policy were not renewed. Officials of the department estimate that the cost of administering a compulsory liability insurance program in California would be considerable but not prohibitive. It is estimated that administering this program would cost about $3,900,000 per year, or about 50 cents per registered motor vehicle.

New York has recently attempted to solve the problems that were left unsolved by its compulsory insurance laws. As of January 1, 1959, that state has in operation a Motor Vehicle Indemnification Corporation, patterned after a plan proposed in California in 1955 by the Senate Interim Committee on Vehicles and Aircraft. The proposal was outlined in the committee's report, "The Financially Irresponsible Motorist."

The New York Motor Vehicle Indemnification Corporation pays claims filed by injured victims involved in accidents with uninsured out-of-state motorists and all of the other types of accidents in which the motorist at fault is not financially responsible. The money for these claims comes from a tax on the insurance company. The tax is levied in direct proportions to the amount of each insurance company's business within the state. New York not only has a compulsory liability insurance law and the Indemnification Corporation to cover all accidents not covered by insurance, but also requires each insured motorist to carry insurance against uninsured motorists.

The subcommittee believes a plan for compulsory insurance is presently not desirable for California because a compulsory insurance law in itself does not solve some of the basic problems of the financially irresponsible motorist. Such laws—as can be seen in the case of New York—generally require the addition of an unsatisfied claim fund of some kind or other to give complete coverage.

b. *Unsatisfied Claim and Judgment Fund*

New Jersey, Virginia, North Dakota and many of the Canadian provinces have laws under which a fund is maintained by the state to pay traffic accident victims who have damage claims, or who have been awarded judgments by the courts, but who cannot collect because of financial irresponsibility of the motorist causing the accident. A similar system has been proposed by the Motor Vehicle Administrator in Maine.

In New Jersey every automobile owner is required to furnish proof that he has public liability insurance at the time he registers or reregisters his motor vehicle. If he does not have insurance, he must pay a fee of no more than $15, which goes into an Unsatisfied Claim and Judgment Fund. The fee presently being charged is $12. The Virginia plan operates similarly, although through the device of a nonprofit corporation, and the fee now being charged in Virginia is $15 per uninsured vehicle.

The $12 fee in New Jersey for uninsured motorists is used to administer the unsatisfied claim and judgment program as well as to reimburse accident victims who have a just claim arising out of an accident with an uninsured or financially irresponsible motorist.

The subcommittee's research indicates that the unsatisfied claims and judgment plan in its advanced form solves most of the major problems left untouched by compulsory insurance laws. For instance, it provides reimbursement for accidents involving out-of-state uninsured motorists, hit and run accidents, and all of the others not covered by compulsory insurance. And it requires the uninsured motorist to bear the major cost of the program, rather than the insured motorist.

However, the program still leaves some problems unsolved or creates new ones. It is feared by some people that the fund will discourage the sale of insurance. Critics maintain that some drivers will eagerly drop their insurance with its high rates and willingly pay the $12 uninsured motorist fee at registration time. This is doubtful, since this fee does not provide *insurance*, but merely bonds the driver to pay for injuries caused by his negligence. If a payment is made out of the fund, the fund has the right to collect as much of the payment as it can from the uninsured motorist.

The cost of administering the program has also been criticized. Department of Motor Vehicles officials estimate the administrative cost of such a fund at $4,729,000 per year, or about 67 cents per registered vehicle in the State. This estimate is based upon the cost of establishing procedures to: (1) determine at registration time whether or not a motorist has insurance; and (2) check constantly during the year in order to charge the uninsured motorist fee if a driver allows his insurance to lapse. The subcommittee believes that this checking procedure

could be simplified greatly. A motorist could, at registration time, present an affidavit alleging that he carries insurance, and that he intends to renew it at expiration. If the motorist does not renew it and has an accident, he will lose his registration and be subject to conviction for perjury, while his victim will be compensated for loss out of the unsatisfied claim fund.

The cost of using affidavits as proof of existence or nonexistence of insurance at registration time would reduce the total cost of the program far below the 67-cents-per-vehicle estimate of the department, and down to a figure probably less than the 50-cents-per-vehicle cost of administering a compulsory insurance law.

Another "unknown" in the unsatisfied claim and judgment approach is the amount of the fee that must be charged to create and sustain the fund. Although the New Jersey law has been in operation since 1955, enough actuarial information is not yet available to know definitely what the charge to the uninsured motorist must be. The New Jersey law originally required all motorists to contribute to the fund, and only since 1958 has the uninsured motorist been required to bear the entire cost of sustaining the fund. Similarly the Virginia unsatisfied claim fund has been in operation only since October, 1958. It is still unknown whether collection from uninsured motorists alone will be sufficient to sustain these funds, due to the lack of actuarial experience from both of these programs.

It appears likely that an Unsatisfied Claim and Judgment Fund for California would provide protection for all of the State's motorists from the dangers of economic loss resulting from accidents with uninsured or financially irresponsible motorists. However, because of this present lack of adequate actuarial data, this subcommittee recommends the plan be given further study, including ways to cut administrative costs and simplify procedures under the plan. Ideally, the administrative costs and the fund itself should be paid for with fees levied on uninsured motorists, but at a minimum, the cost of building and maintaining the fund should be borne by the uninsured motorist. Furthermore, in view of the recommendation for uninsured motorist coverage in paragraph (c), below, this subcommittee urges delay in enacting an unsatisfied claim fund law until some experience can be acquired under the uninsured motorist coverage plan.

c. *Insurance Against Uninsured Motorists*

Testimony of traffic accident victims pointed graphically to three important facts: (1) Most people in California now believe that public liability insurance is compulsory here and that there are no uninsured motorists in the State. Victims of accidents with uninsured motorists testified that until they had been involved in their accidents they did not know that there were uninsured motorists in the State, (2) many people in the State do not realize that most public liability insurance policies do not afford self-protection from loss as a result of an accident with an uninsured motorist; (3) many people do not know that financial protection for themselves is available from their own insurance company.

Representatives of the insurance industry testified before the subcommittee that the cost to a motorist of insuring himself at the same

level as he is insured for public liability ranges from $1 to $8 per year at liability limits now in effect. This cost varies because of the differences in the amount of the coverage, differences in company rates, geographical areas, etc. The insurance company representatives testified that generally insurance agents and brokers have not greatly publicized this "self protection" endorsement on their public liability policies. One insurance representative testified that at a November, 1958, meeting of major stock and mutual insurance company officials, the question of uninsured motorist protection was discussed. He indicated that these officials had agreed to start a voluntary program for promotion of uninsured motorist endorsements in public liability policies.

The subcommittee believes that the majority of insured motorists will take advantage of a clause in insurance policies to protect themselves from accidents involving uninsured or financially irresponsible motorists if they are aware that such coverage is available. It is evident that this coverage is not more widely used at present simply because most people are unaware that it is available, or else they think they already have it. Increasing use of this type of self-protection coverage will inevitably lessen personal losses resulting from accidents involving uninsured motorists. It is not believed that a purely voluntary approach to this problem will have the desired effect of bringing to each motorist's attention the availability of uninsured motorist coverage. The subcommittee therefore makes the following recommendation as an interim solution to the problem of the uninsured motorist: Legislation should be enacted to require that all automobile liability insurance policies sold or delivered in California contain a provision for financial protection against bodily injury caused by uninsured motorists. Some insurance companies now include a mandatory provision of this nature. All insurance companies that do not now offer this protection should be compelled to do so Unless the company desires to include such coverage on a mandatory basis, the coverage should be subject to rejection by the insured person. For proposed legislation, see Appendix A.

The subcommittee believes that the above plan should be given a fair trial before enacting an unsatisfied claim fund law or some other form of legislation in this field. Even though the cost of uninsured motorist coverage should prove greater to the insured motorist than would an unsatisfied claim fund, the advantages of dealing with one's own insurance company rather than a state agency are great. Furthermore, such a solution would leave the State out of the insurance business and promote the competitive setting of rates for uninsured motorist protection coverage.

d. *"Compensation Without Fault" Plans*

A "compensation without fault" plan has been in effect for a number of years in the Canadian Province of Saskatchewan, with mixed results. A variation of this plan has been proposed by Professor Albert A. Ehrenzweig, University of California. His plan, called "full aid insurance," would provide compensation without fault while retaining the private insurance device.

Governor Edmund G. Brown, in his inaugural message on January 5, 1959, called for a study of the theory of compensation without fault in automobile accident cases. While the subcommittee was greatly im-

pressed by the theoretical soundness of Professor Ehrenzweig's proposal, it does not believe the plan has reached a stage of development that warrants its adoption at this time

Nevertheless, this theory should continue to receive serious study as a possible solution to the problems of delay in the administration of justice, the inequities of present rules of fault and contributory negligence and the ever-rising cost of liability insurance policies.

II. LICENSING OF JUVENILES AND REPORTING OF JUVENILE OFFENSES

The subcommittee considered imposing stricter driver licensing requirements on youths between 16 and 21 years old. This suggestion was based on insurance company statistics that indicate younger drivers as a group have more accidents than older drivers. Paul Mason, Director of the Department of Motor Vehicles at the time of the hearing, testified that no information the department had gathered indicates that youthful drivers should be more restricted in licensing regulations than other drivers. He said that the department doubts the value of giving youthful drivers a probationary driver's license rather than an ordinary license.

Mr. Mason testified that juvenile traffic offenders are not subject to the same restrictions that adults are. Juvenile offenses are not reported to the Department of Motor Vehicles and thus violations of the Vehicle Code by minors do not result in revocation or suspension of their drivers' licenses.

The Vehicle Code grants the department the right to revoke drivers' licenses for juveniles upon recommendation by a county probation officer This procedure was formerly used in Alameda County and proved highly effective. However, the procedure is currently not being enforced in the State. At present there is nothing in the law requiring reporting of juvenile traffic offenses Mr Mason indicated that although juvenile traffic offenses are not considered crimes according to the Juvenile Court Law, violations should nevertheless be reported. In that way, juveniles would be on a par with adults in the matter of driver license suspension and revocation.

The subcommittee recommends full reporting of all juvenile traffic offenses to the Department of Motor Vehicles, to provide information on which to base license suspensions and revocations in the case of repeating offenders See Appendix B.

III. MORE STRINGENT LICENSING EXAMINATIONS

The subcommittee found that driver licensing examinations in California need further improvement. The Department of Motor Vehicles has tried to follow a policy of giving the best test it can possibly give to all applicants California's tremendous growth in population in the last 20 years has adversely affected the drivers' license testing procedures It has not been possible to increase the number of the department's employees to test applicants as rapidly as the number of applicants has increased Therefore, the best test that the department can give is not necessarily the same as the best test that should be given.

In the period 1956-1959 the department has been given an additional 200 employees with which to upgrade the testing procedures. Officials at the department estimate that these extra testers have made possible an additional two minutes for each person's road test or his vision test. A further increase of employees is necessary to continue to upgrade the testing procedure.

About 15 minutes of the individual driver test for new applicants is devoted to actual behind-the-wheel testing. This is the most time-consuming part of the test, and consequently an actual driving test is not now generally given upon license renewal. Only if the testing official believes the already licensed driver needs another road test, or if the driver is over 70 or otherwise required to retake the road test, is it given at license renewal. The subcommittee believes that the department's policy should include road tests at least every 10 years.

It is recommended that more stringent driver examinations be given to all applicants. The tests should include more thorough eye examinations. A road test should be required at least every 10 years for all drivers. See Appendix C.

IV. REPORTING OF ILLNESSES AFFECTING DRIVING ABILITY

Under present laws, the names of persons subject to epilepsy are forwarded to the Department of Motor Vehicles. Driver improvement analysts must then consider the individual's case and determine whether or not he should be given a driver's license. This program has been highly effective in determining which epileptic persons are able to drive safely and which ones would constitute a safety hazard on the highways

The subcommittee believes that similar success would result from reporting to the department of other serious mental and physical illnesses that raise the question of whether or not the person can drive safely and should have a license. Reporting to the department of all persons who are diabetic or have serious heart conditions would undoubtedly be of great safety value Informing the department of the names of chronic alcoholics, drug addicts and persons admitted to or released from mental institutions would also be helpful in connection with the driver improvement program, which is discussed briefly below.

The subcommittee recommends better reporting to the Department of Motor Vehicles of illnesses—both mental and physical—which seriously affect one's ability to drive All of such reports should remain confidential. For proposed legislation implementing this recommendation, see Appendix D.

V. DRIVER IMPROVEMENT PROGRAM

The Department of Motor Vehicles currently has an experimental program of driver improvement for people guilty of repeated traffic offenses. This program is not actually recognized by statute. If a person is found guilty of four or more traffic violations in 12 months, he is interviewed by one of the department's driver improvement analysts. Anyone who is involved in an automobile accident in which someone is killed is also interviewed. The purpose of the interviews is to determine the cause of repeated violations, or of the fatal accident, and to retrain

the driver or recommend license suspension, if retraining is not possible.

The subcommittee recommends that the driver improvement program of the Department of Motor Vehicles be expanded, and that the department conduct or co-operate in the conducting of driver improvement school in various portions of the State where the need is apparent. The subcommittee further recommends legislation stating that a driver convicted of a violation of the Vehicle Code may be compelled as a part of the penalty to attend driver improvement school. For proposed legislation, see Appendix E.

APPENDIX A

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 1836

Introduced by Mr. Busterud, Chairman, and Messrs. Biddick, Sumner, Masterson, Miller, and O'Connell, comprising the Subcommittee on Traffic Accident Consequences of the Assembly Interim Committee on Judiciary

March 4, 1959

REFERRED TO COMMITTEE ON TRANSPORTATION AND COMMERCE

An act to add Section 11580.2 to the Insurance Code, relating to uninsured motorist coverage.

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

1 SECTION 1. Section 11580.2 is added to the Insurance
2 Code, to read:
3 11580.2. (a) No policy of bodily injury liability insur-
4 ance covering liability arising out of the ownership, mainte-
5 nance, or use of any motor vehicle, shall be issued or delivered
6 in this State to the owner or operator of a motor vehicle, or
7 shall be issued or delivered by any insurer licensed in this
8 State upon any motor vehicle then principally used or prin-
9 cipally garaged in this State, unless the policy contains, or
10 has added to it by endorsement, a provision insuring the named
11 insured and any other person legally responsible for the use

LEGISLATIVE COUNSEL'S DIGEST

A. B. 1836 as introduced, Busterud (Trans. & C.). Uninsured motorist coverage.

Adds Sec. 11580 2, Ins. C.

Provides that all automobile bodily injury liability insurance policies shall include provisions for protection to an insured against bodily injuries caused by an uninsured motorist.

Allows insurer and insured by supplemental agreement to waive application of the uninsured motorist provision if they both so desire.

Defines terms used in section.

Permits insurer paying claim under uninsured motorist provision to be subrogated to rights of insured

Allows insured entitled to recovery under uninsured motorist provision to be reimbursed independently from any other insurance coverage applicable to the accident.

of or using the motor vehicle with the consent, express or implied, of the named insured, for all sums which he shall be legally entitled to recover as damages for bodily injury from the owner or operator of an uninsured motor vehicle, with coverage limits at least equal to the financial responsibility requirements specified in Sections 16059 and 16451 of the Vehicle Code; provided, however, that the insurer and the insured may by supplemental agreement waive application of the provision covering damage caused by an uninsured motor vehicle.

(b) As used in (a) above, "bodily injury" shall include sickness or disease, including death, resulting therefrom; the term "insured" means the named insured and the spouse of the named insured and relatives of either while residents of the same household while occupants of a motor vehicle or otherwise, and any other person while in or upon or entering into or alighting from an insured motor vehicle; provided, the motor vehicle is used by the named insured or with his permission or consent, express or implied; the term "uninsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident or a motor vehicle used without the permission of the owner thereof if there is no bodily injury liability insurance or bond applicable at the time of the accident with respect to the operator thereof, or there is such applicable insurance or bond but the company writing the same denies coverage thereunder, or the owner or operator thereof be unknown. The term "uninsured motor vehicle" shall not include an automobile owned by the named insured or any resident of his household or self-insured within the meaning of the safety responsibility law of the state in which the motor vehicle is registered or which is owned by the United States or Dominion of Canada, or any state or province or any agency or political subdivision of any of them, or a land motor vehicle or trailer operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle.

(c) The insurance coverage provided for in this section does not apply:

(1) To property damage sustained by the insured.

(2) To bodily injury of the insured sustained while in or upon or while entering into or alighting from an automobile other than the described automobile if the owner thereof has insurance similar to that provided in this section.

(3) To bodily injury of the insured with respect to which such insured or his representative shall, without the written consent of the insured, make any settlement with or prosecute to judgment any action against any person who may be legally liable therefor.

(4) In any instance where it would inure directly or indirectly to the benefit of any workmen's compensation carrier

or to any person qualified as a self-insurer under any workmen's compensation law.

(d) The policy or an endorsement added thereto shall provide that the determination as to whether the insured shall be legally entitled to recover damages, and if so entitled, the amount thereof, shall be made by agreement between the insured and the insurer or, in the event of disagreement, by arbitration. As used in (a) above, "limits" shall mean for purposes of this section a liability limit, on account of bodily injury sustained by one insured as a result of any one accident, or sustained by two or more persons in any one accident, consistent with the limits of liability referred to in the provisions concerning financial responsibility and security following accidents found in Chapter 7 (commencing with Section 16000) of the Vehicle Code. The applicable limits hereunder shall apply only as excess insurance over any other liability insurance available to such insured, and this insurance shall then apply only in the amount by which the applicable limit of liability under this endorsement exceeds the sum of the applicable limits of liability of all such other insurance. As used herein, "such other insurance" is not intended to include coverage for medical payments, personal accident and sickness, disability, disability income, or any other separate or individual coverage other than liability insurance available to the insured.

(e) An insurer paying a claim under an uninsured motorist endorsement or coverage shall be entitled to be subrogated to the rights of the insured to whom such claim was paid against the person causing such injury or death to the extent that payment was made.

(f) An insured entitled to recovery under the uninsured motorist endorsement or coverage shall be reimbursed within the conditions stated herein without being required to sign any release or waiver of rights to which he may be entitled under any other insurance coverage applicable, nor shall payment under this section to such insured be delayed or made contingent upon the decisions as to liability or distribution of loss costs under other bodily injury liability insurance or any bond applicable to the accident.

APPENDIX B

AMENDED IN ASSEMBLY MARCH 11, 1959

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 719

Introduced by Messrs. Miller and Bradley

January 27, 1959

REFERRED TO COMMITTEE ON TRANSPORTATION AND COMMERCE

An act to add Section ~~744.1 to the Vehicle Code~~ 1816 TO THE VEHICLE CODE AS ENACTED BY THE LEGISLATURE AT THE 1959 REGULAR SESSION, *relating to the reporting of traffic violations committed by minors.*

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

1 SECTION 1. Section ~~744.1 is added to the Vehicle Code~~
2 *1816 is added to the Vehicle Code as enacted by the Legisla-*
3 *ture at the 1959 Regular Session*, to read:
4 ~~744.1. Conviction of Juvenile Traffic Offender to Be Re-~~
5 *1816. Every judge, referee, probation officer, or other per-*
6 *son responsible for the disposition of cases involving traffic*
7 *offenses committed by persons under 21 years of age shall keep*
8 *a full record of every case in which such a person is charged*
9 *with a violation of this code, and, except as provided in Sec-*
10 *tions 1803 and 13355, shall report the offense to the depart-*
11 *ment at its office in Sacramento not more than 30 days after*
12 *the date on which it was committed. No report need be made*
13 *in the case of parking violations or if it is found that the*
14 *offense was not committed.*
15 *The report required by this section shall be made upon a*
16 *form furnished by the department and shall contain all neces-*
17 *sary information as to the identity of the offender, the arrest-*
18 *ing agency, and the date and nature of the offense.*
19 ~~ported to the Department. Every judge, referee, probation~~
20 ~~officer, or other person responsible for the disposition of cases~~

~~involving traffic offenses committed by persons under 21 years of age shall keep a full record of every case in which such a person is charged with a violation of this code, and, except as provided in subdivision (b) of Section 305, shall report the offense to the department at its office in Sacramento not more than 30 days after the date on which it was committed. No report need be made in the case of parking violations or if it is found that the offense was not committed.~~

~~The report required by this section shall be made upon a form furnished by the department and shall contain all necessary information as to the identity of the offender, the arresting agency, and the date and nature of the offense.~~

APPENDIX C

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 2075

Introduced by Messrs. Marks, Gaffney, Dahl, Lunardi, Meyers, and Petris

March 18, 1959

REFERRED TO COMMITTEE ON TRANSPORTATION AND COMMERCE

An act to amend Section 12814 of, the Vehicle Code, as enacted by the Legislature at the 1959 Regular Session, relating to the examination of drivers.

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

1 SECTION 1. Section 12814 of the Vehicle Code as enacted
2 by the Legislature at the 1959 Regular Session is amended
3 to read:
4 12814. Application for renewal of a license shall be made
5 by the person to whom the license was issued. The department
6 may in its discretion require an examination of the applicant
7 as upon an original application or, in the case of a chauffeur's
8 license, may require a physical examination only. *The depart-*
9 *ment shall require every applicant to take the examination*
10 *given to original applicants at least once in every 10-year*
11 *period.*

LEGISLATIVE COUNSEL'S DIGEST

A. B. 2075 as introduced, Marks (Trans. & C.). Examination of drivers.

Amends Sec. 12814, Veh. C., as enacted at the 1959 Reg. Sess.

Provides that the Department of Motor Vehicles shall require every applicant for a driver's license renewal to take the examination given to original applicants at least once in every 10-year period.

APPENDIX D

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 2078

Introduced by Mr. Busterud, Chairman, and Messrs. Masterson, Miller, Biddick, and Sumner, as members of the Subcommittee on Traffic Accident Consequences of the Assembly Interim Committee on Judiciary

March 18, 1959

REFERRED TO COMMITTEE ON TRANSPORTATION AND COMMERCE

An act to add Section 6515 to the Welfare and Institutions Code, relating to reports by the Department of Mental Hygiene to the Department of Motor Vehicles.

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

1 SECTION 1. Section 6515 is added to the Welfare and In-
2 stitutions Code, to read:
3 6515. The Department of Mental Hygiene shall report in
4 writing to the Department of Motor Vehicles all persons ad-
5 mitted to hospitals under its jurisdiction.
6 The report shall include the name, address, date of birth,
7 driver's license number if known, and diagnosis of the person
8 admitted and the name and address of the person filing the
9 petition.
10 The Department of Mental Hygiene shall also report to the
11 Department of Motor Vehicles all persons released or who have
12 escaped from a state hospital.

LEGISLATIVE COUNSEL'S DIGEST

A. B. 2078 as introduced, Busterud (Trans. & C.). Reports to Department of Motor Vehicles.

Adds Sec. 6515, W. & I. C.

Requires Department of Mental Hygiene to report to Department of Motor Vehicles names, diagnoses, and other information concerning persons admitted to state hospitals, and similar information concerning persons released or who have escaped therefrom, such reports to be on forms provided by Department of Motor Vehicles. Provides that such reports shall be used solely to determine eligibility for driver's license.

The report of release shall include the same elements of identification as required on the report of admission and shall include the type of release. Whenever a person is released from a state hospital and the hospital records or staff opinion indicates that driving a motor vehicle might be unsafe, such information shall be shown on the release report.

The required reports shall be made on forms provided by the Department of Motor Vehicles. Such reports shall be for the information of the Department of Motor Vehicles in enforcing the provisions of the Vehicle Code of California and shall be used solely for the purpose of determining the eligibility for a driver's license.

APPENDIX E

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 1857

Introduced by Mr. Busterud, Chairman, and Messrs. Masterson, Sumner, Hanna, Biddick, Miller, and O'Connell, comprising the Subcommittee on Traffic Accident Consequences of the Assembly Interim Committee on Judiciary

March 5, 1959

REFERRED TO COMMITTEE ON TRANSPORTATION AND COMMERCE

An act to add Sections 1659 and 42006 to the Vehicle Code as enacted by the Legislature at the 1959 Regular Session, relating to driver improvement schools.

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

1 SECTION 1. Section 1659 is added to the Vehicle Code as
2 enacted by the Legislature at the 1959 Regular Session, to
3 read:
4 1659. The department shall conduct driver improvement
5 schools at such times and places and on such schedules as the
6 department determines will most conveniently serve the
7 greatest number of motorists The department shall prescribe
8 the number of hours constituting the course and the subject
9 matter to be taught.
10 SEC. 2. Section 42006 is added to said code, to read:
11 42006. Any person convicted of a violation of this code
12 may, in addition to, or in lieu of, any other applicable penalty,
13 be required to attend a Department of Motor Vehicles driver
14 improvement school as part of the judgment.

LEGISLATIVE COUNSEL'S DIGEST

A. B. 1857 as introduced, Busterud (Trans. & C.). Driver improvement schools.

Adds Secs. 1659, 42006, Veh. C. as enacted at the 1959 Reg. Sess.

Authorizes the Department of Motor Vehicles to conduct driver improvement schools at places and times determined by the department to be convenient to motorists.

Provides that a judgment for conviction of a Vehicle Code violation may require attendance at such a school in addition to, or in lieu of, any other applicable penalty.

o

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ASSEMBLY INTERIM COMMITTEE REPORTS
1957-59
VOLUME 20 NUMBER 7

REPORT OF THE

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON JUDICIARY

PERTAINING TO

LOYALTY OATHS

MEMBERS OF THE INTERIM COMMITTEE ON JUDICIARY

BRUCE F. ALLEN, *Chairman*

WILLIAM BIDDICK, JR.
CLARK L. BRADLEY
RALPH M BROWN
PHILLIP BURTON
JOHN A. BUSTERUD
GEORGE G. CRAWFORD
ROBERT W. CROWN
LOUIS FRANCIS
RICHARD T. HANNA
THOMAS J. MacBRIDE
S. C MASTERSON
ALLEN MILLER
JOHN A O'CONNELL
BRUCE SUMNER
HOWARD J. THELIN
CASPAR W. WEINBERGER

ROBERT J COOK, *Consultant*
JANE RIGMAIDEN, *Committee Secretary*

March, 1959

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

HON. RALPH M. BROWN
Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON. WILLIAM A. MUNNELL
Majority Floor Leader

HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON JUDICIARY
SACRAMENTO, April 9, 1959

HON. RALPH M. BROWN, *Speaker of the Assembly*
and Members of the Assembly
Assembly Chamber, Sacramento

GENTLEMEN: Enclosed is the Report on Loyalty Oaths of the Subcommittee on Constitutional Rights of the Assembly Interim Committee on Judiciary.

The loyalty oath issue is a controversial one It is treated in this report in a comprehensive and balanced manner, and deserves the thoughtful attention of the Legislature.

Respectfully submitted,

BRUCE F. ALLEN, Chairman

SUBCOMMITTEE LETTER OF TRANSMITTAL

April 2, 1959

HON. BRUCE F. ALLEN, *Chairman*
Assembly Interim Committee on Judiciary
California Legislature
State Capitol, Sacramento

DEAR MR. ALLEN: Pursuant to your directive and in conformance with the provisions of House Resolution No. 224 of the 1957 General Session, the Subcommittee on Constitutional Rights herewith submits its report on loyalty oaths

Three members of the subcommittee, Messrs. O'Connell, Burton, and Masterson, believe that the loyalty oath should be repealed and the traditional oath of allegiance restored for public employees. Their reasons are stated in Part One of the report.

The remaining three members of the subcommittee, Messrs. Busterud, Crawford, and Thelin, believe that the loyalty oath should be retained, revising its application, where necessary, to meet constitutional requirements. Their reasons are stated in Part Two of the report.

Respectfully submitted,

JOHN A. O'CONNELL, Subcommittee Chairman

S. C. MASTERSON
HOWARD J. THELIN
PHILIP BURTON
JOHN A. BUSTERUD
GEORGE G. CRAWFORD

CONTENTS

	Page
Letters of Transmittal	
Committee	3
Subcommittee	4
Preface	7
PART ONE	
Excerpts From Testimony	9
I. Introduction	13
II. The Constitutional and Statutory Basis of the Loyalty Oath	14
III. The Price of Loyalty Oaths	15
A. Reason and the Loyalty Oath	15
1. First Amendment Guarantees: Freedom of Speech and Assembly	15
2. Group Oaths	17
3. Confusing the Word With the Thing	17
4. Veterans' Tax Exemptions	18
B. Religion and the Loyalty Oath	18
1. Separation of Church and State	18
2. Invasion of the Privacy of Religious Beliefs	19
C. Summary	19
IV. The Efficacy of Loyalty Oaths	21
A. In the Past	21
1. Situations of Mass Disloyalty	21
2. Situations of Isolated Disloyalty	21
B. Today	22
1. Widespread and Wordy Oaths	22
2. Negative and Expurgatory Oaths	23
V. Conclusion and Recommendations	26
PART TWO	
I. Introduction	27
II. The Age of the Nation-State	28
III. Conclusion and Recommendations	29
Appendices	
1. Opinion No. 3979 of the Legislative Counsel	30
2. Proposed Legislation	35

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PREFACE

Few subjects are more emotion laden than that of loyalty oaths. "If a person is loyal, why should he be reluctant to sign an oath?" asks one. "Why should my loyalty be questioned?" asks another. Such rhetorical questions are statements of conclusion and belief rather than attempts at rational persuasion. Moreover, in a field where the people need guidance, such questions tend rather to harangue than to inform.

The loyalty oath issue is a legislative matter and, as such, deserves careful deliberation. The purpose of this report is to treat a passionate matter dispassionately.

PART ONE

EXCERPTS FROM TESTIMONY

Excerpts from testimony given at a public hearing of the Subcommittee on Constitutional Rights of the Assembly Interim Committee on Judiciary, held at Los Angeles on December 13, 1957.

Coleman Blease, *Friends Committee on Legislation:* * "Quakers have since the early 1600's, refused to sign oaths of nondisloyalty on the basis of conscience, on the basis of their understanding of the Bible, because they believe that test oaths were a means of political and religious suppression. * * "

Professor Harold Horowitz, University of Southern California Law School: "By definition, the person who is violating the standard for employment whom you want to fire by having him take an oath, he is the person who is not going to think twice about perjuring himself when he signs the oath and says that he doesn't advocate the violent overthrow of the government He is the very person the oath was designed to ferret out and he is the very person who will certainly never disclose himself by signing such a sheet of paper."

Martin J. Schnitzer, Attorney at Law, Beverly Hills: "The type of people who come into my office and say they do not want to take the oath are the people who have ethical reasons, whether we agree with them or not, that make them think it is a cowardly thing to take the oath These are the people who stand upon principle and are completely impractical about it, but they are the people who do some of our most creative work. If the loyalty oath is only weeding them out, then we are not doing ourselves any service by having the loyalty oath. We are actually hurting ourselves because the Communists don't care about it anyway."

Reverend Forrest C. Weir, Ph.D., *Executive Director, Church Federation of Los Angeles:* "Thus, one of our strong reasons for opposing the present [loyalty oath requirement] is that it violates the principle that the church and the state are separate but co-operating bodies. The church desires to remain as a co-operating body. The present [loyalty oath] makes the state not a co-operating body, but the coercive force over the church Whether the courts declared it constitutional or unconstitutional, it breaks our established pattern by which a free church in a free society may foster the disposition in its members to give to the state the kind of loyalty you cannot command by force. To serve in this way the church must never be subservient to any force or institution. Its supreme allegiance is to God "

Rev. Ray W. Ragsdale, *District Superintendent, Los Angeles District of the Methodist Church* (quoting from a letter): "The * * *

* Italicizing the name of the organization indicates that the witness is speaking on behalf of that organization

Grace Methodist Church, Inglewood, [has resolved] not to apply for state tax exemption for the coming year. We wish it clearly understood that this decision in no way represents any unwillingness on our part to affirm our loyalty to the United States of America. * * * Our decision is motivated by the following position: The offer of tax exemption when it is made by the State out of respect for the charitable purposes and nature of the church, is one which is freely accepted with gratitude, but when the offer is made on conditions that tend to break down the traditional separation of church and state, then the church must respectfully maintain its independence and be glad, under the circumstances, to pay the lawful taxes which the State requires. * * *"

John Anson Ford, County Supervisor, Los Angeles: "* * * Certain very conscientious and, in my personal view, very loyal, employees took [the loyalty oath] very seriously and we lost some good employees because their conscience wouldn't permit them to go along. * * *"

Reverend Emerson G. Hangen, Minister, First Congregational Church, Long Beach: "Those who believe in loyalty oaths have confused loyalty with orthodoxy. It's an utterly alien philosophy in America that is based upon a fundamental distrust of people. Its premise is that the general citizenry cannot be trusted to be loyal to their government unless they are officially signed up."

Dr. John Caughey, Historian, University of California at Los Angeles: "* * * Somewhere in the hierarchy of state employees there is a line below which it is not * * * appropriate to set up an oath requirement. The majority of offices, it seems to me, do not justify it."

Professor Harold Hyman, Department of History, University of California at Los Angeles: "From my own work in this field, I think historical evidence indicates that test oaths, loyalty oaths, especially those of a retrospective, past-testing nature, are ineffective and damaging to political democracy."

Reverend Eldon Durham, *Chairman of the Social Education Action Committee of the Los Angeles Presbytery:* "Our voluntary pledge of allegiance to the Flag, the symbol of our beloved Nation, sits much better on our shoulders than an enforced oath signed under the brandished club of taxation."

E. A. King, *Vice President, California C. I. O. Council:* "In the climate of concern over Communist subversion a charge of disloyalty * * * frequently carries a far greater stigma than conviction for some criminal offenses. * * *

"Our philosophy is premised on the belief that national security will be better assured through political freedom than through suppression."

Henry Clark, *Federation of Teachers, A. F. of L.:* " * * * The loyalty oath tends to coerce teachers from exercising their political rights, from attending political meetings, and from participating in political campaigns. * * *

" * * * The loyalty oath is an infringement upon the academic freedom of the classroom teacher."

Robert Vogel, *Chairman, Board of Directors, American Civil Liberties Union:* "The sometime defense of [loyalty] oaths as perjury traps to catch the disloyal is now obviously threadbare. Since the enactment of the current oath over seven years ago, not a single person has been indicted for falsely swearing the Levering oath."

Dorothy Marshall, *Vice Chairman, Citizens Committee to Preserve American Freedom:* "I think * * * it was significant this morning that Supervisor Ford, when questioned, was * * * unable to remember what kind of an oath he had taken. Now this is a responsible public official. If the so-called loyalty oath doesn't even register enough on him so he knows what he signs, then obviously it cannot be very effective."

Reverend Stephen Fritchman, *Pastor, First Unitarian Church, Los Angeles, and representative of the Council of Liberal Ministers of Southern California and Arizona:* "Too many of our forefathers had fled religious persecution—Catholics, Jews, Quakers, Puritans, Congregationalists—to want to bring it to these shores. The expurgatory oath in which a man uncharged with a crime is compelled to deny he committed it is very old in the church-state struggle and for 166 years we Americans have fought any return of the ancient evil."

Father Charles S. Casassa, *President, Loyola University:* "I do not think that loyalty oaths for faculty members in state institutions are either necessary or effective. I don't think they are necessary because * * * the board of education of trustees * * * can accomplish the same aim by effective screening processes. * * *

"Secondly, I don't think they are effective off the record in the past. I don't believe that anyone committed to the overthrow of this government is hindered from seeking employment by the taking of a loyalty oath."

A. L. Wirin, Attorney at Law, *Counsel for the Southern California American Civil Liberties Union:* " * * * The Constitution of the United States and its guarantees apply to all and * * * there is an obligation on our Legislature to avoid legislation which violates constitutional rights, not merely [to] pass legislation [recklessly] in the hope or assumption that the United States Supreme Court will attend to it."

Edwin A. Sanders, *Executive Secretary, Pacific Southwest Regional Office of the American Friends' Service Committee* (quoting from an earlier statement): "Believing in the importance of the individual, we deplore the tendency toward restriction of individual freedom represented by the property tax law declaration. We protest this requirement because it is part of the attempt to test loyalty by words instead of by deeds."

John Richardson, *Chairman, Los Angeles Chapter of the Federation of American Scientists:* "I think that the loyalty oath is rather ineffectual in accomplishing what * * * I assume the objectives were."

Dr. Joseph Kaplan, Professor of Physics at the University of California at Los Angeles, and Chairman of the United States National

Committee for the International Geophysical Year: "I must say that technically it is extremely difficult to have to sign loyalty oaths and * * * for every speech, literally, to have to re-sign the oath because as a matter of bookkeeping it becomes extremely irksome. * * * It makes it a little difficult to accept some of these teaching engagements. * * * If you make 20 speeches a year to teachers' groups * * * [you] sign something 20 times."

Paul Johnson, *Clerk of the Orange Grove Meeting of Friends:* "We were led to seek for the true meaning of loyalty. Could it be commanded by legislation? Can it be created by words or fetish of the annual oath-taking? Least of all, can it be bought? We determined that it could not. Loyalty is a function of love. It must be freely felt."

I. INTRODUCTION

A loyalty oath is a means to an end. We build highways to foster safe and rapid transportation and schools to educate our youth; the mobility of our citizenry, physical and social, is an end in itself. Loyalty oaths are meant to serve an end of a different sort, a more basic one and at the same time, of its very nature, a negative one—that of national security, the safety of the people. The happiness which we derive from roads and colleges is felt directly. The safety which we secure from our armies and diplomats does not create happiness, but only permits it; it is a necessary precondition of the enjoyment of life's bounties, but is not a sufficient cause of them.

The great triumph of western civilization has been to free men to seek happiness, as individuals or in groups. This triumph was made possible only by securing the citizen safe in his home and his travels. Fear of physical danger had to be removed before living could become gracious. Within the United States, and throughout the western hemisphere, such fear has been eliminated to an unprecedented degree. We have conquered banditry, and illness and ignorance are greatly reduced. Moreover, we have accomplished this while increasing human freedom.

But we have not removed the danger of external aggression. The specter of atomic holocaust or Soviet domination disturbs our tranquillity. We are dedicated to the removal of these fearsome threats. One of our weapons in this struggle has been the loyalty oath. And just as we continually reappraise the effectiveness of our tanks and missiles in terms of their cost, so we must ask of loyalty oaths, are they effective? and, what is the price we pay for them?

II. THE CONSTITUTIONAL AND STATUTORY BASIS OF THE LOYALTY OATH

There is one primary loyalty oath in California today, the Levering Oath.[1] This oath was adopted as a constitutional amendment in 1952 by a referendum vote of 2,951,955 to 1,290,851. It is significant to note that even while McCarthyism was at its highest pitch, over one and one-quarter million Californians voted against the adoption of this new oath.

Statutory provisions for the use of this oath are varied and overlapping. The individuals and groups covered are as follows:

1. All taxpayers who claim any exemption (except householders' exemption).[2]
2. All public employees.[3]
3. Groups using public school facilities for civic or recreational activities.[4]
4. Members of county central committees of political parties.[5]

In addition, the Dilworth Act (1953) requires that each new schoolteacher take an oath that he is not knowingly a member of the Communist Party, and further requires that any employee of a school district who has been a member of the Communist Party since October 3, 1945, file a verified affidavit that he is no longer such a member, and that membership was terminated in good faith.[6]

---

[1] Art. XX, Sec 3 of the California Constitution provides as follows

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California, that I take this obligation freely without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties upon which I am to enter

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means, that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows: (If no affiliation, write in the words "No Exceptions") and that during such time as I hold the office of _____ I will not advocate nor become a member of any
(Name of office)
party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means"

[2] Revenue and Taxation Code, Sections 32 and 23705 This provision is superfluous, in that Art XX, Sec 19 of the California Constitution provides that "* * * No person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means * * * shall· * * * (b) receive any exemption from any tax imposed by this State or any * * * political subdivision * * * of this State." This section is self-executing, and demands no implementing legislation. (See Opinion No. 3979 of the Office of Legislative Counsel, appended, on this point)

In any event, the taxpayers' oath was declared unconstitutional by the United States Supreme Court as a violation of the First and Fourteenth Amendment guarantees of due process of law, in that the burden of proof to show non-advocacy of violent overthrow of government was improperly put on those seeking exemption. *First Unitarian Church of Los Angeles* v. *County of Los Angeles,* 2 L. Ed. 2d 1484 (1958); *Speiser* v *Randall,* 2 L Ed 2d 1460 (1958).

[3] Government Code, Sections 1360, 3102, and 3103. Elective officials are required to take two oaths for each term—one when candidacy is filed and one when office is assumed. Oaths have also been required of quasi-public servants, such as boiler and elevator inspectors.

[4] Education Code, Section 19441, the Civic Center Act

[5] Elections Code, Section 2842 5

[6] Education Code, Sections 12601 and 12602.

III. THE PRICE OF LOYALTY OATHS

A. REASON AND THE LOYALTY OATH

1. *First Amendment Guarantees: Freedom of Speech and Assembly*

A legislature could not require a loyalty oath of all citizens, with a fine, imprisonment or civil disability being imposed for refusal to swear, because the legislature would be unreasonably restricting the constitutional right to speak and associate freely. It has been argued, however, that when a legislature grants a *privilege,* it may attach any conditions it wishes to that privilege. This is an overstatement: If the condition requires the reliquishment of a constitutional right, it will be subject to severe judicial scrutiny.[7] And, in fact, the United States Supreme Court held that California could not demand a loyalty oath as a condition of a tax exemption.[8] However, the courts have held that public employment is a privilege which may be conditioned by the requirement of an oath.

But to answer the question of the power of the legislature to act is not necessarily to answer the question of the *wisdom* of its actions. To the individual who is faced with the choice of circumscribing his political activities or forsaking government employment, there is little comfort in the knowledge that, technically, his constitutional rights have not been infringed. If he argues that the burden of proof has been reversed, requiring him to prove his innocence, he gains little satisfaction from learning that his guilt or innocence, in a technical sense, are not at issue. If he loses his job, he is not mollified by being told that this loss is not, in the eyes of the law, a punishment.

When the courts find a law to be unconstitutional, the duty of the legislature is clear—a legislature should not pass an act which is null and void, nor enact laws infringing the Bill of Rights. Having overstepped these limits, a legislature has a duty to erase its own error. Thus, the California Legislature should repeal the taxpayers' oath which was stricken in the *Speiser* and *First Unitarian Church* cases, *supra.* Furthermore, the Legislature should examine other similar provisions and repeal those which would lead to further humiliation.[9]

But even when the courts uphold a law, legislative responsibility is not necessarily discharged. A legislature should not attempt to play shuffleboard with civil liberties, to try to come as close to the line as possible without overshooting. The purpose of a legislature is not to exercise the maximum of power at its disposal: habitual self-restraint is the handmaiden of the rule of law.

---

[7] See Robert L Hale, *Freedom Through Law* (1952), pp. 295-304, for a discussion of "Withholding a Special Privilege as a Penalty"

[8] See the discussion of the *Speiser* and *First Unitarian Church* cases, *supra,* p 13, footnote 2 In the *Speiser* case (2 L.Ed. 2nd 1460), the court stated (p. 1468) that:

> "* * * The appellees are plainly mistaken in their argument that, because a tax exemption is a 'privilege' or a 'bounty,' its denial may not infringe speech * * *"

[9] The Civic Center Act, *supra,* p 13, is a clear example of such a provision: The same oath which was held to be unconstitutional in the *Speiser* case is made a condition of the privilege of using public facilities.

It should be added that the courts, by their very nature, cannot function as a *general* protector of civil liberties. Each decision of a court is limited to the facts of the case before it, each remedy provided by a court is directed to the parties at the bar. A court is incapable of undertaking a comprehensive lawmaking role. And so it should be. It is the legislative branch of government which is entrusted with this broader task The actions of a court are specific and retroactive; those of a legislature are general and prospective. Our Constitutions, State and Federal, prescribe the minimal measurements of the mantle of civil liberty; it is the legislature which cuts the cloth; the courts are limited to a search for basic flaws in legislative workmanship. The courts may not question the wisdom of legislative action, but only the power of the legislature to act in a given situation. For the greater protection of civil liberties as well as for the maintenance of our traditional separation of powers, the legislature must not abdicate to the courts its duty to "secure the Blessings of Liberty to ourselves and our Posterity."[10]

Whether or not loyalty oaths have been effective in fostering national security (to be discussed later), it must be recognized, then, that a price has been paid in terms of freedom of speech and assembly. Some government employees and prospective government employees have refrained from expressing political views or from joining various organizations, because they have feared that their jobs would be jeopardized. Schoolteachers in the classroom have, to some degree, been stifled in discussion of controversial matters, because they feared that the line between discussion and "advocacy" (which latter they had to swear they had not done) was not clear In short, the loyalty oath has acted as a political oath. The loss of freedom which these people have experienced must be included in totalling the costs of the loyalty oath program. The price paid by those who have forsaken government employment rather than give up any part of their freedom must also be considered. They have lost a job opportunity which they otherwise had.

Nor has the cost in this category been limited to the individuals directly affected. The Nation as a whole has suffered proportionally to the degree of restriction of discussion and association When it is stated that constitutional guarantees do not restrict the government in the conditions it may attach to public employment, it does not follow that the *reasons* for these guarantees have conveniently disappeared. It only means that other purposes—here, national security—have countervailed. We need the ideas of our public servants, and their active participation in the political process, just as much as those of any other group. We need the critical insights of our teachers perhaps even more. In an attempt to gain security, we have sacrified a portion of the contribution which our state employees could make. This sacrifice is part of the price we pay for loyalty oaths.[11]

---

[10] Preamble to the United States Constitution

[11] Another price which we have paid indirectly for loyalty oaths is that we have offended influential groups among our faithful and democratic allies abroad—those who have resented even the suspicion that our freedoms were being restricted

2. *Group Oaths*

To receive a tax exemption, religious and charitable organizations must have an oath signed by one of their officers. Similarly, an officer must sign an oath for any group desiring to use public school facilities for meetings or recreation.[12]

The officers who sign such an oath on behalf of a group are undertaking either an impossible responsibility or none at all. If they are responsible for the loyalty of each member of the group, they are in a very difficult position: they cannot control the actions or thoughts of the members—or even know what these actions or thoughts are If they are not responsible for the individual members, then the signing of the oath is a meaningless gesture.[13]

For the State to demand the execution of meaningless or impossible oaths is to breed hypocrisy and cynicism. This is a very high price to pay for this particular type of loyalty oath.

3. *Confusing the Word With the Thing*

That the use of loyalty oaths could lead to the illogic of demanding group oaths indicates that there is a more basic logical error underlying all loyalty oath legislation—that of hypostatization, the substitution of the word for the thing. This confusion rarely occurs with physical objects. we do not accept the words "food" and "drink" in satisfaction of our hunger and thirst. But in the realm of ideas and beliefs, which do not lend themselves to direct sensory perception, there is such a danger Let us develop this problem a little further.

In the proper context certain words have a constitutive force. The "I do" of a marriage ceremony and the "I promise" of a contract are examples. These words create a clearly defined and enforceable obligation Other words are declaratory; they express an existing state of affairs, but they do not create that state of affairs. "I love you" and "I am loyal to you" are examples If we strongly need the love and desire the loyalty, we tend to permit our doubts as to their existence to be overcome by erroneously considering the words as constitutive In a close personal relationship, such as marriage, the parties can test the declaration by observing each other's actions continuously over a long period of time This device is not feasible for larger groups. Taking the declaratory words as constitutive then becomes conclusive. The word becomes the thing itself, and the result is not loyalty, but only the word "loyalty."

This situation is frightening. By taking the words "I am loyal" as constitutive, we are undermining the very thing we set out to ensure—

---

[12] These laws are enumerated, *supra*, at page 13 The tax exemption oath was held to be unconstitutional in the *First Unitarian Church* case, *op cit* A test case on the oath for the use of public school buildings and grounds has not yet come before the courts

[13] Reverend Emerson G Hangen, Minister of the First Congregational Church in Long Beach, California, described this dilemma very aptly at the public hearing held in Los Angeles on December 13, 1957 He stated (p 39)

> "* * * [W]hen the treasurer signs that oath, for whom does he sign? Does he sign for the minister? Absolutely not, because I have already declared my opposition to it and I would not sign it under any circumstances Does he sign it for the board of trustees? Does he sign for the church membership? One man cannot possibly make such a declaration on behalf of 2,000 or more people
>
> "Suppose, God forbid, that some disloyal people might be discovered in our congregation at some time What would happen then? Who would be liable? The signer of the oath, the trustees or the other 2,000 people in our church?"

the safety of the people. Instead of having loyalty and resulting security, we have only a word and a false sense of security. If the price of loyalty oaths is danger and self-contradiction, it is indeed high.

4. *Veterans' Tax Exemptions*

One group of Americans has given unimpeachable proof of its loyalty: our servicemen risked their lives for their Country. We need not rely on declarations of loyalty from these men and women for proof of their patriotism. Their actions speak for themselves, and loudly. To take the word for the thing when the thing itself has been amply demonstrated is a double error, one of logic and one of misjudging weight of evidence.

There is another reason why veterans' exemptions should not be conditioned on the taking of a loyalty oath. The exemption was granted to veterans as a gesture of thanks for sacrifice made. It is a gift in consideration of past services. To exact a promise of future loyalty and an oath of past loyalty under such circumstances is simply in poor taste. The spirit of the gift is marred by the insult which accompanies it. It would be better to make no gift at all, to say a modest "thank you," than to add to the gift a requirement which impugns the very qualities it is intended to reward. Our fighting men deserve our unreserved thanks.

It is not surprising that the Supreme Court struck down the veterans' oath in the *Speiser* case, *supra*. In this case, the court stated (2 L. Ed. 1460, at p. 1474):

> "But while a union official or public employee may be deprived of his position and thereby removed from the place of special danger, the State is powerless to erase the service which the veteran has rendered his Country. * * *"

B. RELIGION AND THE LOYALTY OATH

1. *Separation of Church and State*

The State is under no obligation to grant tax exemptions to religious or charitable organizations or to veterans. If it does so, it is because the State has decided that it wants to encourage these groups or reward these warriors. But once the State has decided to grant such an exemption, the picture is changed—it cannot then burden the gift with onerous conditions.

No one familiar with our form of government and with the history of religious persecution which brought our forebears to this Country advocates state control over religion. Special taxes on religion, censorship or sermons, or punishment of sects are all inimical to our laws and morals. We tend to take such toleration for granted, but it was not easily won. If the State—by way of tax exemption—freely gives money to all religions without requiring adherence to one or another dogma, then churches may accept the gift in the spirit in which it is given. But if the gift is withheld from those churches which do not sign an oath of nondisloyalty, then the effect is to license or to tax all churches. They must either conform to a state dictated creed or pay,

indirectly, a tax. Either result is a slash from Caesar's sword, a thrust at the bulwark of church-state separation.[14]

2. *Invasion of the Privacy of Religious Beliefs*

If one price which has been paid for loyalty oaths is the erosion of the principle of the separation of church and state, another is the anguish suffered by a small group of deeply religious people whose beliefs prevent them from swearing loyalty to any but their God. Assuming that the State has the power to exact loyalty oaths from these people, and assuming that such oaths are otherwise effective (to be discussed later), the conscientious legislator must recognize that this price is being exacted.

In times gone by, governments paid heavily for forcing recusants to swear loyalty to the king or to an established church. France lost the cream of her craftsmen when the Huguenots fled; England suffered civil war in attempting to enforce conformity. We are faced with no such loss for demanding oaths of our religious minority: they do not flee nor threaten war. We do miss their contributions to jobs for which they are not eligible, but to the extent that they are adamant in their refusal to conform there is no diminution of free speech or assembly. It is the minority itself which pays the cost in lost tax exemptions, lost jobs, and expenses of litigation That the price is not borne by the whole body politic does not mean that the legislator should dismiss it. To the contrary, he should consider it even more seriously. Martyrs should not lightly be created. These men will not abandon their profound religious faith; do we wish to penalize them for it?[15]

C. SUMMARY

While the dollar and cents outlay is the most obvious cost paid for loyalty oaths, others are more important.

The cost in terms of moral fiber and personal integrity has been oppressive. Organized religion and rugged individualism—two of the major currents in the stream of American history—have been forced to choose between civil disability and, to them, damning conformity. The disability attendant on noncompliance with the oath has taken the form of lost tax exemptions or lost job possibilities. The damnation has resulted whenever individuals have violated their own consciences by subscribing to oaths inconsistent with their religious or philosophical beliefs. Many of these conscientious people have resolved the dilemma in favor of their peace of mind and at the expense of their pocketbooks. They have not signed.

In addition to the costs borne by these groups and individuals, the people as a whole have paid heavily for the loyalty oath program. The independence of our churches has been lessened and we have lost skilled persons who might otherwise have taken public employment

[14] The loyalty oath for religious and charitable organizations was held to be unconstitutional in the *First Unitarian Church* case, *op cit.*, on the ground that it unduly restricted freedom of speech The church-state issue, then, was not reached by the court

[15] One witness who otherwise favored loyalty oaths conceded that loyal persons might possibly have religious objections to swearing an oath. See the testimony of B E. Gwartney, American Legion Chairman on Americanism for the County of Los Angeles, given at the public hearing held in Los Angeles on December 13, 1957.

Most costly of all, we have eroded freedom of speech and assembly. An informed and critical populace is the cornerstone of a democracy. We have sacrified the stimulation which freer expression and participation on the part of teachers and civil servants might give. This strikes at the very foundation of our form of government.

These, then, have been some of the costs of loyalty oaths. Let us now see what we have received in return, in terms of the increased safety of the Nation.

IV. THE EFFICACY OF LOYALTY OATHS

A. IN THE PAST

1. *Situations of Mass Disloyalty*

If the loyalty of more than a small fraction of the people is in question then there is no such thing as a timely oath: it is either not needed at all or it is too late. For a loyal people no oath is necessary; for a disloyal one, none will help. Of necessity, then, loyalty oaths must be directed at very small groups who threaten subversion or sabotage, but not popular revolution. In the face of mass disaffection, historical examples of the futility of oaths abound.

Loyalty oaths were legion in England during the religious antagonism of the sixteenth and seventeenth centuries. They did not prevent two civil wars (1640-1660, 1688-1689) nor save the head of Charles I.[16] Asseverations of loyalty during the War of American Independence and during the Civil War were equally ineffective.[17]

But these examples are not the most pertinent to our present situation, one in which there is no question as to the loyalty of the great mass of the people. The experiences of World Wars I and II fit more into this latter category.

2. *Situations of Isolated Disloyalty*

The use of loyalty oaths during the world wars has been succinctly stated by Professor Hyman, as follows:[18]

> "With American entrance into World War I, the Federal Government largely abandoned loyalty oaths. * * * For the first time in any major American war, federal officials were confident of the fidelity of the American people and that an effective security system existed. The result was general agreement among these officials that loyalty oaths were unnecessary for the successful prosecution of the war. * * *

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[16] Professor Harold M. Hyman, a historian at the University of California at Los Angeles, states that he approaches his research "with no prejudice either for or against loyalty oaths in the abstract." In the prepared statement which he submitted at the public hearing held in Los Angeles on December 13, 1957, *op. cit.*, he asserts as follows (page 5)

> "[T]he loyalty oaths of the seventeenth century were failures. They did not create loyalty nor did they provide security."

[17] Professor Hyman, *op. cit.*, further notes (page 14)

> "The history of loyalty oaths in the American Revolution indicates that allegiance closely paralleled the reality of military power. The combat was not between theoretical concepts of loyalty as measured by formal oaths, but between contending armies. * * * Loyalty to one side or the other existed or did not exist regardless of the oaths sworn."

And, again (pages 20, 23).

> "Yet history judges that all the oaths sworn, deceits practiced, and perjuries committed failed to affect the course of the war. Union loyalty oaths were more effective than their Confederate counterparts only because Union armies defeated Confederate armies. * * *
>
> "The tragic era of reconstruction, which left more scars in southern memories than did defeat in the Civil War, resulted in large part from the postwar exploitation of loyalty oaths."

[18] *Ibid.*, pp. 25-28

"Local and state governments, however, used loyalty oaths with great energy and increasing application. * * * These oaths were directed against pro-Germans, but even before the Armistice, local pressures and prejudices twisted the security purposes of state loyalty oaths into subjective, partisan weapons. * * *

"Local loyalty testing encouraged the violence, the tragic vigilantism, the lynchings and beatings which marred the home front history of the United States in World War I. * * *

"American history during World War II indicates that the past can teach. Every earlier American war had given rise to uncontrolled mob action in local communities, ostensibly in support of loyalty. In 1941, however, the national government obtained, with the approval of state authorities, a monopoly of internal security functions. As in World War I, federal security agencies did not employ loyalty oaths. Unlike World War I, the unprecedented federal security monopoly resulted in a new efficiency and temperance in the performance of security responsibilities. World War II is America's first wartime experience in which no Americans were lynched, beaten or terrorized for alleged disloyalty. * * *

"American history indicates that loyalty oaths do not preserve government or suppress disloyalty. From Benedict Arnold to the Rosenbergs, America's major traitors have been fully sworn to American loyalty by the oaths they had signed."

In none of the examples cited by Professor Hyman, then, is there evidence that loyalty oaths have been effective in securing national safety. Many of them, to the contrary, have exacerbated internal dissension at a time when unity was needed. These lessons of history should give pause to those who would institute loyalty oath programs. But once such a program is started it is only fair to let it speak for itself rather than to condemn it merely by reference to the failure of all its predecessors.

How effective have California loyalty oaths been in fostering national security?

B. TODAY

1. *Widespread and Wordy Oaths*

Oaths can be edifying To be so they must be short and must be limited to positions of unusual trust. When a governor or a judge, for example, swears to uphold the Constitution, he is emphasizing the fact that his importance in maintaining the Constitution is greater than that of the ordinary citizen The honor of his position carries with it greater responsibility. The oath is a recognition of this difference. It is an assurance to the people of his acceptance of a higher duty and at the same time an inspiration to the officeholder to fulfill his promise.

If everyone takes such an oath, it fails to distinguish the statesman—he is no longer honored, his duty is no longer set apart. The oath becomes commonplace, taken for granted, and forgotten. It comes to be measured in terms of the economic advantage which it confers as a condition of a tax exemption or salary payment. It is not a badge of merit but a ticket of admission. It is, in a word, debased.

The depreciation of the value of an oath is increased when group oaths are required. The spirit of dedication is an individual thing; the very concept of loyalty is an individual one. Love and hate are highly personal emotions. To have an officer take an oath on behalf of a group inspires neither the group nor the officer.

The inspirational effect of an oath is further lessened by making it lengthy. The noble purpose becomes mired in petty detail. Striving for awe, it instills boredom; the long-remembered moment of inspiration becomes a soon-forgotten quarter-hour of pedantry.

If we would continue the impressive tradition of having officeholders take oaths of allegiance, we must make the oath short, we must make it individual, and we must limit it to those who wear a mantle of special trust.

2. *Negative and Expurgatory Oaths*

To the extent that negative oaths are lengthy, they have already been treated. But negative oaths have another aspect which bears even more directly on efficacy. When an oath requires the affiant to promise *not* to hold certain beliefs or associations, it becomes a test oath rather than a simple oath of allegiance. The test oath may include the oath of allegiance, but it adds something quite different: it makes the oath "a criterion of the fitness of the person to fill a public or political office."[19]

The standard oath of allegiance is not meant to exclude anyone from office, it is a formality—a formality whose meaningfulness depends on the solemnity with which it is taken. The test oath, on the other hand, is intended to affect standards of employment In short, it is a political oath. The current test oath is meant to exclude from office or tax exemption those who would overthrow the government by "violence or other unlawful means." Its effectiveness in this regard is not measured by the loyalty which it inspires, but by the number and nature of those it keeps out of office.[20]

When the negative oath looks backward it is an expurgatory oath. The affiant swears that he has not held certain beliefs nor maintained certain associations in the past. If he is able so to swear, he has passed this particular test of employment. If he is not so able, then he must admit past beliefs or associations and swear not to retain them. This may purge him, and, if so, he has again passed the test. If he refuses to take the expurgatory oath, he is denied employment (or tax exemption) Having defined our terms, we must now ask, how effective have negative oaths, including expurgatory oaths, been?

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[19] *Black's Law Dictionary* (4th ed, 1959), p 1643

If negative oaths are no different from positive ones (or test oaths from oaths of allegiance), then they add nothing to the traditional oath and are merely redundant. If there is a difference then it must be definable Definitions are necessarily arbitrary and a given definition is defensible if it is noncircular, consistent, and consonant with accepted usage The definitions used here are operational—they attempt to distinguish different oaths according to the different results which they achieve And it is, after all, the effectiveness of oaths which is here under consideration

Once a definition has met the requirements of being customary and not self-contradictory, it is pointless to quibble over fine distinctions Human experience does not fit well in air-tight categories If the different kinds of oaths have had different effects, then it is to these effects that we should direct ourselves

[20] It might be mentioned that the democratic process is weakened to the extent that selection for elective office is made conditional on an oath The function of the voting public is to choose officials on the basis of record and platform. Impeachment, prosecution, or defeat at the next election are safeguards far superior to a merely self-serving oath.

First of all, such oaths have not been edifying They are too lengthy and widespread in application to foster loyalty But, equally important, their very negativeness is deadening The distinction between promising to be good and promising not to be bad has an important effect. The latter type promise is seldom inspiring. A similar difference exists between forward-looking and backward-looking oaths. The hopeful future may exalt the spirit; the dead past is not so calculated. And this is particularly so when the reference to the past is negative. We have already argued that, if oaths are going to augment loyalty, they should be personal, short, and limited to higher offices. To these requirements we should now add that the oaths ought to be positive and forward-looking.

If negative oaths have not added to our legacy of loyalty, we must ask if they have been effective in keeping the disloyal out of government. This is indeed a crucial question Even if loyalty oaths have not fostered loyalty, their price can perhaps be justified if they have contributed to national safety by preventing subversion.

Unfortunately, they have not served this purpose. None of the millions of California oath-takers has ever been prosecuted for perjury, as far as is known. Furthermore, no one dedicated to the violent overthrow of the government would have qualms about signing an oath Still, some people have refused to sign oaths, and have lost jobs or job opportunities. Who have these people been? Anarchists? Communists? Fascists? No, they have been the deeply religious and ruggedly individualistic persons earlier discussed.[21]

This does not mean to imply that the original purpose of the loyalty oaths was to harry these people. But such has been the effect—and the sole effect. We have lost their contribution to the public service; they have lost the chance to work for the government. But we have not lessened danger; we have rather increased it by inculcating a false sense of security.[22] As political litmus paper the loyalty oath has failed: it has turned red, not on contact with Communists, but on contact with nonconformists.

Even if loyalty oaths were effective in detecting subversives there would be questions left to be answered. Would national security be increased to any significant degree if revolutionaries were kept from menial or ministerial tasks? Would the safety of the Nation be enhanced if dangerous groups were denied tax exemptions or the use of public facilities? Not significantly. Any danger they present would not be appreciably decreased by these gestures.

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[21] As pointed out by Father Charles S Casassa, President of Loyola University of Los Angeles "[No one] committed to the overthrow of this government is hindered from seeking employment by the taking of a loyalty oath" See the transcript of the public hearing held in Los Angeles on December 13, 1957, *supra* As far as public employment is concerned, the price paid for loyalty oaths and the effect achieved by them have been one and the same

[22] The loyalty oaths which are signed are so numerous that they have not been effectively screened The oath is taken at face value and becomes the sole—and, as we have seen, futile—means of ensuring security If we guard our safety pins and our sapphires each with equal vigor we will lose fewer safety pins but more sapphires

Not only do excessive numbers of people take oaths, but single individuals or groups take an excessive number of oaths As an illustration of this latter problem, see the excerpt of testimony, *supra*, given by Dr Joseph Kaplan, Professor of Physics at the University of California at Los Angeles, and Chairman of the United States National Committee for the International Geophysical Year.

If the relation between oaths and security is remote the conclusion emerges that the sole effect of the loyalty oath program, whether or not inadvertent, has been to punish rather than to purify. The laws are not couched in language of punishment, but this has been their result. Moreover, the primary punishment is not to be refused a job or a tax exemption, but is the stigma which such refusal brings with it. And because the suffering is not technically punishment there are no legal protections against it, such as the presumption of innocence, the right to be informed of the crime of which one is accused, the rules of evidence, and the proscriptions against bills of attainder and ex post facto laws.

> " 'Go to', said the Quaker to poor old Trey, 'I will not kill thee, but I will give thee a bad name.' So he turned him out into the streets with a cry of 'mad dog' and somebody else did kill Trey." [23]

[23] This illustration was provided by Reverend Hangen at the public hearing held in Los Angeles on December 13, 1957, *op cit* (p 42)

V. CONCLUSIONS AND RECOMMENDATIONS

We have paid a heavy price for loyalty oaths. Among the costs have been the following:

(1) Administrative expense;
(2) Lessening of separation of church and state;
(3) Forcing the pious and the principled to choose between conscience and civil disability;
(4) Erosion of freedom of speech and assembly and of free exchange of ideas; and,
(5) Debasing man's rational faculty through confusing the word "loyalty" with the thing itself and through embracing the illogic of the group oath.

The return on this precious investment has unfortunately been negative Some of the effects of the loyalty oath program have been as follows:

(1) Inculcation of a false sense of security;
(2) Failure to inspire greater loyalty;
(3) Dilution of the impressiveness of the traditional oath of allegiance; and,
(4) Punishment of nonconformists.

And all of this has occurred without increasing national security, the primary purpose for which the legislation was enacted. We have bought a white elephant and placed it in a china closet; the loyalty oath program has been both useless and destructive. We cannot afford to keep it.

It is our recommendation that loyalty oaths not be required of groups or individuals claiming tax exemptions, nor of groups using public facilities for civic or recreational purposes, nor of members of county central committees.

We further recommend that the loyalty oath for public employees be repealed and the traditional oath to uphold the Constitution of the United States and the Constitution of the State of California be restored.

Respectfully submitted,

JOHN A. O'CONNELL, Chairman
PHILLIP BURTON
S. C. MASTERSON

PART TWO

I. INTRODUCTION

The views expressed in Part One of this report are based on one-sided evidence. Notice of hearing to groups favoring the loyalty oath was scanty, and only one member of any such group appeared; that member, Mr. B E. Gwartney, American Legion Chairman on Americanism for the County of Los Angeles, had little time for preparation, as he did not know of the hearing until the morning it was to take place. Mr. Gwartney agreed that the existence of the loyalty oath had a sobering effect on persons who might be considering joining questionable organizations.[1]

Moreover, one of the most impressive witnesses who attended the hearing, Dr. Joseph Kaplan, Professor of Physics at the University of California at Los Angeles and Chairman of the United States Committee for the International Geophysical Year, did not find the loyalty oath to be a serious problem. Dr Kaplan noted that he was not aware of any scientists who had refused, because of opposition to the loyalty oath, to take positions "at either of the two universities with which I am best acquainted * * *, the University of California at Los Angeles and the University of California at Berkeley."[2] Dr. Kaplan went on to state·

> "The history of the last few years at Berkeley * * * and at La Jolla * * * has indicated that if the loyalty oath situation has had any adverse effect, the adverse effect has been measured only by an increased number of Nobel Prizes and memberships in the National Academy."

It would seem that the specter of loyalty oath-imposed stultification, as raised in Part One, is, at best, exaggerated.

Similarly, while Part One of this report argues that there have been no perjury convictions based on the Levering Oath, it should be noted that Mr. Hugh Bryson, President of the National Union of Marine Cooks and Stewards, was recently convicted of perjury in the United States District Court for falsely swearing to the non-Communist oath of the Taft-Hartley Act.[3]

Perhaps even more important, many of the groups and individuals which the authors of Part One claim to be protecting do not wish to be so protected. The vast majority of veterans[4] and church members do not oppose the loyalty oath. To the contrary, they believe it serves a useful purpose.

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[1] See the transcript of the public hearing held in Los Angeles on December 13, 1957.

[2] *Loc. cit*

[3] Appeal denied (November, 1956) and petition for rehearing denied (April, 1957) by the Court of Appeals (Ninth Circuit) (238 F 2nd 657, 243 F 2nd 837) Petition for writ of certiorari denied (October, 1957) by the United States Supreme Court (2 L Ed 2nd 34).

[4] Part One of this report maintains that the loyalty of veterans should not be questioned under any circumstances, whether they were volunteers or draftees, and no matter what their actions may have been, now and then. While we are confident of the loyalty of the overwhelming majority of ex-servicemen, this does not preclude the possible presence of some disloyal elements among them

II. THE AGE OF THE NATION-STATE

But aside from these specific objections to Part One of this report, we take issue with the basic philosophy which underlies it There is no inherent conflict between loyalty to one's Country and loyalty to one's family, friends or church. In truth, it is loyalty to the Nation which cements all the other loyalties—and protects them. Without this higher loyalty, the others would all be lost in internecine strife.

If we were not brought together in love of country, we would find church struggling against church, family against family, and region against region. If there is any lesson to be learned from the historical incidents cited in Part One, it is that a government which could not command the respect of its citizens could not prevent them from warring one against the other. Had the Englishmen of the seventeenth century been primarily loyal to England, had the American Revolutionairies found in England of the eighteenth century a worthy object of loyalty, had the South of the nineteenth century placed its first loyalty in the *United* States, there would have been no civil wars, no Revolutionary War. The object of the loyalty oath is to help insure a degree of fealty to Country which will prevent such tragedies from reoccurring. The loyalty oath is not only a shield against a foreign enemy, it is the preventive cure of internal chaos.

Man's basic political loyalties change very slowly Past eras have seen identification with the Greek city-state, with the Roman Empire, and with the feudal lord. Today we find that the viable unit of political life is the nation-state. Each of these units in its time has been the matrix of human intercourse, social, economic and political. As such, each has had a duty to preserve its own existence; the death of the Nation is the death of *all* its valued institutions—family, church and business. The loyalty oath deserves credit for its role in preserving the state and in preserving these institutions Let us not, confusing liberty with unbridled license, permit it to be hastily undone.

III. CONCLUSION AND RECOMMENDATIONS

The recommendations of Part One of this report are based on a faulty understanding of the import of the *Unitarian* and *Speiser* cases.[5] These cases did not hold any part of the California Constitution to be unconstitutional. Nor did they find the imposition of a loyalty oath requirement to be unconstitutional as such. Rather, they declared that the oath, *as applied in these cases,* was invalid because it had the effect of placing the burden of proof as to loyalty on the taxpayer.

Section 19 of Article XX of the California Constitution still requires implementation by the California Legislature, as follows:

> "* * * No person or organization which advocates the overthrow of the Government of the United States by force or violence or other unlawful means * * * shall: * * * (b) receive any exemption from any tax imposed by the State or any political subdivision of this State.
>
> "The Legislature shall enact such laws as may be necessary to enforce the provisions of this section."

On the basis of this constitutional directive, it is our recommendation that Sections 32 and 23705 of the Revenue and Taxation Code not be repealed, but instead be amended to conform to the requirements laid down by the United States Supreme Court in the *Unitarian* and *Speiser* cases. This could be done in one of the following two ways:

(1) By substituting a positive oath for the present negative language, and then by making the violation of the sections a crime; or,

(2) By retaining the present oath, but with the additional provision that the burden of proof of disloyalty be clearly placed on the State or its subdivisions.

It is our further recommendation that the loyalty oath for public employees be retained.

Respectfully submitted,

GEORGE G. CRAWFORD
HOWARD J. THELIN

I concur in Sections I and III of Part Two of this report, but not in Section II of Part Two.

Respectfully submitted,

JOHN A. BUSTERUD

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[5] *First Unitarian Church of Los Angeles* v. *County of Los Angeles,* 2 L Ed 2nd 1484 (1958); *Speiser* v. *Randall,* 2 L Ed 2nd 1460 (1958).

APPENDICES

OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA
October 20, 1958

HONORABLE JOHN A. O'CONNELL
1095 Market Street
San Francisco 3, California

PROPERTY TAXATION—LOYALTY OATHS—#3979

Dear Mr. O'Connell:

You have directed our attention to Section 19 of Article XX of the California Constitution, and with respect to that section have asked the three questions considered and answered below.

QUESTION NO. 1

Is Section 19 of Article XX of the State Constitution self-executing?

OPINION NO. 1

The section is self-executing.

ANALYSIS NO. 1

Section 19 of Article XX provides in part:

> "Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:
>
> (b) "Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.
>
> "The Legislature shall enact such laws as may be necessary to enforce the provisions of this section."

This provision has been viewed by the California Supreme Court as in effect self-executing. In *First Unitarian Church of Los Angeles* v. *County of Los Angeles* (1957), 48 Cal. 2d 419 (reversed by the United States Supreme Court on ground that implementing legislation in R. & T. C., Sec. 32, violated due process [2 L. Ed. 2d 1484, rehearing denied 10-13-58]), the court pointed out that Section 19's provisions "are plain and unambiguous and require no interpretation in the matter of their prohibitions. * * * Its prohibitions are declared by its own terms and are mandatory and prohibitory" (page 428). The court also pointed out that it was the duty of the assessor to see that exemptions are not allowed in violation of the constitutional provision irrespective of implementing legislation (page 430 et seq.).

In *Speiser* v. *Randall* (1958), 2 L. Ed. 2d 1460, 1470, rehearing denied 10-13-58, the United States Supreme Court appears also to have taken the view that Section 19 is self-executing.

QUESTION NO. 2

If Section 19 of Article XX is self-executing, may constitutional procedures be adopted to implement it by (a) the Legislature only or (b) the taxing authorities through administrative regulations?

OPINION NO. 2

In our opinion either the Legislature or the taxing authorities may enact constitutional procedures to implement the provisions of Section 19 of Article XX.

ANALYSIS NO. 2

That the Legislature has authority to implement the provisions of Section 19 of Article XX is apparent from the last paragraph of that section, which provides:

> "The Legislature shall enact such laws as may be necessary to enforce the provisions of this section."

The Legislature would probably be considered to have such authority even in the absence of such a provision (see *Chesney* v. *Byram* (1940), 15 Cal. 2d 460, 463).

In the event of failure on the part of the Legislature to enact legislation on the subject, any concerned taxing agency would probably be considered as having authority to enact reasonable rules and regulations to enable it to perform its duty in regard to Section 19 of Article XX (see *California Drive-In Restaurant Association* v. *Clark* (1943), 22 Cal. 2d 287, 302-303). As previously noted, that duty is to see that exemptions are not allowed in violation of the section.

QUESTION NO. 3

Would the requirement of due process be met by a loyalty oath which, once signed, would establish a conclusive presumption of compliance with Section 19 of Article XX?

OPINION NO. 3

In view of the holding in *Speiser* v. *Randall*, above, it is our opinion that such an oath would not be held to satisfy the requirements of due process under the Federal Constitution.

ANALYSIS NO. 3

Section 19 of Article XX of the California Constitution prohibits any "person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities" from receiving any tax exemption imposed by the State of California or any of its political subdivisions or public agencies.

Section 32 of the Revenue and Taxation Code, enacted by the Legislature in implementation of Section 19 of Article XX, requires a

claimant, as a prerequisite to qualification for any property tax exemption, other than the householder's exemption, to declare that he does not engage in the activities described in the constitutional provision.

Section 32 was recently held unconstitutional by the United States Supreme Court in its application to the veterans' and church exemptions from property taxation (*Speiser* v. *Randall* and *First Unitarian Church of Los Angeles* v. *County of Los Angeles*, above).

In the *Speiser* case the taxpayer, Speiser, refused to subscribe a loyalty oath, which had been prescribed pursuant to Section 32, in support of his claim for the veterans' exemption, and struck it from the form which he executed and filed with the assessor. The assessor denied the exemption solely for the refusal to execute the oath. The Supreme Court of California sustained the assessor's action against the taxpayer's claim that requiring the oath as a condition of obtaining the tax exemption was in violation of the Federal Constitution, and reversed the judgment of the trial court which had ruled in favor of Speiser (48 Cal. 2d 903). Speiser appealed to the United States Supreme Court upon the ground that the statutory and constitutional provisions mentioned denied him freedom of speech without the procedural safeguards required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. With this the United States Supreme Court (hereinafter referred to as "court") agreed insofar as the argument applied to Section 32 and, accordingly, reversed the decision of the California Supreme Court.

The court pointed out that under the California procedure the appellant had the affirmative burden of proof, in court as well as before the assessor, to show that he was qualified for the tax exemption in question; that is, that he was not a person who advocated the overthrow of the government of the United States, or of the State, by force or violence or other unlawful means, or who advocated the support of a foreign government against the United States in the event of hostilities.

The court further pointed out that when the State undertakes to restrain unlawful advocacy, it must provide precedures which are adequate to safeguard against infringement of constitutionally protected rights, and that only considerations of the greatest urgency can justify restrictions on speech. It stated that the separation of legitimate from illegitimate speech calls for more sensitive tools than California had supplied, and that it is plain that where the burden of proof lies may be decisive of the outcome.

The court held that when the constitutional right to speech is sought to be deterred by a state's general taxing program, due process demands that the speech be unencumbered until the state comes forward with sufficient proof justifying its inhibition, and that the state bear the burden of proof in that regard.

In addition, the court stated that, though the validity of Section 19 of Article XX of the California Constitution be conceded for the purposes of argument, "its enforcement through procedures which place the burdens of proof and persuasion on the taxpayer is a violation of due process" (2 L. Ed. 2d, at p. 1474).

In rendering its decision, the court distinguished cases previously decided relating to loyalty oaths required for public employees. It

pointed out that each of those cases concerned a limited class of persons in, or aspiring to, public positions by virtue of which they could, if evilly motivated, create serious danger to the public safety. The principal aim of those statutes was not to penalize political speeches but to deny positions to persons supposed to be dangerous whose positions might be misused to the detriment of the public. The court stated that the tax exemption loyalty declaration legislation could have no such justification, in that it purported to deal directly with speech and the expression of political ideas.

Moreover, the court pointed out that the oaths required in the public employee cases performed a different function from the declaration in issue in the *Speiser* case In the earlier cases it appeared that the loyalty oath, once signed, became conclusive of the facts attested so far as the right to office was concerned. If the person took the oath he retained his position. The court pointed out that the oath was not part of a device to shift to the office holder the burden of proving his right to retain his position. The signer could be prosecuted for perjury, but only in accordance with the strict procedural safeguards surrounding such criminal prosecutions, whereas in the *Speiser* case, the declaration might be accepted or rejected on the basis of incompetent information or no information at all.

Based on these distinctions, the court held that the principles of the employee loyalty oath cases had no application to the matter under consideration.

In view of the general reasoning employed by the court in the *Speiser* case in reaching its conclusion, we do not think that the court would hold otherwise as to a loyalty oath which, once signed, establishes a conclusive presumption of compliance with Section 19 of Article XX. Although the court held that the present California law does not involve a declaration which is conclusive, the court's reasoning would appear to cover such a situation, for such an oath would also impose an affirmative burden on the taxpayer in the matter of establishing his loyalty. While it might, in a sense, be easier to bear than that provided by Section 32, nevertheless, as in the case of the latter, it would still be a burden and, as such, consistently with the general reasoning in the *Speiser* case, constitute a penalty on, or infringement of, an exemption claimant's exercise of the right of free speech.

For example, the court said "appellants could not be required to execute the declaration *as a condition for obtaining a tax exemption* or as a condition for the assessor proceeding further in determining whether they were entitled to such an exemption" (emphasis added). (2 L.Ed. 2d, at p. 1474) Furthermore, as pointed out in the dissent (at p. 1481), if the statute could have been sustained by construing the declaration to be conclusive, it was the court's duty to so construe it, yet it did not do so. Considering the entire situation, therefore, we conclude that the Supreme Court of the United States would not sustain a procedure which requires the claimant for tax exemption to establish his nonadvocacy of subversive doctrines by filing a loyalty oath, even if the oath is given conclusive effect. We recognize that this is a point

not passed upon in the *Speiser* case, but we think the reasoning in that case clearly foreshadows such a result.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel

By RYAN M. POLSTRA
Deputy Legislative Counsel

PROPOSED LEGISLATION

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

Assembly Constitutional Amendment No. 8

Introduced by Messrs. O'Connell, Burton, Elliott, George E. Brown, Crown, Hawkins, McMillan, Petris, Rees, and Waldie

January 13, 1959

REFERRED TO COMMITTEE ON CONSTITUTIONAL AMENDMENTS

Assembly Constitutional Amendment No. 8—A resolution to propose to the people of the State of California an amendment to the Constitution of the State by amending Section 3 of Article XX, relating to oaths of office.

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1959 Regular Session commencing on the fifth day of January, 1959, two-thirds of all the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended by amending Section 3 of Article XX, to read as follows:

SEC. 3. Members of the Legislature, and all ~~public~~ officers ~~and employees~~, executive, ~~legislative,~~ and judicial, except such inferior officers ~~and employees~~ as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I, _____, do solemnly swear (or affirm, *as the case may be.*) that I will support ~~and defend~~ the Constitution of the United States and the Constitution of the State of California ~~against all enemies, foreign and domestic~~; *and* that I will ~~bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California;~~

LEGISLATIVE COUNSEL'S DIGEST

A. C. A. 8 as introduced, O'Connell (C. A.). Oaths of office.

Amends Sec. 3, Art. XX, Cal. Const.

Revises oath of office required of Members of the Legislature, executive, and judicial officers before entering upon the duties of their respective offices.

Requires all executive and judicial officers except inferior officers exempted by law, rather than all public officers and employees, including those employed by the State, the University of California, every county, city, city and county, district, and authority, except inferior officers and employees exempted by law, to subscribe to the prescribed oath.

~~that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and~~ faithfully discharge the duties *of the office of _____, according to the best of my ability.* ~~upon which I am about to enter.~~

~~"And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows:~~

~~_____~~

~~(If no affiliations, write in the words "No Exceptions")~~

~~and that during such time as I hold the office of _____~~

~~(name of office)~~

~~I will not advocate nor become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means."~~

And no other oath, declaration, or test, shall be required as a qualification for any ~~public~~ office or ~~employment~~ *public trust*.

~~"Public officer and employee" includes every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing.~~

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 214

Introduced by Messrs. O'Connell, Burton, George E. Brown, Elliott, Hawkins, Masterson, McMillan, Petris, and Rees

January 13, 1959

REFERRED TO COMMITTEE ON EDUCATION

An act to repeal Sections 19441 and 19442 of the Education Code, and to repeal Sections 16565 and 16566 of the Education Code as proposed by Senate Bill No. 2, relating to applications for the use of school property.

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

1 SECTION 1. Section 19441 and 19442 of the Education Code
2 are repealed.
3 SEC. 2. Sections 16565 and 16566 of the Education Code
4 as proposed by Senate Bill No 2 are repealed.
5 SEC. 3 Section 2 of this act shall become operative only
6 if the Education Code as proposed by Senate Bill No. 2 is
7 enacted by the Legislature and in such case at the same time
8 as Senate Bill No. 2 takes effect.

LEGISLATIVE COUNSEL'S DIGEST

A. B. 214 as introduced, O'Connell (Ed). Use of school property.

Repeals Secs. 19441 and 19442, Ed. C.

Deletes provision requiring applicant for use of school property to state under oath that organization in whose behalf he is making application for such use does not advocate overthrow of Government of United States or of State by force, violence or other unlawful means, and that such organization is not communist-action or communist-front organization required to register with Attorney General of the United States.

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 215

Introduced by Messrs. O'Connell, Burton, Elliott, Meyers, George E. Brown, Busterud, Crown, Hawkins, Masterson, McMillan, Petris, Rees, and Waldie

January 13, 1959

REFERRED TO COMMITTEE ON REVENUE AND TAXATION

An act to repeal Sections 32 and 23705 of the Revenue and Taxation Code, relating to claims for tax exemption.

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

1 SECTION 1. Sections 32 and 23705 of the Revenue and Tax-
2 ation Code are repealed.

LEGISLATIVE COUNSEL'S DIGEST

A. B. 215 as introduced, O'Connell (Rev. & Tax.). Tax exemptions.

Repeals Secs. 32 and 23705, R. & T. C

Deletes provisions requiring claimants to tax exemption to declare that person or organization making such claim does not advocate overthrow of Government of United States or State by force or violence or other unlawful means or support of foreign government against United States in the event of hostilities

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 1766

Introduced by Messrs. O'Connell, Burton, George E. Brown, Elliott, Hawkins, McMillan, Petris, Rees, and Waldie

March 2, 1959

REFERRED TO COMMITTEE ON GOVERNMENTAL EFFICIENCY AND ECONOMY

An act to amend Sections 1360, 1368, 1369, 3103, and 18150 and to repeal Sections 1192, 3108, and 3109 of the Government Code, and to repeal Section 2842.5 of the Elections Code, relating to oaths of office.

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

1 SECTION 1. Sections 1192, 3108, and 3109 of the Govern-
2 ment Code are repealed.
3 SEC. 2. Section 1360 of said code is amended to read:
4 1360. *(a)* Unless otherwise provided, before any *elective*
5 *officer, or any appointive* officer *whose term of service is fixed*
6 *by the Constitution*, enters on the duties of his office, he shall
7 take and subscribe the oath or affirmation set forth in Section
8 3 of Article XX of the Constitution of California. *No other*
9 *public officer or employee, as defined by this provision of the*
10 *Constitution, shall be required to take or subscribe the oath.*
11 *(b) Any public officer not within the scope of subdivision*
12 *(a) shall, before he enters on the duties of his office, take and*
13 *subscribe the following oath or affirmation:*
14 *"I do solemnly swear (or affirm) that I will support the*
15 *Constitution of the United States and the Constitution of*

LEGISLATIVE COUNSEL'S DIGEST

A. B. 1766 as introduced, O'Connell (G. E. & E.). Oaths of office and employment.

Amends, repeals various sections, Gov. C., Elec. C.

Implements the constitutional provision that the Legislature may exempt "inferior officers and employees" from the oath requirement of Art. XX, Sec. 3, Const., by providing that, instead of said oath, public officers and employees other than elective officers and appointive officers whose term of service is fixed by the Constitution, shall instead take the oath required of public officers by Art. XX, Sec. 3, Const., prior to amendment in 1952. Makes inapplicable to officers and employees exempted from constitutional provision, certain penal provisions relating to violation of the terms of the constitutional oath.

Eliminates requirement that members of county central committees take the oath required of public officers by Article XX, Section 3, of the Constitution.

the State of California, and that I will faithfully discharge the duties of _____, according to the best of my ability."

No other oath, declaration, or test shall be required as a qualification for such office.

SEC. 3. Section 1368 of said code is amended to read:

1368. Every person who, while taking and subscribing to the oath or affirmation required by ~~this chapter~~ *subdivision (a) of Section 1360*, states as true any material matter which he knows to be false, is guilty of perjury, and is punishable by imprisonment in the state prison not less than one nor more than 14 years.

SEC 4. Section 1369 of said code is amended to read:

1369. Every person having taken and subscribed to the oath or affirmation required by ~~this chapter~~ *subdivision (a) of Section 1360*, who while holding office, advocates or becomes a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States by force or violence or other unlawful means, is guilty of a felony, and is punishable by imprisonment in the state prison not less than one or more than 14 years.

SEC. 5. Section 3103 of the Government Code is amended to read:

3103. The oath or affirmation required by this chapter is the oath or affirmation set forth in ~~Section 3 of Article XX of the Constitution of California~~ *Section 18150*.

SEC. 6. Section 18150 of the Government Code is amended to read:

18150. The oath *or affirmation* required by this chapter is the ~~oath set forth in Section 3 of Article XX of the Constitution of Callifornia.~~ *following:*

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of _____, according to the best of my ability."

SEC. 7. Section 2842.5 of the Elections Code is repealed.

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Report of the

SUBCOMMITTEE ON POLICE ADMINISTRATION

of the

ASSEMBLY INTERIM COMMITTEE ON JUDICIARY
House Resolution No. 224, 1957

MINIMUM STANDARDS FOR LAW ENFORCEMENT PERSONNEL

SUBCOMMITTEE MEMBERS

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March, 1959

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OF THE STATE OF CALIFORNIA

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TABLE OF CONTENTS

	Page
Letters of Transmittal	
Committee	5
Subcommittee	6
I. Introduction	7
II. Findings	8
III. Recommendations	19
Proposed Legislation	20
Appendix	24

LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON JUDICIARY
SACRAMENTO, May 1, 1959

HON. RALPH M. BROWN
Speaker of the Assembly
and Members of the Assembly
Assembly Chamber, Sacramento

GENTLEMEN: Enclosed is the report of Subcommittee on Police Administration of the Assembly Interim Committee on Judiciary relating to the selection and training of law enforcement personnel in California cities and counties. During the interim the subcommittee investigated the manner in which cities and counties select and train their law enforcement personnel and studied proposals that were offered to raise the minimum standards that these agencies require of their officers. The subcommittee held one hearing on October 14 and 15, 1957. The results of this study are set out in the report.

Respectfully submitted,

BRUCE F. ALLEN, Chairman

SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, April 14, 1959

HON. BRUCE F. ALLEN, *Chairman*
Assembly Interim Committee on Judiciary
State Capitol, Sacramento

DEAR MR. ALLEN: Pursuant to your directive and in conformance with the provisions of House Resolution No. 224 of the 1957 General Session, the Subcommittee on Police Administration herewith submits its report on Minimum Standards for Law Enforcement Personnel.

The subcommittee studied the area of the selection and training of law enforcement personnel in cities and counties in the State of California and sets forth its findings and recommendations relating thereto in this report.

Respectfully submitted,

GEORGE G. CRAWFORD, Chairman
Subcommittee on Police Administration

CLARK L. BRADLEY
PHILLIP BURTON
ROBERT W. CROWN
LOUIS FRANCIS
S. C. MASTERSON
JOHN A. O'CONNELL
HOWARD J. THELIN

I. INTRODUCTION

The protection of life and property against criminal attack and the preservation of the peace have always been the primary purposes of police departments. A police department is no better than the aggregate of its individual members. Incompetent, untrained and undisciplined policemen invariably provide unsatisfactory service, jeopardize life and property, and create an unfavorable public image for law enforcement officers throughout the State.

Some California law enforcement agencies have been criticized as not protecting persons or property, of disregarding the civil rights of individuals, of allowing crime and accident rates to rise to new heights, and of tolerating commercial vice and corruption in public offices, including the police department itself.

Competent personnel is one of the most pressing needs of every police department. In our complex society, it is increasingly important that policemen be of superior mental and physical ability and that more vigorous efforts be taken to attract such persons to law enforcement work. Modern police work requires men of intelligence with an aptitude for their responsibilities, men who can work together in a disciplined organization, men of physical stamina, and, above all, men of high character.

In an effort to improve the competence of law enforcement personnel in the State, Assembly Bill No. 2440 (set out in full in Appendix) was introduced during the 1957 Regular Session. In amended form, the bill provided that each law enforcement candidate meet certain minimum standards of citizenship, age, educational background, health and moral character, be fingerprinted and photographed, and be given a certain specified period of training in basic courses of police science.

Assembly Bill No 2440 was referred to the Assembly Interim Committee on Judiciary for interim study. On August 2, 1957, Chairman Bruce F. Allen appointed Assemblyman George G. Crawford as Chairman of the Subcommittee on Police Administration with power to study the standards for police and sheriffs' departments as well as other matters in the field of law enforcement and criminal justice.

A formal hearing of the subcommittee was held in Sacramento on October 14 and 15, 1957, for the purpose of receiving evidence regarding the necessity for enactment of minimum standards in the selection of competent personnel by law enforcement agencies in the State.

II. FINDINGS

The Subcommittee on Police Administration of the Assembly Interim Committee on Judiciary, at its October 14 and 15, 1957, hearing received evidence from witnesses regarding the raising of minimum standards in the selection and training of law enforcement officers by the many law enforcement agencies throughout the State. Some attention was given to Assembly Bill 2440 (see Appendix). Every attempt was made to secure persons as witnesses at these hearings who, because of their professional interest or official position, were qualified to make contributions of value. Accordingly, among those who appeared as witnesses were representatives of law enforcement agencies, a superior court judge, attorneys, members of groups interested in developing stronger local organizations, educators, writers, public servants, and others with informed opinions on the subject. A resume of some of the views expressed at the hearing, together with excerpts from letters from proposed witnesses who were unable to attend, appear in the following pages.

George H. Brereton, Chief of the Bureau of Criminal Identification and Investigation, State Department of Justice

Mr. Brereton testified that he believed the Legislature should enact compulsory minimum standards for law enforcement organization and operation. He stated that he did not feel that voluntary action by local law enforcement agencies was adequate to raise the level of California law enforcement because it is inefficient and takes too long. He said that he feels that law enforcement is a statewide problem largely because police officers spend the bulk of their time enforcing state laws. He stated that he and the Attorney General believe that peace officers, whether in small or large communities, must be intelligent, educated, adequately trained and prepared to meet any problem that might arise.

Mr. Brereton referred to the *Survey of California Police and Sheriffs' Departments* conducted by the bureau under the direction of Attorney General Edmund G. Brown in 1957. The information contained therein was compiled from answers to a questionnaire distributed to 326 chiefs of police and 58 sheriffs in the State and showed a wide variety of methods used in selecting and training law enforcement personnel. Among other things the *Survey* reported:

1. **Preservice Training.** Of the 280 chiefs of police and 51 sheriffs reporting, 241 chiefs and 46 sheriffs stated that no recruits had received any preservice training—*i.e.*, training received prior to acceptance for law enforcement work.

2. **Inservice Training.** Sixty-seven chiefs of police and 16 sheriffs reported having no inservice training program—*i.e.*, training given to peace officer candidates who have been accepted for employment. 74 chiefs of police and 18 sheriffs reported at least some of their men had attended the five-week basic training school conducted by the State

Department of Education, 25 chiefs and 2 sheriffs reported that some of their men had attended the two-week technical institute conducted by the State Department of Education in cosponsorship with the California State Peace Officers' Association, and 15 chiefs reported that their men had attended police courses provided by local public schools as part of their adult education program. 50 chiefs and six sheriffs indicated maintenance of a departmental training program for recruits only while 62 chiefs and 13 sheriffs reported maintaining refresher courses for personnel already in service.

3 **Minimum Education Required of Recruits.** Out of the chiefs of police reporting 5 listed that they have no minimum education requirements, 28 require graduation from grammar school, 254 require graduation from high school, and 17 did not answer the question. Two sheriffs reported that they require grammar school graduation, 49 require high school graduation and 7 did not answer the question.

4. **Applicant Investigation.** Two hundred twenty-six chiefs of police fingerprint and investigate the background of their applicants, 31 chiefs investigate but do not fingerprint, 2 chiefs stated that their applicants were fingerprinted but did not answer the part of the question relating to other types of investigation, 6 chiefs reported that their applicants were investigated but did not answer that part of the question concerning fingerprinting, and 1 chief reported that no investigation was made at all. Out of the sheriffs reporting, 40 stated that they both fingerprint and investigate their applicants, 5 stated that they fingerprint but did not investigate, 7 stated that they investigate but do not fingerprint, and 2 stated that their applicants were investigated but did not answer the part of the question concerning fingerprinting.

5. **Entrance Examinations.** Out of 286 chiefs responding, 36 reported that they use neither a written nor oral examination to select their personnel, 4 reported a written exam only, 84 reported an oral exam only, 162 reported using both a written and oral exam, and 18 did not answer the question. Out of 57 sheriffs answering the questionnaire, 12 reported that they use neither written nor oral examinations, 19 reported using a written exam alone, 23 stated that they used both and 3 did not answer the question.

Mr. Brereton further pointed out that the *Survey* shows a wide variety of practices regarding minimum age, medical, psychological and psychiatric examinations, agility tests, residence requirements, presence of civil service, retirement, disability and vacation benefits, and salary.

Mr. Brereton stated that the great majority of both the chiefs of police and sheriffs who answered the questionnaire expressed themselves as being in favor of having laws passed by the State Legislature establishing minimum standards of performance, education, training, physical ability, civil service or some merit system, provisions for retirement and pensions, and a minimum salary. He said that he did not feel that higher standards would drive people away from law enforcement if residential restrictions were eliminated, salary raised and civil service or some type of merit system established. Mr. Brereton did not feel that the standards set forth in Assembly Bill 2440 (see Appendix) were adequate but thought that they were at least a beginning. He did not

believe that the establishment of minimum standards would reduce incentive for law enforcement agencies to set higher standards but added that if that occurred the Legislature could again raise the minimum.

Thomas P. Hunter, Assistant Supervisor, Special Services Section, Bureau of Criminal Identification and Investigation, State Department of Justice

Mr. Hunter stated that the bureau runs a check on the fingerprints of law enforcement applicants that local police agencies submit to it. The purpose of this check is to determine whether the applicant has ever been convicted of a felony (Government Code, Section 1028, prohibits anyone who has been convicted of a felony from becoming a peace officer). Mr. Hunter reported that from 470 sets of fingerprints received by his office between September 24, 1957, and October 11, 1957, 105 applicants had prior records of some type of arrest. He noted that this check covered a relatively short period of time but felt that it was indicative of the need for fingerprinting applicants for peace officer positions.

Mr. Hunter referred to the *Survey of California Police and Sheriffs' Departments* which states that 31 chiefs of police and 7 sheriffs do not require fingerprinting of applicants for police work at all. He stated that while Section 1028 of the Government Code bars any person convicted of a felony from becoming a police officer, it does not require the employing agency to make any investigation of the candidate's past to determine whether he has, in fact, ever been so convicted. He further said that he knows of cases where felons have been hired as peace officers and even as chiefs of police.

Ronald H. Beattie, Chief of the Bureau of Criminal Statistics, State Department of Justice, Sacramento

Mr. Beattie testified that his office collects data on crime and criminals from all the police and law enforcement agencies of the State and summarizes findings regarding major offenses, felony arrests, and prosecutions in its annual report *Crime in California.* While the accuracy and scope of the material covered has improved from year to year, he does not feel that the information gathered by the bureau has yet reached the stage where it can be used to measure the efficiency of state law enforcement agencies. He stated that a high level of crimes reported could mean either that there is poor law enforcement or excellent law enforcement.

Mr. Beattie stated that the reported statistics show an increase in crime in California in recent years, especially in the urban areas of Los Angeles and San Francisco The procedure for reporting crime within the State is similar to that employed by the FBI and is known to all state law enforcement agencies. However, the bureau has encountered the practical difficulty of getting each of the 400 individual state agencies to follow the procedure uniformly.

John P. Peper, State Supervisor of Peace Officers' Training, Bureau of Industrial Education, Sacramento

Mr. Peper testified that the Bureau of Industrial Education was established in 1935 to set up schools at convenient centers in the State for training peace officers in their powers and duties and in the use of

approved equipment and police methods. He stated that the larger police departments attend their specialty programs and look to the bureau to train their officers as instructors and competent leaders. The bureau has also established its own schools for smaller departments. It further operates two-week technical institutes for peace officer training twice each year, the Peace Officers Administrative Institute, which runs twice each year for three days each, teacher training programs of 60 hours in length to prepare men who have had five or more years of police experience to teach other officers, and conference leadership training for peace officer supervisors.

In addition to the bureau's program, Mr. Peper stated that training is made available to all law enforcement agencies in the State by the California Highway Patrol, the FBI, and the International Association of City Managers. There are also 24 police training programs operating in state junior colleges, ranging from two-week courses to courses leading to an associate in arts degree, police training programs in five state colleges leading to technical or AB degrees, and courses offered in several universities leading to both undergraduate and advanced degrees.

Mr. Peper stated that he believes that about 90 percent of the police departments and the sheriffs' departments were participating in their program and that all of the police personnel in the State could be trained by the program if the local agencies were able to afford it. In Mr. Peper's opinion, every police officer had had some training but less than the 218 hours that he feels is an absolute minimum. He felt that his present staff would be adequate to supervise preservice training for the entire State because such training is handled by other agencies and his staff would only have to assist these agencies when necessary. However, he did not feel that his present staff could conduct a program of inservice training.

Mr. Peper testified that he felt that Assembly Bill No 2440 was good in some respects but did not provide for enough training. He stated that he favors state enacted minimum standards with a minimum of 218 hours of training.

Roy A. Gustafson, District Attorney, Ventura County, Ventura

Mr. Gustafson did not appear personally before the subcommittee but sent a prepared statement which was read into the record.

Mr. Gustafson wrote that extremely few law enforcement officers possess the necessary intelligence, education and training to handle the difficult phases of law enforcement and to administer an office of any size. He says that on the administrative side it is quite common to find that the head of a law enforcement agency has a very hazy concept of proper departmental organization and procedures. He feels that there is little doubt that higher pay and minimum standards would aid in improving this situation.

On the other hand, Mr. Gustafson does not feel that higher pay and minimum standards are appropriate for functions of the police department that can be performed by individuals of lower capabilities and that require little training—e.g., ticketing overparked automobiles. He believes that there are hundreds of facets of law enforcement work that fall into this category.

Mr. Gustafson stated that candidates of higher capability and with more training should not be required to enter the law enforcement field at the ground level, as is now the case, but at a level commensurate with their ability and training. He criticized the idea that every person should perform routine tasks before he is considered capable of performing more complicated duties.

Mr. Gustafson noted that the adoption of minimum standards for only certain law enforcement personnel would present many problems and would require a great deal of study.

Bradford M. Crittenden, District Attorney, San Joaquin County, Stockton

Mr. Crittenden favors compulsory state minimum standards for law enforcement personnel and thinks they should be tougher than those set out in Assembly Bill No. 2440 (see Appendix). He testified that the State has a legitimate legal interest in the law enforcement programs of local agencies who spend the bulk of their time enforcing state laws. He noted that the State regulates teachers, veterinarians, barbers and beauticians but doesn't supervise law enforcement even though a police officer can deprive an individual of his liberty. Mr. Crittenden suggested that peace officer applicants be required to have either a higher than high school education or a minimum of four to six weeks preservice training and that each applicant be given a psychiatric examination.

Erle Stanley Gardner, author and attorney, Temecula

Mr. Gardner was unable to appear before the subcommittee but sent a prepared statement which was read into the record.

It is Mr. Gardner's belief that inadequate investigative work on the part of the authorities has caused many miscarriages of justice. In his opinion it is absolutely imperative that steps be taken to upgrade and investigate personnel. He stated, "Ignorance on the part of peace officers makes for an arrogant attitude of sneering superiority in dealing with the general public and sadistic brutality in dealing with persons accused of crime. This arrogance and this brutality cause widespread resentment, undermine respect for the law and are sometimes a factor in turning criminals into bitter, antisocial, cop-hating killers. * * * Knowledge on the part of peace officers makes for efficiency. Investigative skill is substituted for brutality and in the long run wins respect from the public and even from the lawbreakers themselves."

Mr. Gardner noted that a peace officer candidate must have intelligence and training—intelligence to absorb training and training to function properly as an officer. He states, "The answer lies very largely in training and experience—a training given to the right man over a period of time."

Mr. Gardner wrote that inadequate compensation is one of the most common causes of police inefficiency—that it results in a rapid and high percentage turnover in law enforcement personnel. He further stated that efficiency improves whenever police officers can advance on merit, whenever politics is kept out of the police system and whenever the police force is given the proper type of citizens support. He stressed that the public should be made aware of the problems facing law en-

forcement agencies and be encouraged to promote the elevation of police standards.

Lt. John Lindquist, Patrol Division, Berkeley Police Department, Berkeley

Lt. Lindquist testified that the City of Berkeley believes that minimum standards are necessary and that local law enforcement agencies should be encouraged to adopt them. However, it feels that this should be done voluntarily and that compulsory minimum standards such as those set out in Assembly Bill No 2440 (see Appendix) constitute a violation of home rule. The policy of the City of Berkeley was set out in Resolution No. 36294 N. S., adopted unanimously by the Berkeley City Council.

Lt. Lindquist stated that it is his opinion that the quantity and quality of police service varies greatly from city to city, and that there is a great variance in selection and training methods. He said that the type of training offered and selection processes employed in various communities actually makes a great difference in the ability of the various police officers or law enforcement agencies to capture criminals, and he believes that the adoption of minimum standards for the selection and training of peace officers is of vital importance to the people in the State.

Assemblyman S. C. Masterson stated that he feels that the Berkeley policy regarding home rule might be in error in view of the fact that they primarily enforce state laws, that the State, in most cases, allows it and other local areas to keep fines which are imposed for violation of state laws, that the fines received by all such agencies run into millions of dollars each year, and that the State has an interest in seeing that its laws are enforced uniformly throughout the State.

Richard Carpenter, Executive Director and General Counsel, League of California Cities, Berkeley

Mr. Carpenter testified that the League of California Cities will support any soundly conceived and effective voluntary program to raise minimum standards for all municipal employees. However, it will oppose any mandatory legislation substantially similar to Assembly Bill 2440 (see Appendix) because such legislation conflicts with the basic policy of the league to broaden the authority of locally elected public officials and to provide a high standard of municipal service without interference from another level of government He stated that mandatory minimum standards would ultimately result in a state police force, a result that would clearly violate home rule.

Mr. Carpenter stated that the league believes that elected city officials should determine, among other matters of local internal concern, personnel policies which include salaries, age and physical standards, educational standards, merit systems, pensions and retirement, and training and performance standards for all municipal employees. He objected to the Legislature singling out one municipal function and giving it preferred treatment on a mandatory basis because this will make it impossible for municipal officials to provide a balanced municipal service program based on the ability and willingness of the city to finance its services.

Mr. Carpenter cited examples of cases in the past when the league had supported voluntary programs and enabling legislation that sought to benefit municipal employees, including police personnel, and emphasized that it would continue to support such enabling legislation in the future

Capt. Edward M. Davis, President, Los Angeles Fire and Police Protective League, Los Angeles

Capt. Davis stated that a peace officer is commissioned under the provisions of Penal Code, Section 817, that his powers are statewide in scope, that he enforces state laws for the most part, and that the State has the right to establish minimum standards for peace officers. However, he feels that they should be established on a voluntary basis in order to overcome the objections of those who feel that state legislation is a violation of home rule.

Capt. Davis referred to a resolution that was unanimously adopted by the Peace Officers Research Association of California in 1957 which endorsed the establishment of voluntary minimum standards for new peace officers and set them out as follows: (1) citizen of the United States; (2) minimum age of 21 years; (3) fingerprinting of applicants with search of local, state, and national fingerprint files to disclose criminal record: (4) not convicted of any crime involving moral turpitude as defined by the Attorney General; (5) good moral character as determined by background investigation; (6) graduation from high school or passing a general education development test indicating high school graduation level, and (7) examination by competent medical doctor skilled in psychiatric evaluation.

The resolution further calls for a maximum of 480 hours training to be given to each applicant during his first year of employment, the standards of which would be prescribed by the Attorney General. For each city, county, or political subdivision which adopts and conforms to the standards set out in the resolution, the State will pay one-half of each candidate's salary costs during the time of training.

Capt. Davis stated that minimum standards have a very practical advantage. For example, he cited a recent Los Angeles raid where 180 suspects were secretly indicted by the Los Angeles County Grand Jury. The operation involved the state and federal governments, the Los Angeles Police Department, the sheriff's department, and the law enforcement agencies of several surrounding cities. He stated that most offenders have no respect for the artificial boundaries that separate cities and to deal with them effectively the law enforcement officers in each area must meet certain minimum standards of competence.

Peter J. Pitchess, Undersheriff, Los Angeles County

Mr. Pitchess testified that the time was past when all a police officer needed was a strong back and a weak mind and that the complexities of modern society demanded that a police officer be thoroughly skilled in all the techniques of modern police science, have a working knowledge of the bewildering mass of laws he has sworn to enforce, and be courteous, patient, and kind under all conditions and provocations.

Mr. Pitchess stated that in this era of rapid transportation, law enforcement cannot realistically be viewed only as a matter of local

concern, especially in light of the numerous instances in which a crime is committed in one local jurisdiction and the criminal is apprehended in another. He feels that law enforcement officers are rapidly losing their fight against crime in the United States and believes that the State may assist this situation by enacting compulsory minimum police standards that require: (1) United States citizenship; (2) minimum age of 21 and maximum age of 35; (3) fingerprinting and criminal records check; (4) intelligence; (5) graduation from accredited high school; (6) good moral character; and (7) mandatory basic training of 320 hours in police subjects such as the laws of arrest, civil rights, search and seizure, evidence, police ethics, report writing, use of force and firearms, preliminary investigation, first aid, and public relations.

Mr. Pitchess feels that the standards set out in Assembly Bill No. 2440 (see Appendix) are too low but accepts them as a start in the right direction of improving the level of law enforcement throughout the State. He stated that a voluntary minimum standard program would proceed too slowly to cope with the State's rising crime rate. On the other hand, he said that he does not favor the establishment of a state police force However, he felt that the people of a small city or county are entitled to the same type of police service as the people of a large city and that personnel in small cities should receive training equal to that of personnel in large cities.

William R. MacDougall, General Counsel and Manager, County Supervisors Association of California

Mr. MacDougall stated that county governments are in favor of higher personnel standards in all fields. He noted that the home rule doctrine was not as well established as it applies to counties as it is to cities and that practically everything a county does is vested with a State interest. However, he emphasized that home rule was an important principle and should be encouraged whenever possible. He suggested that the State, rather than enact legislation that would set up minimum standards, enact legislation requiring each local agency to set out its own minimum standards by ordinance or other appropriate means. Then, he said. the local public could see what the standards are and, if unsatisfied, bring pressure upon their local agencies to raise the standards At present, there is no requirement that the standards be formulated in writing and, in many cases, the local public is not informed of what they are.

Mr. MacDougall was asked how he reconciled home rule and the degree of state control exercised over education. He stated that there is a similar conflict facing the State in education and law enforcement. In each the State has an interest and must determine the extent to which they are going to set state standards and the degree to which they are going to give the local agency autonomy. He noted one large difference—in education the State provides the bulk of the financial responsibility while in law enforcement the local subdivision supplies the necessary money. He stated that more control is justified where the State actually provides financial aid than where it does not.

Mr. MacDougall stated that a state financed training program on a voluntary basis, plus the requirement that local governments set their

own minimum standards as to entrance into the service, would be a combination that might be acceptable to his organization

Robert O. Fort, Peace Officers Association of California, California State Sheriffs' Association, Sacramento

Mr. Fort testified that the Peace Officers Association of California and the California State Sheriffs' Association both believe that there is need for a more adequate personnel training program in both the smaller and larger communities. He stated that he believed state legislation instituting realistic police standards would be proper on either a voluntary or mandatory basis with the local agency either financing the program itself or receiving partial support from the State. He feels that the State should be more active in law enforcement than it has been.

According to Mr. Fort, one of the big stumbling blocks to voluntary action without state participation—*i e*, through law enforcement associations such as those he represents working to improve standards—is the lack of funds made available by local agencies. He also feels that there is a segment of "old school" officers that are not too anxious to raise police standards even if they had the necessary funds.

Mr. Fort further stated that he did not feel that the minimum standards would become maximum standards—*i. e.*, that agencies with higher than minimum standards would lower their standards to the minimum —although he recognized that it could possibly occur. If it did, he stated that the Legislature could raise them at some future time if necessary.

Judge Raymond E. Peters, Presiding Justice, District Court of Appeal, San Francisco

According to Judge Peters, sheriffs in California have three functions: (1) serving process; (2) acting as peace officers; and (3) acting as custodians of the county jail. The second and third are highly specialized functions. Judge Peters noted two recent studies that concluded that the majority of sheriffs were not properly performing their custodial function—one conducted by the Attorney General's Crime Commission and the other by the Special Study Commission on Correctional Facilities, headed by Professor Austin MacCormick. This is also the belief of Judge Peters, who is also president of the Northern California Service League.

Judge Peters believes that, in addition to training in the police field, sheriffs and their deputies should have training in the custodial field, including rehabilitation He stated that those already employed should be given sufficient training and that new candidates should be required to have some specialized training before they are put out in the field. Judge Peters stated that he thinks the average officer has a sufficient working knowledge of the rules of evidence and the law of arrest.

James H. Rankin, M.D., Consulting Psychiatrist, Los Angeles Police Department

Dr. Rankin explained that he examines each applicant who is seeking a position with the Los Angeles Police Department to determine whether he is emotionally stable and mature and can deal effectively

with other people as well as his general intelligence, attitude toward obeying rules and regulations, ability to solve problems, and interests Dr. Rankin states that his exam is given as one of the last steps in the screening process and despite prior disqualification of applicants at earlier stages he generally eliminates 10 percent of those who appear before him. He believes that some sort of psychiatric screening of police recruits is practical and valuable since policemen encounter many stresses that the ordinary layman does not meet.

Dr. Rankin stated that the cost of psychiatric examinations to smaller police agencies could be cut down if several such agencies joined together and gave group tests. He said that there is a high correlation between those candidates he rejects and those with disqualifying backgrounds but stated that he did not suggest substituting a psychiatric examination for a thorough background investigation.

Dr. Rankin stated that he feels minimum police standards are better than no standards and that they might act as a stimulus to raise standards much higher.

Dr. Rankin said that the Los Angeles Police Department has given psychiatric examinations since 1953 and that since that time there has been a significant drop in embarrassing incidents leading to dismissal of officers. He stated that this result is not only due to psychiatric examinations but to higher standards of selection generally.

O. W. Wilson, Dean of the School of Criminology, University of California at Berkeley

Dean Wilson testified that the State of California is the agency responsible for the enforcement of the criminal law. He stated that the State may delegate this duty to counties and cities but nevertheless retains the responsibility for the proper enforcement of the law. In his opinion, the State has failed to recognize its responsibility for assuring adequate and proper law enforcement for the public.

Dean Wilson stated that there was no doubt as to the necessity for the enactment of minimum standards. He felt that the State should proceed rather than wait for voluntary improvement because progress would be much more rapid.

Dean Wilson noted that the deficient law enforcement agencies are, almost without exception, in areas with small population. To assist the smaller communities, he suggested grants-in-aid or subventions to law enforcement agencies to enable them to raise their standards. He felt that the grants should be limited to the smaller population groups and thus minimize the expense to the State.

Dean Wilson said that he was not prepared to state how high the minimum standards should be set. He suggested that if subventions were employed, the standards should be set as high as possible He stated that setting high standards would not necessarily involve great expense to the State since it would depend upon what the subvention was based. For example, the subvention might be based on the salary cost of the policeman while he is in training Under this method, communities could come in on a voluntary basis and, by adopting the minimum standards set out by the State, gain the financial aid from the State. This aid would only last for the period of training and thus would not constitute a great expense to the State.

Dean Wilson stated that the graduates of California schools of criminology have, for the most part, remained in some phase of law enforcement work and have advanced satisfactorily. Most of them were required to go through the ranks but he said that he was inclined to feel that this procedure was proper.

Arthur H. Sherry, Professor of Law and Criminology, University of California at Berkeley

Professor Sherry stated that the American system of criminal justice can be divided into the police function, the prosecuting and defense function, the criminal courts, and the parole and probation function. Of these four, the professional standards for the largest—the police function—are the lowest. He said that it is taken for granted that qualified members of the bar are required to prosecute and defend persons accused of crime and that judges of the criminal courts are selected from their ranks. He further stated that professional academic training at the college level and beyond is a common personnel requirement in the field of parole and probation. In contrast, police organizations fall far short in their personnel standards.

Professor Sherry stated that much is being done by police departments to improve the competence and skill of personnel by training programs. However, he said that he feels that this training is necessary because the initial minimum standards that applicants must meet are so low. For example, training programs are conducted to teach police officers how to write, how to keep notes, how to make a report, and how to speak. In addition, the police themselves are attempting to raise their own standards without outside help.

Professor Sherry referred to the training program administered by the Department of Education and the courses that have been set up in several California colleges but stated that they are not sufficient to meet the need and comparatively few individuals are able to make use of them. He said that he feels that this situation will not change until a minimum of such schooling is required as qualification for a police career.

Professor Sherry cited the F. B. I. as an example of exceptional minimum requirements—it recruits only men who are graduates in law or other professional fields. While the F. B. I. is limited to investigative action, and does not bear the responsibility of preserving the law and order, the State can profit by its example and at least require that every man or woman appointed as a peace officer in the State have a college degree. While it may be unrealistic to require optimum standards at first, minimum standards requiring a high school education could be enacted without cost to the State or its political subdivisions. He stated that the public safety should not be left to the least competent individuals in the community.

III. RECOMMENDATIONS

The Subcommittee on Police Administration of the Assembly Interim Committee on Judiciary recommends that a Commission on Peace Officer Standards and Training be created in the Department of Justice. The commission would adopt rules relating to physical, mental and moral fitness, hiring, and training of applicants for law enforcement positions in cities and counties participating in the program.

Participation by cities and counties would be voluntary but those entering the program would receive financial assistance. The money required would be raised by a 10 percent assessment levied on every fine, penalty, and forfeiture imposed and collected by any court for a criminal offense, other than an offense subject to the "driver training" penalty assessment (see Vehicle Code, Section 773). These assessments would be deposited in a Peace Officers' Training Fund in the State Treasury, and appropriated to cities and counties which agree to adhere to the commission's standards for hiring and training as reimbursement for costs of administration and salaries of peace officers participating in training.

The commission would be empowered to make necessary inquiries to determine whether counties and cities receiving aid are conforming to commission standards The commission could adopt rules necessary to carry out the provisions of the law and could do all things necessary to enable it fully and adequately to perform its duties and to exercise its powers.

The commission would be composed of nine members appointed by the Governor and to serve at his pleasure, who would receive no compensation but would receive travel expenses. Five of the members would be peace officers in city police departments or county sheriffs' offices, two could be elected officers or chief administrative officers of cities, and two would be similar personnel from counties. The commission could employ an executive secretary and, pursuant to civil service, clerical and technical personnel.

PROPOSED LEGISLATION

CALIFORNIA LEGISLATURE, 1959 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 1448

Introduced by Mr. Crawford
(Co-authored by Senator Cobey)

February 16, 1959

REFERRED TO COMMITTEE ON CRIMINAL PROCEDURE

An act to add Title 4 (commencing with Section 13500) to Part 4 of the Penal Code, relating to standards and training of local law enforcement officers, and making an appropriation.

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

1 SECTION 1. In enacting this legislation the Legislature finds
2 that vocational training and the enforcement of state laws are
3 matters of statewide interest and concern

LEGISLATIVE COUNSEL'S DIGEST

A. B. 1448 as introduced, Crawford (Crim. Pro.). Hiring and training of local peace officers.

Adds Title 4 (commencing with Sec. 13500) to Pt. 4, Pen. C

Creates, in Department of Justice, Commission on Peace Officer Standards and Training, consisting of 9 members appointed by the Governor and to serve at his pleasure, who would receive no compensation but would receive travel expenses. Five of the members would be peace officers in city police departments or county sheriff's offices, two would be elected officers or chief administrative officers of cities, and two would be similar personnel from counties The commission could employ an executive secretary and, pursuant to civil service, clerical and technical personnel.

The commission would adopt rules, relating to physical, mental, and moral fitness, governing hiring of peace officers, and rules governing training, in those cities and counties receiving state aid pursuant to the bill.

A 10 percent assessment would be levied on every fine, penalty, and forfeiture imposed and collected by any court for a criminal offense, other than an offense subject to the "driver training" penalty assessment (Sec 773, Veh C). These assessments would be deposited in a Peace Officers' Training Fund in the State Treasury, which is appropriated, without regard to fiscal years, for grants to counties and cities and for costs of administration, pursuant to the bill. The commission would allocate to cities and counties which agree to adhere to the commission's standards for hiring and training, moneys from such fund to reimburse the counties and cities for salaries of peace officer participating in training. The commission would be empowered to make necessary inquiries to determine whether counties and cities receiving aid are conforming to commission standards. The commission could adopt rules necessary to carry out the provisions of the law and could do all things necessary to enable it fully and adequately to perform its duties and to exercise its powers.

SEC. 2. Title 4 (commencing with Section 13500) is added to Part 4 of the Penal Code, to read:

TITLE 4. STANDARDS AND TRAINING OF LOCAL LAW ENFORCEMENT OFFICERS

CHAPTER 1. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Article 1. Administration

13500 There is in the Department of Justice a Commission on Peace Officer Standards and Training, hereafter referred to in this chapter as the commission. The commission consists of nine members, appointed by the Governor, of whom five must be members of either city police departments or county sheriffs' offices, two must be elected officers or chief administrative officers of cities in this State, and two must be elected officers or chief administrative officers of counties of this State. The members shall serve at the pleasure of the Governor.

13501. The commission shall select a chairman and a vice chairman from among its members. Five members of the commission shall constitute a quorum. The Governor shall summon the commission to its first meeting.

13502. Members of the commission shall receive no compensation, but shall be reimbursed for their actual and necessary travel expenses incurred in the performance of their duties For purposes of compensation, attendance at meetings of the commission shall be deemed performance by a member of the duties of his local governmental employment.

13503. In carrying out its duties and responsibilities, the commission shall have all of the following powers:

(a) To meet at such times and places as it may deem proper;

(b) To employ an executive secretary and, pursuant to civil service, such clerical and technical assistants as may be necessary;

(c) To contract with such other agencies, public or private, as it deems necessary, for the rendition and affording of such services, facilities, studies, and reports to the commission as will best assist it to carry out its duties and responsibilities;

(d) To co-operate with and to secure the co-operation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and in performing its other functions;

(e) To co-operate with and secure the co-operation of every department, agency, or instrumentality in the State Government;

(f) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it.

13504. The Attorney General shall, so far as compatible with other demands upon the personnel in the Department of Justice, make available to the commission the services of such personnel to assist the commission in the execution of the duties imposed upon it by this chapter.

13505. In exercising its functions the commission shall endeavor to minimize costs of administration, so that the greatest possible proportion of the funds available to it shall be expended for the purposes of providing training for local law enforcement officers.

13506. The commission may adopt such regulations as are necessary to carry out the purposes of this chapter.

Article 2. Standards for Recruitment and Training

13510. For the purpose of raising the level of competence of local law enforcement, the commission shall adopt, and may, from time to time amend, rules establishing minimum standards, relating to physical, mental, and moral fitness, which shall govern the recruitment of any city police officers or peace officer members of a county sheriff's office, in any city or county receiving state aid pursuant to this chapter, and shall adopt, and may, from time to time amend, rules establishing minimum standards for training of city police officers and peace officer members of county sheriff's offices, which shall apply to those cities and counties receiving state aid pursuant to this chapter. All such rules shall be adopted and amended pursuant to the Administrative Procedure Act.

13511. In establishing standards for training, the commission may, so far as consistent with the purposes of this chapter, permit required training to be obtained at existing institutions approved by the commission.

13512. The commission shall make such inquiries as may be necessary to determine whether every county and city receiving state aid pursuant to this chapter is adhering to the standards for recruitment and training established pursuant to this chapter.

Article 3. Peace Officers' Training Fund and Allocations Therefrom

13520. There is hereby created in the State Treasury a Peace Officers' Training Fund, which is hereby appropriated, without regard to fiscal years, exclusively for costs of administration and for grants to local governments pursuant to this chapter.

13521. On and after the effective date of this section, there shall be levied an assessment on every fine, penalty, and forfeiture imposed and collected by the courts for criminal offenses, other than misdemeanors subject to the penalty assessment imposed by Section 773 of the Vehicle Code, in an amount equal to 10 percent of such fine, penalty, or forfeiture.

1 When any deposit of bail is made for an offense to which
2 this section applies, the person making such deposit shall also
3 deposit a sufficient amount to include the assessment pre-
4 scribed in this section for forfeited bail. If bail is forfeited,
5 the amount of such assessment shall be transmitted by the
6 clerk of the court to the county treasury and thence to the
7 State Treasury pursuant to this section.
8 After a determination by the court of the amount due, the
9 clerk of the court shall collect the same and transmit it to
10 the county treasury. It shall then be transmitted to the State
11 Treasury to be deposited in the Peace Officers' Training Fund.
12 The transmission to the State Treasury shall be carried out in
13 the same manner as fines collected for the State by a county.
14 13522. Any city, county, or city and county which de-
15 sires to receive state aid pursuant to this chapter shall make
16 application to the commission for such aid. The application
17 must be accompanied by a certified copy of an ordinance
18 adopted by its governing body providing that while receiving
19 any state aid pursuant to this chapter, the city, county or city
20 and county will adhere to the standards for recruitment and
21 training established by the commission. The application shall
22 contain such information as the commission may request.
23 13523. The commission shall annually allocate from the
24 Peace Officers' Training Fund to each city, county, and city
25 and county which has applied for aid pursuant to this chapter
26 a sum which will reimburse the city, county, or city and
27 county for the amount of the salary paid to each peace officer
28 participating in training meeting the standards prescribed
29 pursuant to this chapter, during the period covered by the
30 allocation. If the moneys in the Peace Officers' Training Fund
31 budgeted by the commission for such salary reimbursement
32 are insufficient to allocate such amount to each participating
33 city, county, and city and county, the amount allocated to
34 each shall be reduced proportionately. In no event shall any
35 allocation be made to any city, county, or city and county
36 which has not, throughout the period covered by the alloca-
37 tion, adhered to the standards established by the commission.

APPENDIX

CALIFORNIA LEGISLATURE—1957 REGULAR SESSION

ASSEMBLY BILL No. 2440

Introduced by Mr. MacBride

January 21, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 11008 of the Penal Code, relating to peace officers.

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

1 SECTION 1. Section 11008 of the Penal Code is amended
2 to read:
3 11008. The Attorney General shall from time to time ar-
4 range for and organize schools at convenient centers in the
5 State to train peace officers in their powers and duties and ~~in~~
6 the use of approved equipment and methods for detection,
7 identification and apprehension of criminals.

AMENDED IN ASSEMBLY MAY 8, 1957

CALIFORNIA LEGISLATURE—1957 REGULAR SESSION

ASSEMBLY BILL No. 2440

Introduced by Mr. MacBride

January 21, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to ~~*amend Section 11008 of the Penal Code*~~ ADD SECTIONS 50081, 50082, 50083, 50084, AND 50085 TO THE GOVERNMENT CODE, *relating to peace officers.*

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

1 ~~SECTION 1. Section 11008 of the Penal Code is amended~~
2 ~~to read:~~
3 ~~11008. The Attorney General shall from time to time ar-~~
4 ~~range for and organize schools at convenient centers in the~~
5 ~~State to train peace officers in their powers and duties and~~
6 ~~the use of approved equipment and methods for detection,~~
7 ~~identification and apprehension of criminals.~~
8 *SECTION 1. Section 50081 is added to the Government*
9 *Code, to read:*
10 *50081. It is the policy of the State that regular full-time*
11 *salaried policemen and deputy sheriffs of any city, city and*
12 *county, or county be selected, promoted, and retained exclu-*
13 *sively on the basis of merit, fitness and efficiency.*
14 *SEC. 2. Section 50082 is added to said code, to read:*
15 *50082. No person shall be eligible to be employed as a*
16 *regular full-time salaried policeman or deputy sheriff of any*
17 *city, city and county, or county on or after January 1, 1958*
18 *unless he meets the minimum entrance qualifications pre-*
19 *scribed for this type of employment by such local governing*
20 *body and complies with each of the following:*
21 *(a) He is a citizen of the United States.*
22 *(b) He is at least 21 years of age and not over 35 years*
23 *of age.*
24 *(c) He has a diploma showing graduation from a high*
25 *school, or its equivalent as determined by an examination*
26 *prescribed by the State Department of Education.*

(d) He has a valid motor vehicle operator's license issued by the Department of Motor Vehicles.

(e) He has a satisfactory record as a law-abiding citizen and of good moral character.

(f) He has good health, a sound physical condition and is free from disabling defects.

The aforesaid standards shall be deemed minimum standards and shall not preclude any city, city and county, or county from establishing higher standards for its law enforcement personnel.

SEC. 3. Section 50083 is added to said code, to read:

50083. Every candidate for employment as a policeman or deputy sheriff of any city, city and county, or county shall be fingerprinted and photographed Said prints and photographs shall be transmitted forthwith to the Bureau of Criminal Identification and Investigation of the State Department of Justice.

SEC. 4. Section 50084 is added to said code, to read:

50084. Every person who is employed as a regular, full-time, salaried policeman or deputy sheriff of any city, city and county, or county on or after January 1, 1958 shall receive a minimum of 40 hours of instruction in basic courses of police science prior to being assigned to active law enforcement duties. Said courses shall include but not be limited to the following subjects: Laws of arrest and search and seizure, the law of evidence, criminal identification and investigation, modus operandi of criminals, report writing, rights of citizens, and good public relations. If such person has already received, in a college or university or in an academy or school functioning in connection with the police department or sheriff's office of another city, city and county, or county, such training as would be given him in the basic training course required by the preceding provisions of this section and if such person furnishes proof of satisfactory completion of such training, the head of the law enforcement agency by which he is employed may exempt such person from taking such basic training courses.

SEC 5. Section 50085 is added to said code, to read:

50085. The provisions of Sections 50082, 50083 and 50084 of this code shall not be applicable to any law enforcement agency of any city, city and county, or county employing five or fewer regular, full-time, salaried policemen or deputy sheriffs.

AMENDED IN ASSEMBLY MAY, 10, 1957

AMENDED IN ASSEMBLY MAY 8, 1957

CALIFORNIA LEGISLATURE—1957 REGULAR SESSION

ASSEMBLY BILL No. 2440

Introduced by Mr. MacBride

January 21, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Sections 50081, 50082, 50083, ~~50084, and 50085~~ AND 50084 *to the Government Code, relating to peace officers.*

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

SECTION 1. Section 50081 is added to the Government Code, to read:

50081. It is the policy of the State that regular full-time salaried policemen and deputy sheriffs of any city, city and county, or county be selected, promoted, and retained exclusively on the basis of merit, fitness and efficiency.

SEC. 2. Section 50082 is added to said code, to read:

50082. No person shall be eligible to be employed as a regular full-time salaried policeman or deputy sheriff of any city, city and county, or county on or after January 1, 1958, unless he meets the minimum entrance qualifications prescribed for this type of employment by such local governing body and complies with each of the following:

(a) He is a citizen of the United States.

(b) He is at least 21 years of age and ~~not over~~, *in the absence of prior police experience, is not more than* 35 years of age.

(c) He has a diploma showing graduation from a high school, or ~~its equivalent as determined by an examination prescribed~~ *an equivalent certificate issued by authority of* by the State Department of Education

(d) He has a valid motor vehicle operator's license issued by the Department of Motor Vehicles.

(e) He has a satisfactory record as a law-abiding citizen and *is* of good moral character.

(f) He has good health, a sound physical condition and is free from disabling defects.

The aforesaid standards shall be deemed minimum standards and shall not preclude any city, city and county, or county from establishing higher standards for its law enforcement personnel.

SEC. 3. Section 50083 is added to said code, to read:

50083. Every ~~candidate for~~ *person, prior to* employment as a policeman or deputy sheriff of any city, city and county, or county, shall ~~be fingerprinted and photographed. Said prints and photographs~~ *be fingerprinted. The prints* shall be transmitted forthwith to the Bureau of Criminal Identification and Investigation of the State Department of Justice ~~.~~ *and to the Federal Bureau of Investigation.*

No person shall be employed as a policeman, deputy sheriff, or any other peace officer as defined in Section 817 of the Penal Code who has been convicted of a felony or any offense involving moral turpitude.

SEC. 4. Section 50084 is added to said code, to read:

50084. Every person who is employed as a regular, full-time, salaried policeman or deputy sheriff of any city, city and county, or county on or after January 1, 1958 shall receive a minimum of 40 hours of instruction in basic ~~courses of police science~~ *police subjects*, prior to being assigned to active law enforce ~~ment duties. Said courses shall include but not be limited to~~ *ment duties, such as, laws of arrests, search and seizure, evidence, firearms, report writing, rights of citizens, and public relations, or submit satisfactory proof to the employing law enforcement agency that he has already received such training.* ~~the following subjects: Laws of arrest and search and seizure, the law of evidence, criminal identification and investigation, modus operandi of criminals, report writing, rights of citizens, and good public relations. If such person has already received, in a college or university or in an academy or school functioning in connection with the police department or sheriff's office of another city, city and county, or county, such training as would be given him in the basic training course required by the preceding provisions of this section and if such person furnishes proof of satisfactory completion of such training, the head of the law enforcement agency by which he is employed may exempt such person from taking such basic training courses.~~

~~SEC. 5. Section 50085 is added to said code, to read:~~

~~50085. The provisions of Sections 50082, 50083 and 50084 of this code shall not be applicable to any law enforcement agency of any city, city and county, or county employing five or fewer regular, full-time, salaried policemen or deputy sheriffs.~~

AMENDED IN ASSEMBLY MAY 22, 1957

AMENDED IN ASSEMBLY MAY 10, 1957

AMENDED IN ASSEMBLY MAY 8, 1957

CALIFORNIA LEGISLATURE—1957 REGULAR SESSION

ASSEMBLY BILL No. 2440

Introduced by Mr. MacBride

January 21, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Sections 50081, 50082, 50083, ~~*and 50084*~~ 50084, AND 50085 *to the Government Code, relating to peace officers.*

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

1 ~~SECTION 1. Section 50081 is added to the Government~~
2 *SECTION 1. The problem of efficient enforcement of the*
3 *criminal laws of this State is one of state-wide interest and*
4 *concern. In this era of rapid transportation, swift detection*
5 *of crime and apprehension of criminals cannot be realistically*
6 *view as a matter of local concern only. The numerous cases in*
7 *which a crime is committed in one local jurisdiction and the*
8 *criminal is apprehended in another evidence the truth of this*
9 *fact. This situation warrants action at the state level. Great*
10 *scientific advances that have occurred in recent times—serv-*
11 *ing the criminal element as well as law enforcement agencies*
12 *—render appropriate the establishment of standards for em-*
13 *ployment of peace officers which will assure the people of this*
14 *State law enforcement officers of a calibre to deal with the*
15 *modern crime problem. In view of the state-wide character*
16 *of the problem, it is the intent of the Legislature that this act*
17 *apply in chartered counties, cities, and cities and counties, as*
18 *well as those counties, cities, and cities and counties which*
19 *are not chartered.*
20 *SEC. 2. Section 50081 is added to the Government* Code,
21 to read:
22 50081. It is the policy of the State that regular full-time
23 salaried policemen and deputy sheriffs of any city, city and

county, ~~or county~~ *county, or public district* be selected, promoted, and retained ~~exclusively~~ on the basis of merit, fitness and efficiency.

~~SEC. 2~~ *SEC. 3.* Section 50082 is added to said code, to read:

55082. No person shall be eligible to be *initially* employed as a regular full-time salaried policeman or deputy sheriff of any city, city and county, ~~or county~~ *county or public district* on or after January 1, 1958, unless he meets the minimum entrance qualifications prescribed for this type of employment by ~~such local~~ *the* governing body *of such city, city and county, county, or public district,* and complies with each of the following:

(a) He is a citizen of the United States.

(b) He is at least 21 years of age and, in the absence of prior police experience, is not more than 35 years of age, *except that such maximum age limitation shall not be applicable to any person who serves only as a bailiff of a court or whose duties relate only to the civil law.*

(c) He has a diploma showing graduation from a high school, or an equivalent certificate issued by authority of ~~by~~ the State Department of Education.

~~(d) He has a valid motor vehicle operator's license issued by the Department of Motor Vehicles.~~

~~(e)~~ *(d)* He has a satisfactory record as a law-abiding citizen and is of good moral character.

~~(f)~~ *(e)* He has good health, a sound physical condition and is free from disabling defects.

The aforesaid standards shall be deemed minimum standards and shall not preclude any city, city and county, ~~or county~~ *county, or public district* from establishing higher standards for its law enforcement personnel.

The provisions of this section shall not be construed to apply to a person employed as a policeman or deputy sheriff by the city, city and county, county, or public district prior to January 1, 1958, so as to affect his right to continued employment by such city, city and county, county or public district.

~~SEC. 3~~ *SEC. 4.* Section 50083 is added to said code, to read:

50083. Every person, prior to employment as a policeman or deputy sheriff of any city, city and county, ~~or county~~ *county, or public district*, shall be fingerprinted. The prints shall be transmitted forthwith to the Bureau of Criminal Identification and Investigation of the State Department of Justice and to the Federal Bureau of Investigation.

No person shall be employed as a policeman, deputy sheriff, or any other peace officer as defined in Section 817 of the Penal Code who has been convicted of a felony or any offense involving moral turpitude.

~~SEC. 4~~ *SEC. 5.* Section 50084 is added to said code, to read:

50084. Every person who is employed as a regular, full-time, salaried policeman or deputy sheriff of any city, city and county, ~~or county~~ *county, or public district* on or after January 1, 1958 shall receive a minimum of 40 hours of instruction in basic police subjects, prior to being assigned to active law enforcement duties, such as, laws of arrests, search and seizure, evidence, firearms, report writing, rights of citizens, and public relations, or submit satisfactory proof to the employing law enforcement agency that he has already received such training.

SEC. 6. Section 50085 is added to said code, to read:

50085. No arrest by a policeman or deputy sheriff shall be deemed unlawful by reason of any failure of such policeman or deputy sheriff to meet the requirements of, or by reason of failure by any public agency to comply with, the requirements of Sections 50081, 50082, 50083, or 50084.

SEC. 7. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, or the application of the act to other persons or circumstances, shall not be affected thereby.

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ASSEMBLY INTERIM COMMITTEE REPORTS
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REPORT OF THE

SUBCOMMITTEE ON PORNOGRAPHIC LITERATURE

OF THE

ASSEMBLY INTERIM COMMITTEE ON JUDICIARY

House Resolution No. 224, 1957

PORNOGRAPHIC LITERATURE

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March, 1959

Published by the
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OF THE STATE OF CALIFORNIA

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TABLE OF CONTENTS

	Page
Letters of Transmittal	5
Committee	5
Subcommittee	6
Summary	7
Foreword	9
I. Introduction	10
II. Obscenity and Sex Crimes	11
A. Discussion	11
B. Recommendations	11
III. California's Obscenity Laws and Proposed Changes	12
A. Complexity of Section 311	12
1. Discussion	12
2. Recommendations	12
B. Exceptions for Actors	13
1. Discussion	13
2. Recommendations	13
C. Organization	13
1. Discussion	13
2. Recommendations	14
D. Definition of Obscenity	14
1. Discussion	14
a. The Effect of Thoughts	15
b. Relationship Between Thought and Conduct	15
c. Audience To Be Used in Judging Effect	16
d. Author's Intention	16
2. Recommendations	18
E. Requirement of Intent	18
1. Discussion	18
a. "Strict Liability"	18
b. "Reasonable Man" Test	19
c. "Knowledge" Test	20

TABLE OF CONTENTS—Continued

Page

2. Recommendations ---- 20

F. Advertising ---- 21
1. Discussion ---- 21
2. Recommendation ---- 21

G. Tie-in Sales ---- 22
1. Discussion ---- 22
2. Recommendation ---- 22

H. Minors and Obscenity ---- 22
1. Discussion ---- 22
2. Recommendations ---- 23

I. Injunctions and Seizure of Obscene Matter ---- 23
1. Discussion ---- 23
2. Recommendations ---- 24

J. Mailing and Transportation of Obscenity ---- 27
1. Discussion ---- 27
2. Recommendation ---- 28

K. Penal Provisions ---- 28
1. Discussion ---- 28
2. Recommendations ---- 29

IV. Practical Problems of Enforcement ---- 31

A. Discussion ---- 31

B. Recommendations ---- 31

Appendix I. ---- 32

Appendix II. ---- 34

Appendix III. ---- 36

Appendix IV. ---- 38

Appendix V. ---- 39

Appendix VI. ---- 40

Appendix VII. ---- 41

Table I. Distribution ---- 42

Table II. Advertising ---- 44

Table III. Other Provisions ---- 45

LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, March 16, 1959

HON. RALPH M. BROWN
Speaker of the Assembly
Assembly Chamber, Sacramento

DEAR MR. SPEAKER: The testimony and evidence submitted have been summarized and reduced to the most valuable and significant essence and accompany this letter.

We herewith transmit to you, in accordance with House Resolution No. 224 of the 1957 Regular Session of the State Legislature, the final report of the activities of the Subcommittee on Pornographic Literature of the Assembly Interim Committee on Judiciary.

Respectfully submitted,

BRUCE F. ALLEN, Chairman

SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, March 16, 1959

Hon. Bruce F. Allen, Chairman
Assembly Interim Committee on Judiciary
California Legislature
State Capitol, Sacramento

DEAR MR. ALLEN: Pursuant to your directive and in conformance with the provisions of House Resolution No. 224 of the 1957 General Session, the Subcommittee on Pornographic Literature herewith submits its report.

The subcommittee has held extensive hearings during the interim period on the subject of obscene and pornographic literature and pictures. We sincerely invite and urge you, the Members of the Assembly Interim Committee on Judiciary, the Members of the Legislature, and the public to join with the subcommittee in sponsoring and enacting legislation in this important field.

Respectfully submitted,

LOUIS FRANCIS, Chairman
Subcommittee on Pornographic Literature

March 13, 1959

I hereby accept the attached report of the Subcommittee on Pornographic Literature of the Assembly Interim Committee on Judiciary.

LOUIS FRANCIS, Chairman
HOWARD J. THELIN

I hereby accept in part the attached report of the Subcommittee on Pornographic Literature of the Assembly Interim Committee on Judiciary.

RICHARD T. HANNA

The law at the time of the writing of this report, outlaws the selling of obscene publications. If objectionable material is sold, it is not because of a weakness of the law, but because the present law is not being enforced, and the present law certainly should be enforced. I respectfully feel that censoring material which is not clearly obscene invites a loss of our cherished American freedom. There is a tendency in this report to increase the power of law enforcement officers to censor; past experience would dictate that such censorship would vary considerably from community to community. The publication of "hard core" obscenity is already outlawed, and I am not in favor of any relaxation of this present law. It would seem clear that the best recourse against borderline material is good reading habits encouraged by a healthy family background. To do otherwise, is to invite much censorship where it is not required and to encourage legislative invasion into local areas. There is nothing at the present time to prevent cities from passing ordinances as they see fit to cover activities in this field.

ROBERT W. CROWN

SUMMARY

INTRODUCTION

In an effort to reduce the publication, sale and distribution of obscene matter in California, particularly to minors, and to improve law enforcement, the Subcommittee on Pornographic Literature of the Assembly Interim Committee on Judiciary held extensive hearings in Los Angeles and San Francisco. The following is a summary of the final report of the subcommittee.

CALIFORNIA'S OBSCENITY LAWS

California's obscenity laws are found in Penal Code Sections 311, 312, 313, and 314. They were first enacted in 1858 and 1859, eventually codified in 1872, and have been attacked as antiquated, cumbersome, too broad and difficult to enforce.

PENAL CODE 311

This section now contains many separate offenses. The report recommends that these be broken down and handled separately as follows:

(1) Indecent Exposure

Penal Code Sections 311(1) and (2) deal with indecent exposure and will remain unchanged.

(2) Exceptions for Actors

Penal Code Section 311(6) makes it a crime to sing or speak lewd or obscene songs, ballads, or words in a public place. Penal Code Section 311 contains an exception in the case of actors that will be clarified.

(3) Definitions

The words "person," "obscene," "matter," "distribute," and "prepare" are used, but not defined, in Penal Code Section 311 and decisions applying to this section have been unclear as to the conduct included. The report attempts to define the above words.

(a) *Definition of "Obscene."* The recommended definition of the knotty word "obscene" is that used in *Alberts* v. *California,* 354 U. S. 476 (1957), which is that matter is obscene when it possesses a predominant appeal, considered as a whole, to prurient interest, i. e., a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters. Further whether a thing is obscene shall be judged with reference to ordinary adults.

(4) Requirement of Intent

Penal Code Section 311 has been interpreted to require a specific, "lewd" intent, lewd being synonymous with lustful, lascivious, or gross indecency. The requirement of proving this element in every case

makes it too difficult to acquire a conviction. The report recommends that the word "lewdly" be stricken and a "reasonable man" test substituted—i. e., that the defendant knew, or should reasonably have known, taking into consideration all surrounding circumstances, that the material was obscene.

(5) Advertising

Penal Code Section 311(4) provides that it is a misdemeanor to write, compose, or publish any notice or advertisement of obscene matter. Existing law permits prosecution if the advertisement is itself obscene or if the material advertised is obscene. It does not cover the situation when advertisements that are not, in themselves, obscene, are drawn up to suggest that the material advertised is obscene, when in fact it is not. The report makes this type of advertising illegal also.

TIE-IN SALES

In some instances, a distributor is required to buy obscene matter in order to get publications that he wants to sell that are not obscene. The report makes this practice illegal.

MINORS AND OBSCENITY

The report recommends legislation similar to that in other jurisdictions that makes it a crime for anyone to use minors to aid in the preparation or distribution of obscene matter.

INJUNCTIONS

California has no present legislation by which a person can be enjoined from distributing obscene literature. The report recommends such a statute be added to the Code of Civil Procedure.

SEIZURE OF OBSCENE MATTER

At present, Penal Code Sections 312, 313, and 314 provide for seizure and destruction of obscene matter. The report calls for substantially the same procedure except that the material not be destroyed unless the defendant either pleads guilty or until he is convicted of a violation of the obscenity sections.

MAILING AND TRANSPORTATION OF OBSCENE MATTER OR ADVERTISING

Present federal and state laws do not cover either the intrastate transportation of obscene matter or advertisements or the situation where the ad itself is not obscene but suggests that the material advertised is obscene when it really is not. The report proposes that it be made unlawful to deposit or receive, with intent to carry in intrastate or interstate commerce, obscene matter, equipment, or advertising that is itself obscene or that leads another to believe that the matter advertised is obscene whether it actually is or not.

Punishment. At present, violation of the obscenity laws is punished as a misdemeanor. The report recommends that there be stiffer penalties imposed for first and subsequent offenses, based upon the number of units of obsence matter involved. Greater penalties are also suggested where the offense involves minors.

FOREWORD

On September 19, 1957, Assemblyman Bruce F. Allen, Chairman of the Assembly Interim Committee on Judiciary, appointed a subcommittee on Pornographic Literature headed by Assemblyman Louis Francis, to ascertain, study, and analyze all facts relating to or affecting Penal Code Sections 311, 312, 313, and 314, including but not limited to the operation, effect, administration, enforcement, and needed revision of any and all laws in any way bearing upon or relating to the subject of H. R. No. 224.

The subcommittee held hearings on November 25 and 26, 1957, in Los Angeles; May 21 and 22, 1958, in San Francisco; September 10, 1958, in San Francisco; and September 12, 1958, in Los Angeles.

This final report incorporates much of the material set forth in the preliminary report of April 15, 1957.

The subcommittee wishes to express its appreciation to the many persons who contributed to this report by their appearance at hearings, their expressions of opinions, their expert knowledge, their correspondence, and their research on various aspects of the study. Their names appear in alphabetical order in Appendix II.

2—L-4530

I. INTRODUCTION

This subcommittee, being concerned about the numerous problems caused by the publication, sale and distribution of pornographic literature, held the following hearings:

1. Los Angeles ..... November 25 and 26, 1957.
2. San Francisco ..... May 21 and 22, 1958.
3. San Francisco ..... September 10, 1958.
4. Los Angeles ..... September 12, 1958.

Evidence received at the above hearings showed a multimillion dollar business in the sale of so-called sexy and girlie magazines. The California Attorney General's Office estimates that in California alone some $500,000,000 is spent for such material each year. Particular emphasis at the hearings was given to the impact of such material on juveniles since it is estimated that approximately 75 percent of some 15,000,000 issues each month falls into the hands of teenagers.

We believe it to be a principle of our Nation that premarital or extramarital sexual activity is dangerous and unhealthy. Anything that incites or lures or glorifies such activity is objectionable. Obscenity laws protect the morals of society. We believe such protection is necessary since history shows that when the morality of a society is destroyed, the society itself is destroyed.

In considering changes in the present law it is not the desire or intention of this subcommittee to play the role of censor. We do not wish to infringe upon freedom of the press. We find that the legitimate press is not involved. We recognize, however, that there are certain constitutional limitations to the freedom of expression guaranteed by the Constitution. It has consistently been recognized in the courts that dissemination of obscene material does not fall within the above-mentioned freedom of expression.

A great deal has been accomplished on a local level through the voluntary co-operation of citizens' organizations, peace officers, retailers and distributors. Such progress will undoubtedly continue in the future. However, we believe that to achieve maximum progress corrective legislation is necessary on a state level.

It is the purpose of this report to set forth the criticisms and suggestions for improvement of present legislation and to make such recommendations for proposed legislation as the subcommittee feels is desirable. For convenience and clarity the report will be divided into major areas, each containing discussion and specific recommendations.

II. OBSCENITY AND SEX CRIMES

A. DISCUSSION

There appears to be substantial conflicting evidence of a positive correlation between obscene literature and sex crimes. However, if a person has a personality defect predisposing him to sex crimes, such literature might have a triggering effect although the positive factors which caused such a crime could reach back into childhood and be many and varied. This view seems to be supported by evidence that obscene literature is invariably found in the possession of the sexual pervert or in his bedroom.

Evidence received also indicates that it is not unusual for the sexual pervert who preys on children to use such literature as a means of conditioning himself and his victims to his advances. Used in this manner, such pornographic literature is doubly dangerous and a true menace.

B. RECOMMENDATIONS

Further study of the correlation between obscene literature and sex crimes should be undertaken.

III. CALIFORNIA'S OBSCENITY LAWS AND PROPOSED CHANGES

California's pornography laws (the terms "pornography" and "obscenity" will be used interchangeably unless otherwise noted) are found in the Penal Code Sections 311, 312, 313 and 314 (set forth in full in Appendix I. These laws were first codified in 1872, based upon the original laws enacted in 1858 and 1859. Since that time there have been few minor changes and they have been attacked as antiquated, cumbersome, too broad and difficult to enforce. Each of the major criticisms will be considered separately along with recommendations for improvement.

A. COMPLEXITY OF SECTION 311

1. *Discussion*

Particular criticism has been directed at Section 311 on the ground that it is a conglomeration covering a number of different offenses; indecent exposure, publication, sale, and distribution of lewd and obscene literature and equipment, and speaking or singing lewd songs or words. It was suggested that Section 311 should be broken down so that separate sections cover each of the major areas now covered in one section.

2. *Recommendations*

a. A new chapter should be established in Part 1, Title 9. Such chapter should be called "Chapter VII.5" and should be located between Chapter VII and VIII. Such chapter should contain all provisions relating to obscene matter.

b. The present Section 311 should be repealed and all provisions removed to new and appropriate sections.

c. A new section numbered "311.01" should be enacted to contain the legislation now found in Sections 311(1) and 311(2). The section should read substantially as follows:

> 311.01. Every person who willfully either:
>
> 1. Exposes his person or sexual organs in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or
>
> 2. Procures, counsels, or assists any person so to expose himself or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adopted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor.

Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288 of this code, every person so convicted is guilty of a felony, and is punishable by imprisonment in the state prison for not less than one year.

d. A new section numbered "311.02" should be enacted to contain the legislation now found in Section 311(6).

B. EXCEPTIONS FOR ACTORS

1. *Discussion*

It was pointed out by witnesses that the last paragraph of the present Section 311 makes an exception to the provisions of 311(6) in the case of actors Two main criticisms were heard concerning these provisions. The first objection was that there is no good reason for making an exception in the case of an actor. The second objection is that, if an exception is made, the wording relating to the exception is ambiguous. It is argued that in its present form it reads that a person cannot be convicted for violating this section unless he is convicted first of violating this section.

2. *Recommendations*

The exception for actors should be clarified so that the proposed Section 311.02, discussed above, should read substantially as follows:

> 311.02. Every person who willfully sings or speaks any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor.
>
> This section shall not apply to any person participating in violation thereof only as an actor or actress, unless and until a complaint has been filed against the owner, manager, producer, or director charging a violation of said section, and pending the determination thereof an actor or actress utters the particular word or words complained against or other word or words of the same or similar import, in connection with such performance, act, play, drama, exhibition, or entertainment.

C. ORGANIZATION

1. *Discussion*

Recent judicial decisions involving Section 311 have strained the language of the section considerably in order to find that certain activity was illegal. This came about primarily because the section was not organized so that all nouns were grouped together and all verbs grouped together. The straining of the section resulted when the courts had to take a verb away from one group of nouns and place it in another group of verbs before a different group of nouns.

To remove this and other difficulties it has been suggested that in the proposed Chapter VII.5 a section of definitions be enacted in which certain nouns and verbs should be defined in such a way as to include

a number of other nouns and verbs. By such a procedure it was suggested that the actual sections relating to illegal activity would be less complex, and consequently more understandable.

A comparative analysis, set forth in Appendix VII, has been made of statutes in California and certain other major states with a view toward integrating them into a single section of definitions so as to minimize possible loopholes in the formulation of the definitions.

2. Recommendations

a. The first section of the proposed Chapter VII.5, should contain definitions of the terms to be used in such chapter.

b. The first section should be numbered "310.01" and should read substantially as follows:

> 310 01. Definitions. As used in this chapter:
>
> (1) "Person" shall mean any individual, copartnership, association or corporation.
>
> (2) "Obscene" shall mean that the predominant appeal of a thing, when considered as a whole, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters.
>
> (3) "Matter" shall mean any picture, photograph, stereographic photograph, daguerreotype, image, lithograph, engraving, print, painting, motion picture, television presentation, drawing, writing, newspaper, story-paper, paper, card, book, comic book, magazine, pamphlet, or any other written or printed material or publication, figure, model, statue, mold, cast, article, instrument, phonograph record, wire or tape recording. It shall be immaterial for purposes of this definition whether mechanical, chemical, or other means is necessary to transmit the foregoing into auditory, visual, or sensory representations.
>
> (4) "Distribute" shall mean sell, lend, give, transmit, exhibit, show, or in any way furnish.
>
> (5) "Prepare" shall mean write, draw, compose, print, photograph, engrave, copy, stereotype, design, paint, manufacture, publish, mold, cut, cast, or, in any other way produce.

D. DEFINITION OF OBSCENITY

1. Discussion

One of the major points involved in the hearings was whether it would be desirable to define the term "obscene" in such a manner as to attempt to make the term more objective and easier to apply to a given publication.

There appears little difficulty in applying the term to the obviously obscene literature Most problems have arisen in the borderline areas. The major hurdle to a simple definition is the problem that no one seems to be able to agree even on the essential nature of pornography. Some find the key to it in the sense of shame, i.e., whatever violates the community sense of shame is obscene. Another writer has found it to be in whatever is "off the scene" and not openly shown on the stage of life. Others have taken an entirely different approach. To them the

obscene is that which arouses the "lower passions or indulgence in sensuality." Some writers have attempted to differentiate between "obscenity" and "pornography." One writer has said that "obscenity" is a broader word than "pornography" since it includes profanity and expletives whereas pornography is limited to books that are, or were intended to be, aphrodisiacs; however, pornography as a concept seems almost as hard to handle as obscenity.

The complexity of the idea of obscenity is another cause of difficulty. Obscenity appears to include three different factors: offensiveness; an ideological element that seeks to protect moral standards from criticism; and stimulation of sexual impulses and impure thoughts that may lead to immoral conduct.

Perhaps the most difficult of the problems inherent in any concept of obscenity concerns the effect of reading an obscene book, publication or picture. For purposes of clarity, this effect may be broken into various subcategories:

a. *The Effect on Thoughts.* The courts have used a variety of terminology in expressing this effect. The federal courts, for instance, using such phrases as "tending to suggest impure and libidinous thoughts," "suggesting lewd thoughts and exciting sensual desires," "stirring the sexual impulses," "leading to sexually impure and lustful thoughts," "arousing the salacity of the reader," "allowing or implanting obscene, lewd, or lascivious thoughts or desires." But what kind of desires, imaginations, impulses, or thoughts are impure, lascivious, lecherous, lewd, libidinous, lustful, obscene, sensual, or sexual? None of the cases give a clear answer. It is enough that reading the book or looking at the picture merely allows the thought to arise or suggests or leads to it, or must the book or picture stir, arouse, implant, excite or incite the prohibited thought? Only a few of the cases have discussed this question. In one case, the court suggested that the degree of likelihood of sexual stimulation as well as the degree of intensity of the resulting sexual thought, must outweigh the merits of the book. In *People* v. *Wepplo,* 79 Cal. App. 2d Supp. 959 (1947), the court seemed to indicate that the work must incite the prohibited thought when it said:

> "[It is obscene] if it has a substantial tendency to deprave or corrupt its readers by *inciting* lascivious thoughts or arousing lustful desire" (emphasis added).

Alberts v. *California,* 354 U. S. 476 (1957), also involved Section 311 and the court approved the trial court's instruction that used the same definition of "obscene" as that quoted above in the *Wepplo* case.

b. *Relationship Between Thought and Conduct.* Some courts seem to hold that a book is obscene if it has an adverse effect upon the reader's mind. Other courts apparently hold that it is not obscene unless the matter leads to improper actions. In connection with this thought it is interesting to note several recent California cases.

(1) In *People* v. *Wepplo, supra,* the court held that a book is obscene "* * * if it has a substantial tendency to deprave or corrupt its readers by inciting lascivious *thoughts* or arousing lustful *desire*" (emphasis added).

(2) In the *Alberts* case, *supra*, involving Section 311 and decided after the *Wepplo* case, *supra*, the court said that it is *not* necessary to show that there is a clear and present danger that reading of the writings in question will lead to commission of antisocial *acts*.

Thus, both cases appeared to hold the matter obscene if it has an adverse effect on the mind without considering whether such thoughts will lead to improper actions.

(3) In *People* v. *Murao* (No. B27083) and *People* v. *Ferlinghetti* (No. B27585), both San Francisco Municipal Court cases, the court said, "The test of obscenity in California is that the material must have tendency to deprave or corrupt readers by exciting lascivious thoughts or arousing lustful desire to the point that it presents a clear and present danger of *inciting* to antisocial or immoral *action*" (emphasis added). This case appeared to take into consideration the effect of such thoughts.

c. *Audience to Be Used in Judging Effect.* Another major question is whether the effect of material upon its reader is to be judged by reference to normal adults, abnormal adults, or children. The newer view is that the normal person is to be used as the standard. The normal person, however, is not always a suitable hypothetical individual for testing the effect of a book upon its readers. Books, publications, and pictures, like other things, are sometimes directed toward and distributed in channels that reach certain classes of people. Faced with this problem many courts take into account the "probable audience." They hold that if the potentially obscene matter is prepared, advertised or distributed in such a way as to reach those upon whom it is not likely to have undesirable effects, it is not obscene; but if, on the other hand, the book, publication or picture is so prepared, advertised, and distributed as to reach those upon whom it is likely to have undesirable effects, it is obscene. Reference to the probable audience of a book, publication, or picture to determine its effect upon readers introduces a new variable into a problem that is already full of variables. In this view, a book is not obscene as such. A book may be obscene when distributed to one class of persons, but not when distributed to another. The weight to be given to literary, scientific, and educational values in the determination of what is obscene, has engendered much conflict.

Most jurisdictions, including California, have adopted the requirement that the publication must be judged as a whole, not by its parts taken out of context. Under this view, a publication is obscene if that is its dominant effect or its main purpose, or if it contains prohibited matter in such quantity or of such a nature as to flavor the whole and impart to the whole any of the qualities mentioned in the statute, so that the work as a whole can fairly be described as obscene.

d. *Author's Intention.* The problem of the author's purpose and its bearing upon the determination of whether a work is obscene, is another area of conflict among the courts. Some courts have emphasized the sincerity of the author while other courts seem to hold it immaterial.

This subcommittee has had Assembly Bill No. 3849 and Assembly Bill No. 4158 (set forth in Appendixes III and IV referred to it for

interim study from the 1957 Regular Session of the Legislature. Assembly Bill No. 3849 proposes to amend Section 311 and add Section 311.5. The proposed amendment continues to use the present words, "lewd," "obscene," and "indecent." The proposed Section 311.5 deals with distribution to minors and again uses the words "obscene" and "indecent" but also adds, "which tends to suggest, arouse, or excite lustful sexual desires or thought in minors of such age." Assembly Bill No. 4158 relates to the exhibition and furnishing of sanguinary literature to minors and proposes to add Section 653d to the Penal Code. It should be noted that Senate Bill No. 2310 was also introduced at the 1957 Regular Session (set forth in Appendix V) and proposed to amend Section 311 to include motion pictures. However, the proposed changes did not in any way affect the present definition of obscenity in Section 311. The bill was passed in the Senate, sent to the Assembly, read the first time, and referred to the Assembly Judiciary Committee.

There has been no interpretation of the word "indecent," but the general view is that it means the same thing as "obscene." There have been very few appellate court decisions interpreting what is meant by "obscene," "indecent," and "lewd." Until quite recently the only appellate court interpretation was in *People* v. *Wepplo*, *supra*, which was taken to the United States Supreme Court and considered along with the companion case of *Roth* v. *United States*, 354 U. S. 476 (1957). The majority opinion written by Justice William J. Brennen, Jr., used the same definition of obscene as that quoted above in the discussion of the *Wepplo* case. The Supreme Court added that "obscene material is material which deals with sex in a manner appealing to prurient interest." The court said that it could perceive no significant difference between the meaning of obscenity developed in the case law and the definition in the Model Penal Code (Sec. 207.10(2), Tent. Draft No. 6), to wit:

> "A thing is obscene if, considered as a whole, its predominant appeal is to prurient interest, *i.e.*, a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters."

In a separate opinion, Chief Justice Earl Warren concurred in the result in the *Alberts* case, *supra*, but suggested that the majority opinion was worded too broadly, and the decision should be limited to the wording of the particular statute under consideration, which required "scienter," that is, required that the prohibited activity be done "wilfully and lewdly." Justice John Harlan wrote a separate opinion concurring in the result. He too thought that the opinion of the court was "painted with too broad a brush." He thought the court had mistakenly lumped together very different definitions of obscenity, such as the California definition and the Model Penal Code definition.

There is some conflict in the cases whether or not a "clear and present danger" must be present before material can be found to be obscene. The *Alberts* case, *supra*, said that since obscenity is not within the scope of constitutional guarantees of freedom of expression, it is *not* necessary to show that there is a clear and present danger that reading of the material will lead to commission of antisocial acts. The

Wepplo, Murao, and *Ferlinghetti* cases, *supra,* on the other hand, appeared to use a "clear and present danger" test.

In redefining obscenity, it is suggested that the State Legislature has two alternatives, one is to set standards that are static, based on the desire to raise the moral and ethical climate, or at least maintain it, and the other is to define the concept in such terms as to permit it to change with the change in moral and ethical climate. An example of the former alternative would be to spell out each and every situation wherein Section 311 would be applicable. It would be necessary to describe which portions of the anatomy could be shown and under what circumstances. In the latter alternative, it would be necessary to use different terms, or expand the present terms, in such a manner as to allow the definition of obscenity to change with the times.

All of the suggested definitions received by the subcommittee were subjected to the criticism that they did not minimize the difficulty of determining whether given material came within the definition.

2. Recommendations

a The term "obscene" should be defined to substantially conform with the majority opinion of *People* v. *Alberts,* 354 U. S. 476 (1957), as follows:

> 310.01(2). "Obscene" shall mean that the predominant appeal of a thing, when considered as a whole, is to prurient interest, *i.e.*, a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters.

E. REQUIREMENT OF INTENT

1. Discussion

Section 311 is introduced by the provision that "Every person who willfully and lewdly" does certain acts is guilty of a misdemeanor.

In *People* v. *Wepplo,* supra, the court held that the wording requires a specific intent, *viz,* a lewd intent. "Lewd" has been defined in many ways, but it appears to be synonymous with lustful, lascivious, or gross indecency. However, the *Wepplo* case recognized the difficulty of showing direct proof of such a state of mind and held that such an intent might be inferred from evidence that a person knew of the character of the material. Apparently, though it is not clear, this inference can be rebutted by one charged with a violation of Section 311.

Prosecuting officials appearing before the subcommittee stated that the requirement that a defendant be shown to have acted "lewdly" throws a substantial block in the way of any prosecution, and in many cases, it is an impossible element to prove. They suggested that the following alternatives be considered by the subcommittee:

a. *"Strict Liability."* Such a suggestion has precedent in California legislation. Prior to the enactment of the Penal Code, the subject matter of the statute was dealt with by an 1859 Statute which contained no words requiring a specific intent to constitute the offense. The words "willfully and lewdly" were added at the time of the enactment of the

code, and the courts indicated that this was a material and substantial change and presumed that the Legislature intended to add a requirement of specific intent.

The theory behind strict liability is that which justifies the pure food and similar laws. In cases of distribution to minors an analogy is also drawn to the laws involving drugs, tobacco, liquor and firearms. It is argued that if minors are not intelligent enough to deal with the foregoing, they are not mature enough to deal intelligently with material that is potentially more harmful to the individual and to society.

Under present law mere possession of obscene matter is not an offense and there has been considerable discussion whether it should be made an offense. In this connection it is interesting to consider the testimony of Albert E. Hederman, Jr., Alameda County Deputy District Attorney, at the hearing on May 22, 1958, in San Francisco:

> "We, of course, can speculate when such an individual, pervert or sex offender, is found in possession of such [obscene] materials perhaps around a school or around an area where juveniles are likely to be or play. We can speculate that perhaps it was his intention to sell or to display or exhibit these materials. But we have no other evidence than his mere possession and no evidence to justify a charge or a conviction under Section 311 as it now stands."

Such a problem as Mr. Hederman poses is compounded when an individual apprehended under suspicious circumstances has a prior record of sex offenses, but at the time of his apprehension has committed no punishable offense. There was general agreement among witnesses that possession *with intent* to sell, distribute, etc., should be an offense, and, indeed, it already is under present law under certain circumstances. A compromise solution on the mere possession issue was suggested whereby mere possession would be a crime if it is within a certain specified distance of schools, playgrounds or other places where juveniles are likely to gather.

If mere possession was made an offense, it was suggested that a rebuttable presumption be enacted holding that one who has obscene literature in his possession does so with knowledge of such possession, but that it would be a defense if the person charged could show ignorance of such possession.

Where prosecution is based on possession with intent to do certain specified acts, it was suggested that a rebuttable presumption be enacted holding that possession of a certain number of units of matter is evidence of possession with intent to do illegal acts.

b. *"Reasonable Man" Test.* The trier of fact in a criminal prosecution would first determine whether the matter is in fact obscene. If so found, and assuming all other necessary elements are shown, the trier of fact would then determine whether the defendant knew, or should reasonably have known, taking into consideration all surrounding circumstances, that the material was obscene.

This test would be less burdensome than the strict liability theory in many instances, but would still be burdensome enough to require self-policing based on the theory that distributors making a profit

should shoulder the responsibility that goes with being a merchant. The same problems relating to possession are present here just as they are under the "strict liability" theory, and reference should be made to discussion under (1) above.

c. *"Knowledge" Test.* The determining factor under this test is whether the defendant knows that the material in his possession contains the matter alleged to be obscene. It is immaterial whether the defendant knows or should know that it is obscene and in this respect it differs from the "reasonable man" test.

This test might be made more stringent by holding the defendant if a reasonable man in the defendant's position *should* have known that the material contained the matter alleged to be obscene.

The same problems relating to possession are present here just as they are under the previously described theories, and reference should be made to the discussion under (1) above.

2. Recommendations

a. The requirement that one act "lewdly" should be removed from California's obscenity legislation In its stead should be substituted a "reasonable man" test.

b. Mere possession should not be made an offense.

c. A new section numbered "310.02" should be added to proposed Chapter VII.5 to contain the legislation now found in Section 311(3). The section should read substantially as follows:

> 310.02. Distribution of Obscenity; Articles and Methods. Every person who, with knowledge that such matter is obscene or who is in possession of such facts that he should reasonably have known that such matter is obscene, publishes or distributes, or offers or attempts to publish or distribute, or causes the publication or distribution, or posseses with intent to distribute obscene matter is punishable as provided in Section 310.11. [Considered later in this report.]

d. A new section numbered "310.03" should be added to proposed Chapter VII.5 to contain the legislation now found in Section 311(5). The section should read substantially as follows:

> 310.03. Equipment for Exhibiting or Producing Obscene Matter; Presumptions. (1) Every person who, with knowledge that such equipment contains obscene matter or who is in possession of such facts that he should reasonably have known that such equipment contains obscene matter, distributes, or offers or attempts to distribute, or causes the distribution, or possesses with intent to distribute, any slot machine, motion picture projector, or other mechanical contrivance containing obscene matter shall be punishable as provided in Section 310.11. [Considered later in this report.]
>
> (2) Every person who, with knowledge that equipment is to be so used or intended to be used or who is in possession of such facts that he should reasonably know that such equipment is to be so used or intended to be used, prepares or distributes, or offers or attempts to prepare or distribute, or causes the preparation or dis-

tribution, or possesses with intent to distribute any recording, transcriptions, or mechanical, chemical or electrical reproductions, or any other articles, equipment, machines, or materials used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung, shall be punishable as provided in Section 310 11. [Considered later in this report.] For purposes of this section there is a rebuttable presumption that one in possession of such equipment has knowledge of possession of such equipment. This rebuttable presumption shall not extend to the issue of knowledge of the contents or intended use of such equipment.

F. ADVERTISING

1. Discussion

Testimony and exhibits received by this subcommittee indicate that obscene matter is advertised in three main ways: (1) it is placed where it is exposed to public view; (2) it is advertised in other publications; and (3) it is advertised in brochures, booklets, or pamphlets sent by mail, often unsolicited by the recipient, who frequently is a minor.

It being the policy of the law to suppress obscene matter wherever found, it follows that suppression of advertising of such matter is necessary to achieve that end. Such a policy is already expressed in Section 311(4) which provides that it is a misdemeanor to write, compose, or publish any notice or advertisement of obscene matter.

The only problem presented to the subcommittee was determining whether existing legislation was sufficient to eliminate such advertising.

It is the second and third types of advertising which present peculiar problems since the first type of advertising would be covered by the proposed Section 310 02. Testimony indicates that advertisements of the second and third type are drawn up in such a manner as to suggest, if not actually state, that the material advertised is obscene. Too often it appears that the advertised material is deceiving and misleading, or, in general, does not live up to its billing. Under present state and federal laws, criminal prosecution can be instituted only if there is fraud involved, or if the advertisement itself is obscene. In order to simplify the problems of prosecution in such cases, it has been suggested that it should be made a criminal offense to prepare or distribute such advertising.

2. Recommendations

A new section numbered "310.04" to be added to the proposed Chapter VII 5, should be enacted to contain the legislation now found in Section 311(4). The section should adopt the "reasonable man" test and read substantially as follows:

> 310.4 Advertising Obscene Matter. (1) Every person who, with knowledge that such matter or equipment is obscene or who is in possession of such facts that he should reasonably know that such matter or equipment is obscene, prepares or distributes any advertisement or notice of any kind giving information, directly

or indirectly, stating where, how, of whom, or by what means any obscene matter or equipment enumerated in Sections 310.02 or 310.03 can be purchased, obtained or otherwise had is punishable as provided in Section 310.11. [Considered later in this report.]

G. TIE-IN SALES

1. *Discussion*

Evidence was received that many distributors require retailers, newsstand dealers, and operators to buy obscene matter for resale if they wish to receive the major and popular nationally advertised publications. Although some dealers may have used this as an excuse for handling obscene matter, witnesses generally agreed that it would be desirable to enact legislation similar to the present package tie-in sale law to include such practices.

The present law, found in Business and Professions Code, Section 16603, was enacted in 1955 when there was a great deal of concern about comic books. It generally bars a wholesaler from requiring a retailer to buy an illustrated publication which shows the performance of certain specified crimes in order to get periodicals that the retailer would like to have for his ordinary business. One of the offenses mentioned in Section 16603 is rape; otherwise the section does not relate to sexual matters, but instead it relates to crimes of violence.

2. *Recommendations*

A new section numbered "310.05" should be added to the proposed Chapter VII.5 to read substantially as follows:

> 310.05. Tie-in Sales of Obscene Matter. Every person who, as a condition to a sale, or delivery for resale of any matter, requires that the purchaser or consignee receive for resale, any other obscene matter, is punishable as provided in Section 310.11. [Considered later in this report.]

H. MINORS AND OBSCENITY

1. *Discussion*

Among exhibits submitted at hearings was legislation in other major states making it a criminal offense to use minors to aid in the preparation or distribution of obscene matter. In view of the fact that California has no such legislation at the present time, it has been suggested that it would be desirable to enact a similar statute on the theory that it is particularly desirable to enact such legislation as is necessary to protect youth from such material.

Testimony received also shows that too frequently parents are unaware of the availability of obscene literature and pictures to their children. It is not uncommon to find that there are places near schools or other places, where minors gather, where they can buy not only borderline publications, but also material of the most filthy type. In addition, the subcommittee received evidence that mailed advertisements for obscene material are sent to minors, their names apparently taken from mailing lists, or high school graduation lists.

Most witnesses indicated that it would be helpful to have separate provisions whereby there would be different tests for obscenity and/or different penalties depending upon whether the distribution is to adults or minors.

A few witnesses indicated that they believed a different standard is set up by Welfare and Institutions Code Section 702, which relates to contributing to the delinquency of a minor. Other witnesses, however, have indicated that they did not feel that it was the legislative intent to make the section cover obscene matter and that there are difficult problems of proof involved in utilizing Section 702 for that purpose.

2. Recommendations

a. Greater penalties should be imposed on persons violating California's pornography laws when their activities involve minors than when only adults are involved.

b. A new section numbered "310 06" should be added to the proposed Chapter VII.5 to read, substantially, as follows:

> *310.06. Use of Minors.* Every person who, with knowledge that such minor is in any way aiding in the preparation, or distribution of obscene matter, or equipment, or who is in possession of such facts that he should reasonably know that such minor is in any way aiding in the preparation or distribution of obscene matter or equipment, hires, employs, uses, or who, having the care, custody, or control of any minor, permits any minor to do or assist in doing, any act or thing mentioned in Sections 310.02, 310.03, 310.04, or 310.05 is punishable as provided in Section 310.11. [Considered later in this report.]

I. INJUNCTIONS AND SEIZURE OF OBSCENE MATTER

1. Discussion

It was recommended by various witnesses that it would be helpful to provide for issuance of an injunction to prevent distribution of obscene literature in view of the fact that California has no present legislation by which a person can be enjoined from distributing obscene literature.

Such legislation could be modeled after the Massachusetts and New York laws. Under such a procedure the court, upon the filing of a complaint showing a cause of action, would issue a preliminary injunction. There would then be a trial to determine whether the injunction would be made permanent There is some problem, however, as to whether the trier of fact at the trial should be a judge, jury, or panel of judges. Such injunctive proceedings would be in addition to possible criminal prosecution under the Penal Code pornography provisions

Proponents believe that it would be very useful in reducing the dissemination of obscene literature. They also point out the obvious advantage to the distributor in that it would enable him to have a reasonably fast adjudication as to whether or not he is distributing obscene material. It was suggested that a provision could be included whereby an adjudication in the action that the matter was not obscene would be a bar to criminal prosecution for distributing that matter.

Penal Code Sections 312, 313, and 314 currently provide for seizure of matter in the possession of a person arrested and charged with violation of Section 311. In substance, it is provided that the material must be taken before the magistrate before whom the person arrested is required to be taken. The magistrate, at the time of the examination of the accused, or if the examination is delayed without such examination, must determine whether the material is obscene. If he so finds, one copy is delivered to the district attorney and the rest destroyed. If the defendant is convicted, even the district attorney's copy is destroyed.

The obvious danger present in Sections 312, 313, and 314 is that the magistrate may find the material obscene and order it destroyed, except for the district attorney's copy, even though the defendant pleads not guilty and at trial the jury refuses to convict him because they do not believe the material obscene. The person tried then has to pursue his remedy, if he even has a remedy, to recover the value of the material destroyed.

2. Recommendations

a. A rapid injunction proceeding should be provided for issuance of an injunction to prevent dissemination of obscene literature. This legislation should be contained in a proposed new section (Section 535) to be added to Chapter III of Part 2, Title 7 of the Code of Civil Procedure. Section 535 should read, substantially, as follows:

Section 535. Abatement of Distribution of Obscene Articles

Section 535.01. Definitions. As used in Section 535:

(1) "Person" shall mean any individual, copartnership, association, or corporation.

(2) "Obscene" shall mean that the predominant appeal of a thing, when considered as a whole, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters.

(3) "Matter" shall mean any picture, photograph, stereographic photograph, daguerreotype, image, lithograph, engraving, print, painting, motion picture, television presentation, drawing, writing, newspaper, storypaper, card, book, comic book, magazine, pamphlet, or any other written or printed material or publication, figure, model, statue, mold, cast, article, instrument, phonograph record, wire or tape recording. It shall be immaterial for the purposes of this definition whether mechanical, chemical, or other means is necessary to transmit the foregoing into auditory, visual, or sensory representations.

(4) "Distribute" shall mean sell, lend, give, transmit, exhibit, show, or in any way, furnish.

(5) "Prepare" shall mean write, draw, compose, print, photograph, engrave, copy, stereotype, design, paint, manufacture, publish, mold, cut, cast, or, in any other way produce

Section 535.02. Action to Enjoin. The district attorney of any county, or city and county, or city attorney or other prosecuting officer of any city in which a person prepares or distributes, or

causes the preparation or distribution of, or possesses with intent to distribute any:

a. Obscene matter, or

b. Any slot machine, motion picture projector, or other mechanical contrivance containing obscene matter, or

c. Any recording, transcriptions, or mechanical, chemical, or electrical reproduction, or any other articles, equipment, machines, or materials used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung, may maintain an action in the name of the people of the State of California for an injunction against such person in the superior court to prevent activity charged.

Section 535.03. Temporary Writ. Whenever the existence of a cause of action as described in Section 535.02 is shown in such action by a complaint attesting the existence of facts showing such cause of action, the court or judge shall allow a temporary writ of injunction to prevent the activity charged.

Section 535.04. Time of Trial. The person sought to be enjoined shall be entitled to a trial of the issues within one day after joinder of issue and a decision shall be rendered within two days of the conclusion of the trial.

Section 535 05. Trial. The trier of fact shall be a three-judge panel selected by the presiding judge of the superior court.

Section 535.06. Disposition of Obscene Articles. In the event that the final order or judgment makes the injunction permanent, as to any, or all, of the material, such order shall contain a provision directing the person to surrender to the sheriff of the county in which the action was brought, any of the matter described in Section 535.02, and such sheriff shall be directed to seize and destroy the same.

Section 535.07. Proceeding as Bar to Criminal Prosecution. (1) In the event that the final order or judgment declares that the material which is the subject matter of the proceeding, or any portion thereof, does not fall within the provisions of Section 535.02, such material, or portion thereof, cannot be used as a basis of criminal prosecution under the provisions of Part 1 of Title 9 of Chapter VII.5 of the Penal Code.

(2) In the event that the final order or judgment makes the injunction permanent as to any, or all, of the material which is the subject matter of the proceeding, such order or judgment shall not be a bar to any criminal prosecution using such material as a basis for prosecution under the provisions of Part 1 of Title 9 of Chapter VII.5 of the Penal Code.

Section 535 08. Undertaking, Cost, and Damages. In any action brought as herein provided, such officer of the county, city and county, or city, shall not be required to file any undertaking before the issuance of the temporary injunction provided for in this article.

Neither shall such officer be liable for cost or damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person sought to be enjoined

Section 535.09. Violation of Injunction. Any violation or disobedience of any injunction or order expressly provided for by this article shall be punishable as a contempt of court by a fine of not less than $250 nor more than $1,000 or, by imprisonment in the county jail for not less than thirty (30) days, nor more than six (6) months, or by both such fine and imprisonment.

b. A new section numbered "310.07," to be added to the proposed Chapter VII.5, of the Penal Code, should be enacted to contain the legislation now found in Section 312. The section should read substantially, as follows:

310.07. Seizure of Indecent Articles. At the time of the arrest of any person charged with violation of Sections 310.02, 310.03, or 310.04 of this Chapter, the arresting party shall seize any matter, equipment, or advertisements in the possession or under the control of the person so arrested which he believes violates such sections and deliver the same to the magistrate before whom the person so arrested is required to be taken.

c. A new section numbered "310.08," to be added to the proposed Chapter VII.5 should be enacted to contain the legislation now found in Section 313. The section should read, substantially, as follows:

310.08. Determination of Articles' Nature; Delivery to District Attorney; Destruction. The magistrate to whom such matter, equipment, or advertiesments are delivered pursuant to the foregoing section must, upon the examination of the accused, or, if the examination is delayed, or prevented, without awaiting such examination, determine the character of such matter, equipment, or advertisements.

If the magistrate finds them to fall within the provisions of Section 310.02, 310.03, or 310.04, he shall deliver one unit of each category, or type, to the district attorney of the county in which the accused is liable to indictment or trial, and shall order the rest held pending the entering of a plea by the person charged.

If the person charged pleads guilty to violiation of Section 310.02, 310.03, or 310.04, the matter, equipment, or advertisements covered by the plea shall, at once, be destroyed. If the person pleads not guilty, such matter, equipment, or advertisements, shall be examined by a three judge panel appointed by the presiding judge. In the event that the panel finds it to fall within the above-mentioned sections, the panel shall immediately order it destroyed. In the event that the panel finds that it does not fall within the provisions of the above-mentioned sections, the panel shall order the material held pending the outcome of the trial of the person charged.

d. A new section numbered "310.09," to be added to the proposed Chapter VII.5, should be enacted to contain the legislation now found in Section 314. The section should read substantially, as follows:

> 310.09. Destruction on Conviction of Accused. Upon the conviction of the accused, all material held pending the outcome of the trial and all material which remains in the possession, or under the control of the district attorney, seized from defendant pursuant to Section 310.07, shall immediately be destroyed.

J. MAILING AND TRANSPORTATION OF OBSCENITY

1. Discussion

California, and particularly Southern California, has been called the "smut capital of the Nation" and, by various means, its influence has been felt throughout the Country. A United States Post Office representative, appearing before the subcommittee, testified that people throughout the Country have frequently complained to the postal authorities about advertisements for the sale of obscene literature, pictures and materials, being mailed to them from California.

One of the great obstacles to prosecution was that a large portion of the complaints came from areas less sophisticated than California. Until 1958, under federal law in Title 18 of the United States Code, Sections 1461 through 1465, it was necessary to prosecute where the mail was posted rather than where it was received. The result was that although the complaint came from areas where juries were less sophisticated, prosecution had to be in California where metropolitan juries are more sophisticated and less prone to convict. It should be noted, however, that Congress amended Section 1461 in 1958 to allow prosecution in either place.

One of the problems arising under postal prosecution is that advertising sent out soliciting business is drawn up in such a manner as to suggest, if not actually state, that the material advertised is obscene, whereas, it is in fact, not obscene. It appears that under present federal law, prosecution can be had only if the advertisement itself is obscene.

Among exhibits received by the subcommittee were statutes in other jurisdictions, supplementing federal law, directed toward preventing the mailing and distribution of such material. Raymond M. Momboisse, California Deputy Attorney General, testified that he believed that there is definite merit to enactment of similar legislation in California, expressing the opinion that such legislation, if properly enacted, would be constitutional.

Another problem not covered by federal law, or present state law, is the intrastate transportation of obscenity. There is evidence that distributors of pornography, in order to avoid prosecution under postal laws, have used common carriers and other private carriers in the transportation of such material. While present federal law appears to cover interstate transportation, it does not cover such intrastate transportation. Such legislation has been suggested as necessary and desirable to curb such intrastate activities.

2. *Recommendations*

A new section numbered "310.10" should be added to the proposed Chapter VII.5 to read substantially, as follows:

> 310.10. Every person who, with knowledge that such matter, equipment, or advertisement is unlawful within the provisions of Sections 310.02, 310.03, or 310.04, or, who is in possession of such facts that he should reasonably have known that such matter, equipment, or advertisement is unlawful within the provisions of such sections, deposits in any post office or express office in this State, or places in charge of any person, to be carried or conveyed any matter, equipment, or advertisement falling within the provisions of Section 310.02, 310.03, or 310.04, is punishable as provided in Section 310 11 [Considered later in this report]
>
> Every person, who, with knowledge that such matter, equipment, or advertisement is unlawful within the provisions of Sections 310.02, 310.03, or 310 04, or who is in possession of such facts that he should reasonably have known that such matter, equipment, or advertisement is unlawful within the provisions of such sections, receives any matter, equipment, or advertisement falling within the provisions of Sections 310.02, 310.03, or 310.04 with intent to carry or convey the same, except in the United States mail, is punishable as provided in Section 310 11 [Considered later in this report]

K. PENAL PROVISIONS

1. *Discussion*

Section 311 presently provides that violation of the obscenity provisions of that section is punishable as a misdemeanor. Under Penal Code Section 19 a misdemeanor is punishable as follows:

> "Except in cases where a different punishment prescribed by any law of this State, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both.

Evidence received by the subcommittee suggested that it might be desirable to set a basic minimum fine for the first offense with an additional graduated amount based upon the number of units of pornographic matter involved For example, the fine might be $500 plus $10 for each unit involved. Under this plan a small distributor apprehended with 10 magazines would pay $600 while a big operator apprehended with 1,000 magazines would have to pay $10.500. It has been urged that such a system is desirable in view of the tremendous amount of money spent each year in California for obscenity, more than any other state in the nation It appears that the present small fine is no deterrent since big distributors willingly incur it as a necessary business risk.

Evidence was also received suggesting a minimum jail sentence for the first offense. This too, might be graduated, as has been suggested in the case of fines, according to the number of units involved.

There is presently no increased penalty for second and subsequent offenders and it has been suggested that such legislation would be effective.

Assembly Bill No. 3849, referred to the subcommittee for interim study, provides that in the case of distribution to minors under the age of 18 there shall be a minimum of 10 days and maximum of six months in jail, or minimum of $50 and a maximum of $500, or both. Second and subsequent offenses within three years draws not less than 30 days, nor more than six months, or not less than $100 nor more than $500, or both. It also provides that for second and subsequent offenses the minimum punishment shall be served, or the minimum fine paid, or both, as a condition of probation.

Evidence received indicates the desirability of stiffer penalties where the offender involves minors because of the possible greater harm which may result. Immature minds probably are more susceptible to the influence of such material than are more mature minds, and for this reason it would seem that a greater criminal offense is being committed.

2. Recommendations

A new section numbered "310.11," to be added to the proposed Chapter VII.5, should be enacted. It should read substantially, as follows:

310.11. Punishment.

(1) Violation of Sections 310.02, 310.03, 310.04, or 310.05, shall be punishable by:

(a) A fine not exceeding $500 plus $10 for each additional unit of material coming within the provision of this chapter, or by

(b) Imprisonment in the county jail, not exceeding six months, plus one day for each additional unit of material coming within the provisions of this chapter, such basic minimum and additional days not to exceed 360 days in the county jail, or by

(c) Both such fine and imprisonment.

Second and subsequent offenses, committed within three years of a prior offense, shall be punishable by:

(a) A fine of not less than $100 nor more than $500 plus $15 for each additional unit of material coming within the provisions of the chapter, or by

(b) Imprisonment in the county jail for not less than 10 days nor more than six months, plus one day for each additional unit of material coming within the provisions of this chapter, such basic minimum and additional days not to exceed 360 days in the county jail, or by

(c) Both such fine and imprisonment.

(2) Distribution, or offer or attempt to distribute, or causing the distribution to minors under the age of 18 years of age in violation of Sections 310.02, 310.03, or 310.04, shall be punished by:

(a) A fine of not less than $50 nor more than $500, plus $10 for each additional unit of material coming within the provisions of this chapter, or by
(b) Imprisonment in the county jail for not less than 10 days nor more than six months, plus one day for each additional unit of material coming within the provisions of this chapter, such basic minimum and additional days not to exceed 360 days in the county jail, or by
(c) Both such fine and imprisonment.

Second and subsequent offenses, committed within three years of a prior offense, shall be punishable by:

(a) A fine of not less than $100 nor more than $500 plus $10 for each additional unit of material coming within the provisions of this chapter, or by
(b) Imprisonment in the county jail for not less than 30 days nor more than six months, plus one day for each additional unit of material coming within the provisions of this chapter, such basic minimum and additional days not to exceed 360 days in the county jail, or by
(c) Both such fine and imprisonment.

For second and subsequent offenses, the defendant may be granted probation only if a condition of the probation is that he serve the minimum term of imprisonment, or pay the minimum fine, or both, as specified in this subsection. In no event, does the court have the power to absolve such defendant of the obligation of spending at least such minimum time in the county jail, or paying such minimum fine.

(3) Violation of Section 310.06 shall be punishable by:

(a) A fine of not less than $100 nor more than $500, or by
(b) Imprisonment in the county jail for not less than 30 days nor more than six months, or by
(c) Both such fine and imprisonment.

Second and subsequent offenses, committed within three years of a prior offense, shall be punishable by:

(a) A fine of not less than $250 nor more than $500, or by
(b) Imprisonment in the county jail for not less than 90 days nor more than six months, or by
(c) Both such fine and imprisonment.

For second and subsequent offenses, the defendant may be granted probation only if a condition of the probation is that he serve the minimum term of imprisonment, or pay the minimum fine, or both, as specified in this subsection. In no event, does the court have the power to absolve such defendant of the obligation of spending at least such minimum time in the county jail, or paying such minimum fine.

IV. PRACTICAL PROBLEMS OF ENFORCEMENT

A. DISCUSSION

It appears that law enforcement officers, generally, have had little, if any, special training to aid them in the determination of whether given material comes within the prohibitions of Section 311. Law enforcement agencies are largely dependent upon the advice of prosecuting officials. Their judgment, for the most part, is based on their own experience and that of their department as to the type of material which has been prosecuted successfully in the past.

Success of a prosecution depends to a large extent upon the particular jury involved. Juries in larger communities, being more sophisticated, are less prone to convict than are juries in smaller communities In addition, juries considering borderline cases usually resolve doubts in favor of the defendant so that many guilty men are freed for every innocent one convicted.

Prosecuting officials do not like to be placed in the position of being a censor, and, even if they did, present staffs would be extremely inadequate to read and analyze the multitude of publications published monthly. They also pointed out that if they were to read and clear certain publications as not being obscene, the public might accept this as a kind of recommendation; whereas the prosecutor's office would in fact not be recommending the publication and might believe it to be objectionable, although not sufficiently so as to be able to secure a conviction.

Law enforcement officers also have pointed out the large quantity of objectionable material that is being brought, and sent, into this State from Mexico. They indicated that it would be most helpful if the Legislature would, in some official manner, bring this to the attention of the appropriate officials of that country.

B. RECOMMENDATIONS

1. Schooling received by law enforcement officers should be broadened to include more training in enforcement of pornography laws.

2. The book and magazine industry itself, under the leadership of the largest and reputable publishers, should take immediate steps to organize an effective, all-inclusive, self-regulatory association to prevent the publication of obscene material.

3. The district attorneys and police departments of our State should take a more active interest in the elimination of obscene material now crowding many newsstands.

4. Voluntary citizen's community groups should be encouraged to make an active effort to seek the support of newsdealers, merchants and other distributors in refusing to offer obscene material for sale.

APPENDIX I

Penal Code Section 311. (Indecent exposures, exhibitions, etc.: Grade of offense: Application of subd. 6.)

Every person who willfully and lewdly, either:

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assists any person so to expose himself or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adopted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print or figure; or,

5. Produces, prepares, manufactures, sells, distributes, keeps for sale, exhibits, buys, rents, operates, uses, keeps, or maintains recordings, transcriptions, or mechanical, chemical, or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung; or,

6. Sings or speaks any lewd or obscene song, ballad, or other words in any public place, or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor.

Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288 of this code, every person so convicted is guilty of a felony, and is punishable by imprisonment in the state prison for not less than one year.

The provision of subdivision 6 of this section shall not apply to any person participating in violation thereof only as an actor, unless and until the proper court shall have passed upon the matter and found the actor to have violated the said subdivision 6 of this section, except where after a complaint has been filed against the owner, manager, producer or director charging a violation of said subdivision 6 of this section, and pending the determination thereof an actor or actress utters the particular word or words complained against or other word or words of the same or similar import, in connection with such performance, act, play, drama, exhibition or entertainment.

Penal Code Section 312. (Seizure of indecent articles.)

Every person who is authorized or enjoined to arrest any person for a violation of subdivision 3 of the next preceding section, is equally

authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Every person who is authorized or enjoined to arrest any person for a violation of subdivision 5 of the next preceding section, is equally authorized and enjoined to seize any recordings, transcriptions, or mechanical, chemical or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung.

Penal Code Section 313. (Summary determination of character of indecent articles: Delivery of copy to district attorney: Destruction of other copies.)

The magistrate to whom any obscene or indecent writing, paper, book, picture, print, or figure, or to whom any recordings, transcriptions, or mechanical, chemical or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, is delivered, pursuant to the foregoing section, must, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such material or article, and if he finds it to be obscene or indecent, he must deliver one copy to the district attorney of the county in which the accused is liable to indictment or trial, and must at once destroy all the other copies.

Penal Code Section 314. (Destruction of articles upon conviction of accused.)

Upon the conviction of the accused, such district attorney must cause any matter or article, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

APPENDIX II

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Peninsula Council of Churches, Burlingame
Fred N. Whichello
Deputy District Attorney
Los Angeles County

APPENDIX III

Assembly Bill No. 3849, as finally amended.

An act to amend Section 311 of, and to add Section 311.5 to, the Penal Code, relating to sale of obscene and indecent literature to minors.

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

SECTION 1. Section 311 of the Penal Code is amended to read:

311. Every person who willfully and lewdly, either:

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2 Procures, counsels, or assists any person so to expose himself or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adopted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, or keep or offers for sale, or sells, distributes, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

4 Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print or figure; or,

5. Produces, prepares, manufactures, sells, distributes, keeps or offers for sale, exhibits, buys, rents, operates, uses, keeps, or maintains recordings, transcriptions, or mechanical, chemical, or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung; or,

6. Sings or speaks any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than six months, or by fine of not more than five hundred dollars ($500), or by both

Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288 of this code, every person so convicted is guilty of a felony, and is punishable by imprisonment in the state prison for not less than one year.

The provision of subdivision 6 of this section shall not apply to any person participating in violation thereof only as an actor, unless and until the proper court shall have passed upon the matter and found the actor to have violated the said subdivision 6 of this section, except where after a complaint has been filed against the owner, manager, producer or director charging a violation of said subdivision 6 of this section, and pending the determination thereof an actor or actress utters the particular word or words complained against or other word

or words of the same or similar import, in connection with such performance, act, play, drama, exhibition or entertainment.

SEC. 2. Section 311.5 is added to said code, to read:

311.5. Every person who willfully offers for sale, sells, offers to give, gives, or distributes to any minor under 18 years of age, any obscene or indecent writing, paper, book, picture, print, or figure which tends to suggest, arouse, or excite lustful sexual desires or thoughts in minors of such age or who, having any such writing, paper, book, picture, print, or figure in his possession for sale, knowingly permits any minor of such age to read or examine it, is guilty of a misdemeanor punishable, for the first offense, by imprisonment in the county jail for not less than 10 days nor more than six months, or by fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500), or by both, and for the second and each subsequent offense, committed within three years of a prior offense, by imprisonment in the county jail for not less than 30 days nor more than six months, or by fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or by both.

For a second or subsequent conviction under this section defendant may be granted probation only if a condition of the probation is that he serve the minimum term of imprisonment, or pay the minimum fine, or both, as specified in this section. In no event does the court have the power to obsolve such defendant of the obligation of spending at least such minimum time in the county jail or paying such minimum fine.

APPENDIX IV

Assembly Bill No. 4158

An act to add Section 653d to the Penal Code, relating to the exhibition and furnishing of sanguinary literature to persons under the age of 18 years.

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

SECTION 1. Section 653d is added to the Penal Code, to read:

653d. Every person who sells, offers for sale, exhibits, distributes, or in any manner furnishes, to any person under the age of 18 years, any booklet, pamphlet, or magazine which contains drawings, except editorial drawings, showing human blood or bloodshed incident to crime or violence, including, but not limited to, a drawing of a dismembered human body or a human victim of violence lying in a pool of blood, is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than six months or by fine of not more than five hundred dollars ($500), or by both.

SECTION 2. In adding Section 653d by this act, the Legislature finds as follows:

(a) The distribution and exhibition to children of publications of the types referred to in Section 653d have often corrupted the morals of children and incited crime among children;

(b) Pictorial presentation of scenes of human bloodshed and blood incident to crime or violence is particularly dangerous in its effect on children, who are naturally impressionable and imitative and who have, in fact, been incited by viewing such pictorial presentations to commit sanguinary crimes;

(c) There is a clear and present danger that if distribution and exhibition of such publications to children are allowed to continue, the morals of children will further be corrupted and there will be more incidents of children being incited to the commission of sanguinary crimes;

(d) This act is a reasonable means of averting the clear and present danger described in finding (c) above.

APPENDIX V

Senate Bill No. 2310

An act to amend Section 311 of the Penal Code, relating to possession of obscene and indecent writings, recordings, pictures, and other objects.

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

SECTION 1. Section 311 of the Penal Code is amended to read:

311. Every person who willfully and lewdly, either:

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assist any person so to expose himself or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adopted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, book, picture, print, or motion picture or print; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print or figure; or,

5. Produces, prepares, manufactures, sells, distributes, keeps for sale, exhibits, buys, rents, operates, uses, keeps, or maintains recordings, transcriptions, or mechanical, chemical, or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung; or,

6. Sings or speaks any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor.

Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288 of this code, every person so convicted is guilty of a felony, and is punishable by imprisonment in the state prison for not less than one year.

The provision of subdivision 6 of this section shall not apply to any person participating in violation thereof only as an actor, unless and until the proper court shall have passed upon the matter and found the actor to have violated the said subdivision 6 of this section, except where after a complaint has been filed against the owner, manager, producer or director charging a violation of said subdivision 6 of this section, and pending the determination thereof an actor or actress utters the particular word or words complained against or other word or words complained against or other word or words of the same or similar import, in connection with such performance, act, play, drama, exhibition or entertainment.

APPENDIX VI

Welfare and Institutions Code Section 702. Contributing to delinquency of minor.

(Acts Constituting Misdemeanor: Punishment.) Any person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 21 years to come within the provisions of any of the subdivisions of Section 700 or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person or ward of the juvenile court under the age of 21 years to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause any such person to become or to remain a person within the provisions of any of the subdivisions of Section 700, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years.

(Jurisdiction of Prosecutions: Probation: Bond.) The juvenile court shall have original jurisdiction over all misdemeanors defined in this section, and in all prosecutions hereunder shall cause the defendant to be duly arraigned, and plead to the charge made against him in the manner provided in the Penal Code upon an indictment or information. In all cases where the defendant prosecuted under this section enters a plea of guilty, the juvenile court shall have jurisdiction to impose sentence or in its discretion to grant probation upon such terms as it deems proper. The court may, as a condition of such probation, require a bond in such sum as the court may designate to be approved by the judge requiring it, to secure the performance by such person of the condition imposed by the court on such probation. The bond shall by its terms be made payable to the State of California, and any moneys received for the breach thereof shall be paid into the county treasury.

APPENDIX VII

Comparative Analysis

August 15, 1959

To: Honorable Louis Francis

From: L. J. Dewald, Consultant

Subject: Obscenity and Pornography Legislation

Pursuant to your request I have prepared a short comparative analysis of statutes on obscenity in California, Pennsylvania, Michigan, Indiana, and New York. I have selected those particular states since I believe that they give a fairly good sampling of the better legislation in the field.

The analysis is directed primarily to the areas involving pictures, writings, figures, articles and records of an obscene nature and only secondarily to matter depicting lust and crime. No discussion is included of songs, speech, acts or conduct.

Table I, attached, is an analysis of the statutes of California, Pennsylvania, Michigan, Indiana and New York relating to the objects covered, the means of preparation barred, and the methods of distribution barred. As can be seen by a comparison of the six columns there is a wide divergence between the objects, preparation and distribution covered in California and in other jurisdictions, such as New York, which have more comprehensive legislation on the subject of obscenity. Perhaps this divergence is more apparent than real because of the fact that a California court might construe Section 311 so liberally as to make it virtually as comprehensive as any of the more comprehensive statutes. In any event, the proposed legislation which I have prepared is so worded as to make it more comprehensive than any existing statute so far as preparation and distribution of obscene matter is concerned.

Table II shows the provisions of the above-mentioned states on the subject of advertising. The same general discussion would seem to apply here also. An addition observation might be made here, and that is that the proposed legislation would clarify the present Penal Code section so as to make it clearly applicable to the equipment mentioned in the present Section 311(5).

Table III is a summary of the other provisions which can be found in other jurisdictions on the subject of obscene and pornographic literature. Only the provisions relating to use of minors, tie-in sales and injunctions have been utilized in the proposed legislation.

Sections 310.07, 310.08 and 310.09 of the proposed legislation do not make any changes in existing legislation other than to renumber the sections so that they will be in a separate chapter with the other provisions on this particular subject.

The proposed legislation on the subject of indecent exposure is substantially the same as Sections 311(1) and 311(2), with some modification. The proposed changes are included only because the Subcommittee on Pornographic Literature had heard some criticism of the wording of those subsections, and it is with a view to correcting those inadequacies that there is a change in the wording as well as in the organization.

The discussion immediately above would equally apply to the proposed legislation on lewd conduct.

Table I. Distribution

A. Objects covered by B and C unless otherwise shown	*Calif.* 1	*Penn. 3* 2	*Penn. 5* 4	*Michigan* 4	*Indiana* 6	*New York* 7
1. Writing	x		x	x		x
2. Paper	x		x	x	x	x
3. Book	x		x	x	11	x
4. Card						x
5. Comic Book		x				
6. Magazine		x	x	x		x
7. Other Publication		x				
8. Pamphlet			x	x	x	x
9. Newspaper			x	x		x
10. Storypaper			x	x		x
11. Drawing			x	x	x	x
12. Stereo Picture					x	x
13. Photograph			x	x	x	
14. Daguerreotype					x	
15. Figure			x	x		
16. Image			x	x		
17. Any indecent written or printed matter			x	9		9
18. Articles or Instruments			8		12	8
19. Filthy and obscene libel						
20. Print						
21. Model					x	
22. Statue						
23. Cast					x	
24. Places						
25. Phonograph record				x		x
26. Lithograph					x	
27. Picture				10	x	13
28. Engraving					x	
29. Wire or tape recording				x		

Table I. Distribution—Continued

	Calif.	*Penn. 3*	*Penn. 5*	*Michigan*	*Indiana*	*New York*
B. Methods	*1*	*2*	*4*	*4*	*6*	*7*
1. Sell	x	14	14	14	14	14
2. Attempt to sell		x				
3. Exhibit	x	x	14		x	
4. Show			14	14		14
5. Lend			14	14	14	14
6. Give		x	14	14	14	14
7. Keep with intent to sell or give	x	x	15	15	16	15
8. Distribute	x		14	14		14
9. Any way furnish		x				
10. Utter						
11. Transmute				14		14
12. About to acquire with intent to sell or distribute						17
C. Preparation						
1. Writes	x					
2. Composes	x					
3. Stereotypes	x					
4. Prints	x		19		x	x
5. Publishes	x		19			x
6. Designs	18		19			x
7. Copies	18		19			x
8. Draws	18		19		20	x
9. Engraves	18					
10. Paints	18					
11. Otherwise prepares	18		19			x
12. Photographs			19			x
13. Utters			19			x
14. Manufactures					x	x
15. Mold	21					
16. Cut	21					
17. Cast	21					
18. Otherwise make	21					

FOOTNOTES TO TABLE I:

1. Obscene or indecent objects
2. Obscene, lewd, lascivious, filthy, indecent or disgusting objects which teaches or advocates use of narcotics.
3. Statute applicable to persons under 18 only
4. Same as "2" except that it omits objects which teach or advocate use of narcotics
5. Statute applicable to all persons over 18.
6. Obscene, lewd, indecent, or lascivious
7. Same as "2" except that it omits portion on narcotics and adds the words sadistic and masochistic.
8. Articles or instruments of, purporting to be for, indecent or immoral use or purpose
9. Any indecent written, printed or recorded matter which may or not require mechanical or other means to be transmitted into auditory, visual or sensory representations
10. Includes motion pictures
11. Sec 10-4704 (Burns) provides also that "It shall be unlawful for any person, firm or corporation to expose for sale or cause to have exposed for sale any * * * paper novels with covers bearing dangerous, or incendiary or obscene pictures in any showcase or window along any streets or in any store."
12. Articles or instruments of indecent or immoral use, for procuring abortion, or for self-pollution, or medicine for procuring abortion, or preventing conception
13. See also P C 1141 (1) dealing with peep shows etc
14. Or offer to
15. Or lend, distribute or show.
16. Or lend
17. Covered in C C.P. Sec 22-a(1) dealing with injunctions.
18. Refers only to any picture or print
19. Same as all objects under "A" except that picture is added and photograph is subtracted.
20. And exposes, or with intent to sell or have sold.
21. Figures only.

Table II. Advertising

	Calif.	*Penn. 3*	*Penn. 5*	*Michigan*	*Indiana*	*New York*
A. Objects Covered	1	2	4	4	6 22	6 22
1. Writing	x		x	x		
2. Paper	x		x	x		
3. Book	x		x	x		
4. Picture	x			10		
5. Print	x					
6. Figurine	x					
7. Equip for reproducing obscene songs, ballads or other words spoken or sung.						
8. Magazine			x	x		
9. Pamphlet			x	x		
10. Newspaper			x	x		
11. Storypaper			x	x		
12. Drawing			x			
13. Photograph			x			
14. Figure			x	x		
15. Image			x	x		
16. Any written or printed matter of an indecent character			x	9		
17. Record				23		
B. Form of Advertising				25		
1. Writes	x		x			x
2. Composes	x					
3. Publishes	x		24			x
4. Prints			24			x
5. Utters			24			x

FOOTNOTES TO TABLE II:
1. Obscene or indecent objects
2. Obscene, lewd, lascivious, filthy, indecent, or disgusting objects which teach or advocate use of narcotics.
3. Statute applicable to persons under 18 only.
4. Same as "2" except that it omits objects which teach or advocate use of narcotics.
5 Statute applicable to all persons over 18.
6 *Obscene, lewd, indecent, or lascivious.*
9. Any indecent written, printed or recorded matter which may or may not require mechanical or other means to be transmitted into auditory, visual or sensory representations
10. Includes motion pictures.
22. Same as Articles under Distribution.
23. Phonograph, tape or wire
24. Or causes to be.
25. See Secs 10-2803 and 10-2804.

Table III. Other Provisions

	Calif.	*Penn. 3*	*Penn. 5*	*Michigan*	*Indiana*	*New York*
1. Presumption of violation						x
2. Provision covering articles of indecent or immoral use			x			
3. Provisions dealing with use of minors			28	33		30
4. Provisions dealing with crime literature			28	32	26	
5. Provisions authorizing issuance of injunctions						29
6. Tie-in sale statute			27			31

FOOTNOTES TO TABLE III:
3. Statute applicable to persons under 18 only.
5. Statute applicable to all persons over 18.
26. See Sec 10-2805 (Burns).
27 See Sec 3832 (Purdon).
28. See Sec. 4524 (Purdon).
29 See N.Y Code of Criminal Procedure Sec 22(a).
30. See N Y. Penal Code Sec. 1141(2).
31 N Y Penal Code Sec 1141(b)
32. Mich Laws (1948) Sec. 750 344.
33 Mich Laws (1948) Sec 750 345.

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LEGISLATORS' ORIENTATION CONFERENCE

HELD AT SACRAMENTO, ROOM 2170, STATE CAPITOL

January 3 and 4, 1959

Sponsored by the

RULES COMMITTEES OF THE SENATE AND ASSEMBLY

MEMBERS OF THE 1958 SENATE COMMITTEE

HUGH M. BURNS, *Chairman*

CHARLES BROWN

JOHN F. McCARTHY

GEORGE MILLER, JR

JOHN A. MURDY, JR

MEMBERS OF THE 1959 SENATE COMMITTEE

HUGH M. BURNS, *Chairman*

CHARLES BROWN

JOHN F McCARTHY

GEORGE MILLER, JR.

JOHN A MURDY, JR

MEMBERS OF THE 1958 ASSEMBLY COMMITTEE

ALLEN MILLER, *Chairman*
JACK A. BEAVER
ERNEST R. GEDDES
AUGUSTUS F. HAWKINS
WALLACE D. HENDERSON
JOHN A. O'CONNELL
JACK SCHRADE
RICHARD H. McCOLLISTER, *ex officio*
WILLIAM A. MUNNELL, *ex offic.o*

MEMBERS OF THE 1959 ASSEMBLY COMMITTEE

ALLEN MILLER, *Chairman*
CHARLES J. CONRAD
RICHARD T. HANNA
AUGUSTUS F. HAWKINS
EUGENE G. NISBET
JACK SCHRADE
HAROLD T. SEDGWICK
CARLOS BEE, *ex officio*
WILLIAM A MUNNELL, *ex officio*
JOSEPH C SHELL, *ex officio*

INVITATION TO ATTEND CONFERENCE

CALIFORNIA LEGISLATURE
JOINT RULES COMMITTEE
STATE CAPITOL, December 18, 1958

To All Members of the Legislature:

The Joint Rules Committee is sponsoring a Legislative Orientation Conference for Legislators on January 3d and 4th, just prior to the session, in Room 2170, State Capitol.

The purpose of the conference is to acquaint the members, primarily the new ones, with rules, legislative procedure, facilities and legislator's rights and privileges. A competent staff has been assembled to present the various subjects.

While the conference is designed primarily for new members, much of the material will prove both interesting and informative to all our membership.

We are, therefore, inviting all of the Members of the Legislature to attend and enclose for your convenience a card of acceptance. *Attendance is limited to legislators.*

Sincerely yours,

ALLEN MILLER, *Chairman*
Joint Rules Committee

MEMBERS OF THE SENATE, CALIFORNIA LEGISLATURE—1959 REGULAR SESSION

Name	Occupation	Party	Dist	Office No.	Telephone Local	Counties	Home Address	Local Address
*Arnold, Stanley	Attorney	D-R	1st	4085-92	2104-5	Lassen, Modoc, and Plumas	P. O Box 150, Susanville	Senate Chamber
*Beard, John William (Bill)	Attorney	D	39th	4091	3121-22	Imperial	895 Broadway, El Centro	Senate Chamber
*Berry, Swift	Forest Engineer	R-D	9th	4072	2091	Amador and El Dorado	115 Canal St , Placerville	Senate Chamber
Brown, Charles	Merchant	D-R	28th	3048	2338	Alpine, Inyo, and Mono	Shoshone	Senate Chamber
Burns, Hugh M.	Savings and Loan	D-R	30th	3044	4311	Fresno	P O Box 748, Fresno	Senate Chamber
*Byrne, Paul L	Insurance	R-D	6th	3062	4835	Butte	Box 937, Chico	Senate Chamber
*Christensen, Carl L.	Attorney	D-R	3d	3058	4937	Humboldt	937 Sixth St., Eureka	Senate Chamber
*Cobey, James A	Attorney	D	24th	4054	5976-77	Madera and Merced	Box 1229, Merced	Senate Chamber
Collier, Randolph	Title Business	R-D	2d	3061	4641-42	Del Norte and Siskiyou	206 Fourth St., Yreka	Senate Chamber
*Coombs, Nathan F	Attorney	R	11th	4048	4809	Napa and Yolo	Mighavacca Bldg , Napa	Senate Chamber
*Dilworth, Nelson S.	Farmer	R	37th	4090	5314	Riverside	Route 1, Box 288, Hemet	Senate Chamber
Dolwig, Richard J	Attorney	R	21st	3064	5280	San Mateo	515 Allerton St , Redwood City	Senate Chamber
Donnelly, Hugh P	Insurance	D-R	22d	3072	4923	Stanislaus	953 Sierra Drive, Turlock	Senate Chamber
*Erhart, A A	Retired	R	29th	3054	2669	San Luis Obispo	P O. Box 596, Pismo Beach	Senate Chamber
Farr, Fred S	Attorney	D-R	25th	3070	5581	Monterey	P. O. Box 3305, Carmel	Senate Chamber
Fisher, Hugo	Attorney	D	40th	3066	3952-53	San Diego	4345 Arcadia, San Diego 3	Senate Chamber
*Gibson, Luther E	Newspaper Publisher	D-R	15th	4066	5272-73	Solano	516 Marin St , Vallejo	Senate Chamber
*Grunsky, Donald L	Attorney	R	23d	3052	4997	Santa Cruz and San Benito	Lettunich Bldg., Watsonville	Senate Chamber
Hollister, John J , Jr.	Rancher	D	31st	4064	5116	Santa Barbara	Winchester Canyon, Goleta	Senate Chamber
*Holmdahl, John W	Attorney	D-R	16th	3076	3688-89	Alameda	1624 Franklin St., Oakland	Senate Chamber
Johnson, Ed C	Retired	R-D	10th	3067	5083	Sutter and Yuba	1111 F St., Marysville	Senate Chamber
*McAteer, Eugene	Attorney	D-R	14th	4078	3571-72	San Francisco	206 Jefferson St., San Francisco	Senate Chamber
McBride, James J	Insurance	D-R	33d	4076	3016-17	Ventura	P. O. Box 708, Ventura	Senate Chamber
McCarthy, John F (Jack)	General Contractor	R-D	13th	3057	3375-76	Marin	711 D St , San Rafael	Senate Chamber
Miller, George, Jr	Businessman	D	17th	4047	3576-77	Contra Costa	P O. Box 909, Martinez	Senate Chamber
Montgomery, Robert I	Retired	D-R	27th	4059	5236	Kings	8361 Flint Ave , Hanford	Senate Chamber
*Murdy, John A , Jr.	Farmer	R	35th	3090	5831-32	Orange	1623 W 17th St , Santa Ana	Senate Chamber
*O'Sullivan, Virgil	Attorney	D-R	8th	4035	5833	Colusa, Glenn, Tehama	831 I St , Williams	Senate Chamber
*Rattigan, Joseph A	Attorney	D-R	12th	4067	5914	Sonoma	2414 Mendota Way, Santa Rosa	Senate Chamber
*Regan, Edwin J	Attorney	D-R	5th	4057	3215-4285	Shasta and Trinity	Weaverville	Senate Chamber
Richards, Richard	Attorney	D	38th	3078	3456-57	Los Angeles	State Bldg , Los Angeles	Senate Chamber
*Rodda, Albert S	Teacher	D-R	19th	4070	5925	Sacramento	3636 W Curtis Park Dr., Sacramento	Senate Chamber
Shaw, Stanford C	Attorney	D	36th	4031	5978	San Bernardino	121 W E St , Ontario	Senate Chamber
*Short, Alan	Attorney	D	20th	4089	5215-16	San Joaquin	1016 Bank of America Bldg , Stockton	Senate Chamber
*Slattery, Waverly Jack	Farmer	D-R	4th	4052	3808	Lake, Mendocino	Box 35, Finley	Senate Chamber
*Stiern, Walter W	Veterinarian	D-R	34th	4039	5275	Kern	2901 Skyline Blvd , Bakersfield	Senate Chamber
Teale, Stephen P	Physician and Surgeon	D-R	26th	4062	4910	Calaveras, Tuolumne, and Mariposa	Box E, West Point	Senate Chamber
Thompson, John F	Farmer	R	18th	3086-92	4524	Santa Clara	Route 3, Box 408, San Jose	Senate Chamber
Williams, J. Howard	Retired	R	32d	4086	2800	Tulare	920 N. E St , Porterville	Senate Chamber

* Veteran

OFFICERS OF THE SENATE

Title	Name	Local Address	Home Address
President of Senate	Glenn M Anderson	209 Capitol Bldg	640 N. Hawthorne Blvd , Hawthorne
President pro Tempore	Hugh M Burns	3045 Capitol Bldg	P. O. Box 748, Fresno
Secretary of Senate	J A Beck	Hotel Senator	410 S. Bay Front, Balboa Island
Minute Clerk	John F Lea	1709 39th St.	Sacramento
Sergeant at Arms	Joseph F. Nolan	Park Hotel	612 S Flower St., Los Angeles
Chaplain	Rev I. E Metcalf	2808 18th Ave.	Sacramento

MEMBERS OF THE ASSEMBLY, CALIFORNIA LEGISLATURE—1959 REGULAR SESSION

Name	Occupation	Party †	Dist.	Seat	Office No.	Telephone Local	Home Mailing Address	Local Address	Telephone
*Allen, Bruce F.	Attorney	R	29	45	4013	4386	20130 Thompson Rd., Los Gatos	State Capitol	HI 5-4711
*Allen, Don A, Sr.	Industrial Relations Consultant	D	63	58	4126	3440	4222 Don Diablo Dr., Los Angeles 8	State Capitol	HI 5-4711
*Backstrand, L. M. (Lee)	Insurance-Realtor	R	71	20	2141	4126	3620 Market St., Riverside	State Capitol	HI 5-4711
Bane, Tom	Insurance Agent	D	42	57	4121	3837	10729 Hielendale St., Tujunga	State Capitol	HI 5-4711
*Beaver, Jack A	General Insurance Agent	R	73	17	4144	4592	204 E State St., Redlands	State Capitol	HI 5-4711
*Bee, Carlos	Teacher	D-R	13	30	6003	3380	1784 D St., Hayward	State Capitol	HI 5-4711
Belotti, Frank P.	Farmer	R	1	21	3111	5108	P O Box 1025, (Spruce Point) Eureka	State Capitol	HI 5-4711
*Biddick, William, Jr.	Attorney	D-R	12	26	4140	3864	302 California Bldg, Stockton	State Capitol	HI 5-4711
*Bradley, Clark L	Attorney	R	28	75	4148	4198	1616 Hedding St., San Jose	State Capitol	HI 5-4711
Britschgi, Carl A.	Farmer-Realtor	R	26	52	4116	5044	2715 Delaware Ave., Redwood City	State Capitol	HI 5-4711
*Brown, George E, Jr.	Labor Relations	D	45	56	4167	2659	390 E Markland Dr., Monterey Park	State Capitol	HI 5-4711
Brown, Ralph M.	Attorney	D-R	30	80	3164	3134	P O Box 827, Modesto	State Capitol	HI 5-4711
Burke, Montivel A	Builder-Contractor	R	53	32	3106	2263	1525 St Albans Rd, San Marino	State Capitol	HI 5-4711
*Burton, Phillip	Attorney	D	20	50	4126	3360	995 Market St, San Francisco	State Capitol	HI 5-4711
*Busterud, John A	Attorney	R	22	25	3126	2570	201 Edgewood Ave, San Francisco 17	State Capitol	HI 5-4711
*Cameron, Ronald Brooks	Certified Public Accountant	D	50	60	4121	5102	11175 S Chadsey Dr, Whittier	State Capitol	HI 5-4711
*Chapel, Charles Edward	Engineer	R	46	65	4001	4836	P O Box 777, Inglewood 5	State Capitol	HI 5-4711
*Collier, John L E	Businessman	R	54	13	3108	2153	832 Cooper Ave., Los Angeles 42	State Capitol	HI 5-4711
*Conrad, Charles J	Motion Pictures and Television	R	57	42	4149	4477	13444 Moorpark St., Sherman Oaks	1320 P St.	HI 7-4675
Coolidge, Glenn E	Realtor	R-D	27	27	3130	2795	Big Trees Ranch, Felton	State Capitol	HI 5-4711
*Crawford, George G.	Attorney	R	79	40	4014	2304	3176 University Ave., San Diego 4	State Capitol	HI 5-4711
*Crown, Robert W.	Attorney	D	14	78	6011	5047	1108 Park St., Alameda	State Capitol	HI 5-4711
*Cunningham, Rex M	Public Accountant	D	37	77	4096	3604	1558 E Main St, Ventura	State Capitol	HI 5-4711
Cusanovich, Lou A	Lumber Business Manager	R	64	14	3116	3720	6824 Firmament St., Van Nuys	State Capitol	HI 5-4711
Dahl, Walter I.	Realtor	R	16	29	3138	5551	974 Sunnyhills Rd, Oakland	State Capitol	HI 5-4711
Davis, Pauline L.	Full-time Legislator	D-R	2	68	4117	2164	P O. Box 1071, Portola	State Capitol	HI 5-4711
*DeLotto, Bert	Public Affairs	D	32	70	3123	5023	304 E Hawes Ave, Fresno 6	State Capitol	HI 5-4711
Dills, Clayton A.	Businessman	D	67	5	3148	4053	15615 S Ainsworth St, Gardena	State Capitol	HI 5-4711
Donahoe, Dorothy M.	Full-time Legislator	D-R	38	43	2126	5953	2403 La Siesta Dr, Bakersfield	State Capitol	HI 5-4711
*Elliott, Edward E	Business	D	40	10	4005	3243	1171 N. Miller Ave, Los Angeles 63	State Capitol	HI 5-4711
*Francis, Louis	Attorney	R	25	51	3152	3564	129 Castillian Way, San Mateo	State Capitol	HI 5-4711
*Frew, Myron H	Merchant	D	35	72	3102	4857	359 N L St., Dinuba	State Capitol	HI 5-4711
Gaffney, Edward M	Insurance Broker	D	24	24	3140	4850	295 Sanchez St, San Francisco 17	State Capitol	HI 5-4711
Garrigus, Charles B	College Professor	D	33	71	3123	4934	18588 E Adams Ave, Reedley	State Capitol	HI 5-4711
*Geddes, Ernest R.	Advertising Executive	R	49	41	3132	5235	560 Harrison Ave, Claremont	State Capitol	HI 5-4711
Geddes, Samuel R	General Contractor	D-R	5	54	2140	5857	1621 East Ave Napa	State Capitol	HI 5-4711
Grant, William S.	Businessman	R	70	76	4120	5238	1381 Bryant Rd, Long Beach 15	State Capitol	HI 5-4711
*Hanna, Richard T.	Attorney	D	75	62	4177	3741	11412 Biscayne Blvd, Garden Grove	State Capitol	HI 5-4711
Hawkins, Augustus F.	Business	D-R	62	9	4005	3074	4251½ Avalon Blvd, Los Angeles 11	State Capitol	HI 5-4711
Hegland, Sheridan N.	Newspaper Publisher	D	77	34	3100	4874	5010 Randlett Dr, La Mesa	State Capitol	HI 5-4711
Holmes, James L.	Businessman	R	36	61	4130	2762	2644 Tallant Rd., Santa Barbara	State Capitol	HI 5-4711
House, Leverette D.	Oil Distributor	D-R	76	64	3110	2965	171 El Cerrito, Brawley	State Capitol	HI 5-4711
Johnson, Seth J.	Engineer	R	56	38	4108	3241	3346 Sunnynook Dr, Los Angeles 39	State Capitol	HI 5-4711
Kennick, Joseph M	Social Worker	D	44	36	3147	2449	2375 Eucalyptus Ave, Long Beach	State Capitol	HI 5-4711
Kilpatrick, Vernon	Real Estate Broker	D	55	66	3132	2385	3715 Abbott Rd. Lynwood	State Capitol	HI 5-4711

Lanterman, Frank	Land Developer	R	48	31	3120	5096	4120 Encinas Dr , La Canada	State Capitol	HI 5-4711
*Levering, Harold K	Businessman	R	60	8	4130	5336	900 Moraga Dr., Los Angeles	State Capitol	HI 5-4711
Lowrey, Lloyd W.	Farmer	D-R	3	67	4141	2215	P O Box 23, Rumsey, Yolo Co	State Capitol	HI 5-4711
*Luckel, Frank	Retired Navy Captain	R	78	39	4134	4214	1036 Savoy St , San Diego 7	State Capitol	HI 5-4711
*Lunardi, Paul J.	Legislator	D	6	73	2132	6095	416 Earl Ave , Roseville	State Capitol	HI 5-4711
*MacBride, Thomas J	Attorney	D-R	8	3	2148	4541	1800 Rockwood Dr , Sacramento	State Capitol	HI 5-4711
*Marks, Milton	Attorney	R	21	23	3126	2573	2111 Franklin St , San Francisco	State Capitol	HI 5-4711
Masterson, S C	Attorney-at-Law	D	11	49	4009	4651	5800 Castro Rd , El Sobrante	State Capitol	HI 5-4711
McCollister, Richard H	Real Estate	R-D	7	6	3173	4929	491 Throckmorton Ave , Mill Valley	State Capitol	HI 5-4711
*McMillan, Lester A	Attorney	D	61	15	3142	3165	3670 Wilshire Blvd , Rm 529 Los Angeles 5	State Capitol	HI 5-4711
*Meyers, Charles W	Businessman	D	19	22	3151	2106	579 Wildwood Way, San Francisco 12	State Capitol	HI 5-4711
Miller, Allen	Attorney	D	41	55	2140	5717	15011 Mission Hills Rd , San Fernando	State Capitol	HI 5-4711
*Mulford, Don	Insurance Broker & Agent	R	18	28	4098	3420	6460 Mystic St., Oakland	State Capitol	HI 5-4711
*Munnell, William A	Attorney	D	51	2	4155	2966	3500 Via Corona, Montebello	State Capitol	HI 5-4711
*Nisbet, Eugene G	Citrus Grower	D	72	35	6007	4359	200 E 13th St., Upland	State Capitol	HI 5-4711
*O'Connell, John A	Attorney	D	23	4	4110	4096	198 Naples St , San Francisco	State Capitol	HI 5-4711
Pattee, Alan G	Rancher	R	34	19	4154	3069	155 Corral de Tierra Rd , Salinas	State Capitol	HI 5-4711
*Petris, Nicholas C	Attorney	D	15	79	6011	4864	15 Crestmont Dr , Oakland	State Capitol	HI 5-4711
Porter, Carley V	Teacher & Businessman	D-R	69	12	2114	6047	401 W. Palmer Ave , Compton	State Capitol	HI 5-4711
*Reagan, Bruce V.	Investment Advisor	R	47	18	4144	2824	2475 Vista Laguna Ter , Pasadena	State Capitol	HI 5-4711
*Rees, Thomas M	Businessman	D	59	59	6007	3754	424 S Holt Ave , Los Angeles 48	State Capitol	HI 5-4711
Rumford, William Byron	Pharmacist	D-R	17	44	3098	4011	1500 Stuart St., Berkeley 3	State Capitol	HI 5-4711
Schrade, Jack	Rancher-Businessman	R	80	33	4004	3758	119 N. Magnolia St , El Cajon	State Capitol	HI 5-4711
*Sedgwick, Harold T	Businessman	R	4	48	3141	4812	1481 Hammon Ave , Oroville	State Capitol	HI 5-4711
*Shell, Joseph C	Businessman	R	58	7	4017	4383	611 Muirfield Rd , Los Angeles 5	State Capitol	HI 5-4711
*Sumner, Bruce	Attorney	R	74	74	4171	4625	1307 Oxford Lane, Newport Beach	State Capitol	HI 5-4711
*Thelin, Howard J	Attorney	R	43	37	4014	3603	1647 Ard Eevin, Glendale 2	State Capitol	HI 5-4711
Thomas, Vincent	Legislator	D-R	68	11	4114	4583	526 N Hanford Ave , San Pedro	State Capitol	HI 5-4711
*Unruh, Jesse M	Economist	D	65	1	2128	5803	4915 Ninth Ave., Los Angeles 43	State Capitol	HI 5-4711
*Waldie, Jerome R	Attorney	D	10	47	3113	5103	500 Lynn Ave , Antioch	State Capitol	HI 5-4711
*Williamson, John C.	Businessman	D	39	46	3113	2989	9801 Holland St , Bakersfield	State Capitol	HI 5-4711
Willson, George A	Attorney	D	52	63	4167	5865	4035 Santa Ana St , Huntington Park	State Capitol	HI 5-4711
*Wilson, Charles H	Insurance Broker	D	66	16	4154	5147	2106 W 78th Pl , Los Angeles 47	State Capitol	HI 5-4711
*Winton, Gordon H , Jr.	Attorney	D-R	31	69	2147	4253	Stoddard Bldg , Suite 1, Merced	State Capitol	HI 5-4711
*Z'berg, Edwin L	Attorney	D	9	53	3151	5398	Forum Bldg , Sacramento	State Capitol	HI 5-4711

* Veteran.
† Party designation R—Republican; D—Democrat

OFFICERS OF THE ASSEMBLY

Name	Title	Home Address	Local Address	Telephone
Brown, Ralph M.	Speaker	P. O Box 827, Modesto	State Capitol	HI 5-4711
Bee, Carlos	Speaker pro Tempore	1784 D St , Hayward	State Capitol	HI 5-4711
Munnell, William A.	Majority Floor Leader	908 S Atlantic Blvd , Los Angeles 22	State Capitol	HI 5-4711
Shell, Joseph C	Minority Floor Leader	3723-B Wilshire Blvd , Los Angeles 5	State Capitol	HI 5-4711
Ohnimus, Arthur A	Chief Clerk	San Francisco	State Capitol	HI 5-4711
Donoghue, Eleanor	Minute Clerk	3701 Fourth Ave , Sacramento	3701 4th Ave	GL 5-3145
Beard, Tony	Sergeant-at-Arms	751 Casselman Dr , Broderick	State Capitol	GI 8-7312
Simmons, Rev R Wilbur	Chaplain	1850 10th Ave , Sacramento	1850 10th Ave	GI 2-8801

1951 SENATORIAL DISTRICTS *

1 Modoc, Lassen, Plumas
2 Del Norte, Siskiyou
3. Humboldt
4. Mendocino, Lake
5 Trinity, Shasta
6. Butte
7. Sierra, Nevada, Placer
8. Tehama, Glenn, Colusa
9. El Dorado, Amador
10. Yuba, Sutter
11. Napa, Yolo
12 Sonoma
13. Marin
14 San Francisco
15. Solano
16 Alameda
17. Contra Costa
18 Santa Clara
19 Sacramento
20. San Joaquin
21. San Mateo
22. Stanislaus
23 Santa Cruz, San Benito
24. Merced, Madera
25 Monterey
26 Calaveras, Tuolumne, Mariposa
27 Kings
28 Alpine, Mono, Inyo
29 San Luis Obispo
30 Fresno
31 Santa Barbara
32 Tulare
33. Ventura
34. Kern
35 Orange
36 San Bernardino
37. Riverside
38. Los Angeles
39 Imperial
40. San Diego

1951 ASSEMBLY DISTRICTS *

1. Del Norte, Humboldt, Mendocino
2 Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, Sierra
3. Tehama, Glenn, Colusa, Lake, Yolo
4. Butte, Yuba, Sutter
5. Napa, Solano
6. Nevada, Placer, El Dorado, Amador, Alpine, Calaveras, Tuolumne, Mono, Inyo, Mariposa
7. Sonoma, Marin
8-9 Sacramento
10-11. Contra Costa
12. San Joaquin
13-18 Alameda
19-24. San Francisco
25-26 San Mateo
27. Santa Cruz, San Benito
28-29. Santa Clara
30. Stanislaus
31. Merced, Madera
32-33. Fresno
34. Monterey
35. Kings, Tulare
36 San Luis Obispo, Santa Barbara
37 Ventura
38-39. Kern
40-70 Los Angeles
71. Riverside
72-73 San Bernardino
74-75. Orange
76 Imperial
77-80. San Diego

* As reapportioned in 1951. Next reapportionment will be in 1961.

TABLE OF CONTENTS

APPENDIX
Program of Conference, 138

ARCHIVES, STATE, and Central Record Depository, 65

ASSEMBLY
Districts, 10
Legal Basis for the Organization of the Houses of the Legislature, 83
Members, List of, 8; officers, 9
Organization and Procedure of, 101

AUDITOR GENERAL, FUNCTION OF, 23

BARTHELL, RUSSELL (Assistant to the Chancellor, UCLA)
Biography, 131
University of California, 133

BEARD, TONY (Sergeant-at-Arms of the Assembly)
Biography, 57
Functions of the Sergeant-at-Arms, 59

BEEK, J. A. (Secretary of the Senate)
Biography, 95
Organization of the Senate, 97

BILL ROOM, Legislative, 33

CENTRAL RECORD DEPOSITORY, State Archives and, 65

CHIEF CLERK OF THE ASSEMBLY, 99, 101

DAVIS, WILLIAM, DR. (Historian)
Biography, 63
State Archives and Central Record Depository, 65

DOUBLEDAY, DOUGLAS JAY (Faculty Supervisor, California Legislature Intern Program)
Biography, 131

FLAG, AMERICAN (color plate), 2
Pledge of Allegiance to, 2

FOREWORD, 3

GALLAGHER, PAUL E. (State Printer)
Biography, 31
The Legislative Bill Room, 33

INVITATION TO CONFERENCE, 5

KLEPS, RALPH N. (Legislative Counsel)
Biography, 47
Function of the Legislative Counsel, 49
Opening Remarks, 13

LEGAL ASPECTS OF REPRESENTATION, 125

LEGAL BASIS FOR THE ORGANIZATION OF THE HOUSES OF THE LEGISLATURE, 83

LEGISLATIVE ANALYST, FUNCTION OF, 41

LEGISLATIVE BILL ROOM, 33

LEGISLATIVE BUDGET COMMITTEE and Legislative Analyst, 41

LEGISLATIVE COUNSEL, FUNCTION OF, 49

LIBRARY, STATE, 75

LOBBYING, California Laws on, 125

MAP OF CALIFORNIA and Assembly and Senatorial Districts, 10

MEMBERS OF THE ASSEMBLY
Districts, 10
List of, showing occupations, party, districts, addresses, etc., 8

MEMBERS OF THE SENATE
Districts, 10
List of, showing occupations, party, districts, addresses, etc., 6; officers, 7

MERRIFIELD, WILLIAM (Auditor General)
Biography, 21
Function of the Auditor General, 23

MILLER, ALLEN (Chairman, Joint Rules Committee)
Foreword by, 3
Invitation by, 5

MORRISON, ANGUS C. (Chief Deputy Legislative Counsel)
Biography, 81
Legal Basis for the Organization of the Houses of the Legislature, 83

NEWMAN, FRANK C. (Professor of Law, University of California)
Biography, 123
Legal Aspects of Representation, 125

NEWSPAPERS
Relationship of the Press With the Legislature, 17

OHNIMUS, ARTHUR A. (Chief Clerk of the Assembly)
Biography, 99
Organization and Procedure of the Assembly, 101

PHILLIPS, HERBERT L. (Vice President, Capitol Correspondents Association)
The Press and the Legislature, 17

POST, A. ALAN (Legislative Analyst)
Biography, 39
California's Joint Legislative Budget Committee and Legislative Analyst, 41

PRESS, THE, and the Legislature, 17

PRINTER, STATE, 31, 33

PROGRAM FOR CONFERENCE, 138

REPRESENTATION, Legal Aspects of, 125

RODDA, RICHARD H. (Secretary, Capitol Correspondents Association)
Biography, 15

SECRETARY OF THE SENATE, 95, 97

SENATE
Districts, 10
Legal Basis for the Organization of the Houses of the Legislature, 83
Members, List of, 6
Organization of, 97

SENATORIAL DISTRICTS, 10

SERGEANT-AT-ARMS, FUNCTION OF, 59

SPEAKER OF THE ASSEMBLY, 92

STATE LIBRARY, Services to the State Legislature, 75

UNIVERSITY OF CALIFORNIA
Assistance to the Legislature, 133
Biographies, speakers from, 131
Legal Aspects of Representation, 125

WALDO, DWIGHT (Acting Director, Bureau of Public Administration, University of California)
Biography, 131

ZIMMERMAN, CARMA R. (State Librarian)
Biography, 73
State Library's Services to the Legislature, 75

LEGISLATORS' ORIENTATION CONFERENCE

Sacramento, January 3 and 4, 1959

OPENING REMARKS

By RALPH N. KLEPS, *Legislative Counsel*

Members, Members-elect, Ladies and Gentlemen:

The second Orientation Conference to be held for the Members of the Legislature, under the auspices of the Assembly Rules Committee, will now be in order. For those of you whom I have not yet met, I should start by saying that my name is Ralph N. Kleps, and that I am selected by the Legislature to serve as your Legislative Counsel, about which assignment I shall have more to say at a later point in the program. It is my pleasant responsibility to preside over this two-day conference, at which we hope to provide you with experts who will give you "inside" information concerning the details of the legislative process in California. It has been said that, like other esoteric subjects, a new member's knowledge concerning the process of the California Legislature must be learned through word of mouth This is not the case in some 34 other states of the Union, and it is the hope of those who planned this conference that it will no longer be the case in California.

We are accustomed to thinking of our State as a leader in virtually all fields, and this assumption is borne out in most matters relating to our Legislature. I speak in that vein, not blindly, but as one who has had a considerable opportunity to learn about the procedures actually followed in many of our sister states. In the particular respect which bring us together today, however, we can make no such claim. As early as 1915, the State of South Carolina held a conference designed to orient the new members of the state legislature concerning the functions and activities of that body. Even the conservative old State of Massachusetts has conducted an exceedingly successful orientation conference regularly since 1933, and as I have indicated, some 34 states now conduct these sessions. While the arrangements and content vary widely, the basic pattern for the conferences is the same. Legislative leaders, the heads of legislative staff agencies, and the key employees of the legislature are customarily invited to appear before such conferences for the purpose of summarizing briefly the technical and professional responsibilities which they carry. The new legislator is thus given an unparalleled opportunity to get to know the key people with whom he will be required to work, and he can obtain a clearer picture of the structure and duties of the agencies upon which he must rely. He will no longer be required to guess which of the several officers he has happened to meet is the one to whom his next urgent request must be channeled. It is hoped that much waste motion may be eliminated, in this way, within the legislative family itself.

In some states these conferences are used for the purpose of summarizing substantive problems which are pending before the legislature. There is no thought on the part of those arranging the present conference that any such matters will be raised. As you will see from examining your program for the two days, a presentation of the process of the Legislature is what is contemplated, and ample time will be afforded so that questions can be answered by those in a position to furnish the answers. For your convenience, we will duplicate and bind the remarks of each of the speakers on our program. This material, plus any notes which you may make during the question-and-answer periods, ought to give you as complete a picture of our legislative process as our panel of experts can furnish.

THE PRESS AND THE LEGISLATURE

By HERBERT L. PHILLIPS
Capitol Correspondents Association

(Prepared by HERBERT L. PHILLIPS of the McClatchy Newspapers at the request of the Capitol Correspondents Association and read by Richard H. Rodda of the *Sacramento Bee*, Secretary of the Capitol Correspondents Association.)
(RICHARD H. RODDA—Born and educated in Sacramento; A.B. from Stanford University; 23 years with *Bee*; 14 years a Capitol correspondent; Secretary of the Capitol Correspondents Association.)

THE PRESS AND THE LEGISLATURE

By HERBERT L. PHILLIPS
Capitol Correspondents Association

This summary of how the press functions at sessions of the State Legislature has been prepared, for use in the new presession procedural conference, pursuant to a request filed by Members of the Legislature with Earl C. Behrens, President of the Capitol Correspondents Association.

The manner in which the Capitol Correspondents Association itself operates may be of first interest to new legislators. It is a self-policing organization of the press and radio representatives who cover the Legislature. But it also is an official organization in that it has been created and authorized by the Legislature. You will find its governing regulations in Rule 32 of the Joint Rules of the Senate and Assembly.

This came into being some years ago because of conditions which both the press and the Legislature felt ought to be corrected. It was possible in some instances, in those earlier days, for a person who wished to lobby in Sacramento for special interests to gain favored position for himself, and perhaps access to the legislative floor, by posing as a newspaper correspondent and obtaining credentials as such. A press card could be granted to that kind of an operator—and sometimes was—provided some unsuspecting publisher could be prevailed upon to file an application in his behalf. Thus it was possible for the legitimate press of California to be misrepresented and the Legislature imposed upon.

This possibility was eliminated with the establishment of the Capitol Correspondents Association. Under the present setup, press credentials are issued by the Senate and Assembly only to those whose names and press or radio connections have first been passed upon by a regular Standing Committee of the Capitol Correspondents Association.

The purpose of these arrangements is to guarantee that the accredited press representatives who report the affairs of the Legislature and occupy the Capitol press rooms and the press seats in the Senate and Assembly Chambers are correspondents of reputable standing in their business. The system has worked well. You will find it all spelled out in Rule 32. The newspaper, press association and radio people with whom Members of the Legislature have to deal are thoroughly legitimate representatives of bona fide news gathering organizations.

These people constitute a relatively large legislative press corps. Press credentials were granted to approximately 60 men and women at the last regular legislative session of 1957. In a highly competitive business, these correspondents are intent upon getting the information for their legislative reports quickly and accurately—and with as much thoroughness of detail as time and the material made available to them will permit.

There are many fields in which members of the Legislature and members of the press can be mutually helpful. It is to be assumed that

the average legislator is anxious to reach his constituents and hit his home district newspapers with the news of the bills he is introducing or the position he is taking on issues before the Legislature. The press is just as anxious to report that news to the public. There are press associations, news bureaus, and special correspondents covering the Legislature for every section of California.

One of the most difficult problems for the press comes during the Legislature's bill introductory period in general sessions. Nearly 7,000 bills were introduced at the 1957 Regular Session. It is the job of the press to ascertain the substance of those bills, particularly the more important ones, and file immediate reports on them, even while the day's session is still in progress.

There have been days, in the Assembly, when as many as 300 or 400 bills have been introduced in a single morning. Though competitive on news generally, it has been necessary for the press representatives to pool their combined reportorial resources on such occasions even to scratch the surface of this great mass of legislative material. The bills have not yet been printed at that point.

It is to be hoped that due to the passage of Proposition No. 9 eliminating the bifurcated session a more orderly introduction of bills will occur.

Under the new system the Legislative Counsel plans to prepare a brief explanation of each measure. These explanations will be distributed to the press as the bills are introduced. This should be extremely helpful, as in the past it has been necessary for reporters to contact the various legislators and obtain a brief summary of the measures they have just put across the desk. On the days bills came in by the hundreds this task was an enormous one.

Only time will tell whether the bills in the forthcoming session will be introduced at a more even rate.

In the past it has been the request of the legislative correspondents that legislators be prepared to explain, either in writing or orally, the provisions and purposes of each measure they offer. Despite the fact the Legislative Counsel now will provide such explanation, it is desirable that legislators be prepared for special interviews as in former years. Often reporters may want to enlarge upon a bill of major significance and the formal explanation may be inadequate.

Concerning news coverage of the Legislature generally, it may be of interest to new members that accredited press representatives have seats on the floors of both houses and also occupy a series of press rooms which have been assigned to them on the west side of the second floor of the Capitol. These extend from the corridor circle in the center of the building to the north end, opposite the Assembly Chamber.

Both major press associations—the Associated Press and the United Press International—staff sessions of the Legislature and have full-time Capitol bureaus reporting State Government news the year around.

Other Capitol bureaus are maintained by the *Hearst* newspapers, the *McClatchy* newspapers, the *Capitol News Service,* the *Copley* newspapers, the *San Francisco Chronicle* and the *Sacramento Union,* as well as part-time bureaus by other papers and news agencies.

Representatives of the *San Francisco Call-Bulletin,* the *San Francisco News,* the *Oakland Tribune,* the *Los Angeles Examiner, Times* and

Mirror, the *San Jose News* and various radio stations likewise are on hand for legislative sessions. Many of these papers are represented by their political editors as well as by reportorial staffs of varying size.

The offices of the various newspapers and press associations are identified by corridor wall signs on the second floor. Their phone numbers are listed in the yellow section of the Capitol Telephone Directory.

Generally speaking, a new Member of the Legislature probably will find himself dealing with a much larger press corps than ever has covered his previous political doings. Most of these men and women are experienced legislative reporters and some of them have been attending legislative sessions for many years. They have one primary purpose—to cover the business of the California Legislature in news reports, and news pictures upon occasion, as thoroughly and fairly as they can.

It may be said, by the way, that the arrangements which prevailed during the 1957 Regular Session in reference to news cameramen at important committee meetings appear to have worked out satisfactorily, both in providing the press with legitimate pictures of newsworthy events and in safeguarding the Legislature from any undue interference with orderly committee functioning. It is the hope of the press corps that the success of this arrangement, worked out through co-operation between the Capitol Correspondents Association and the appropriate Senate and Assembly committee authorities, will prove typical of future discussions and understanding of mutual problems, making for such steadily improving news coverage opportunities as will be beneficial both to the general press of California and the Legislature.

Members of the Legislature sometimes ask newsmen about release dates on press statements. The procedural rule is a very simple one to members of the working press but perhaps not so clear to legislative newcomers. If a member intends to make a statement, a report of any similar material, available first to afternoon (p.m.) or to morning (a.m.) papers, he should carefully mark it, at the beginning, to be published on a given date for a.m. or p.m. use, as the case may be. It is general practice to observe such release dates. If a release is merely marked for use on a given date, without specification as to a.m. or p.m., it automatically is understood to be for first use in the morning papers of that date.

When reports or statements are intended for general press release, it is to the advantage of all concerned to have sufficient copies made so that the material is available to every accredited press organization.

It is part of the competitive business of press representatives to seek exclusive news wherever they can find it. And it is thoroughly understood by all of them that Members of the Legislature are entirely free, of course, to hand out information, on solicitation or otherwise, to anybody they choose. Legislators and other public officials sometimes have inquired of newspapermen what the custom, if any, or the accepted practice is in such matters—the difference from their point of view, in other words, between handling an exclusive statement and putting out a general release.

There is no set rule, since any American citizen can issue statements or express his views in any manner he chooses. For whatever it may be worth, however, there is a simple guiding principle which newspapermen understand, from their point of view, and which, to that

extent, may be interesting. If a public man is solicited for an interview and decides to make an exclusive statement to a given newspaperman, he should observe this arrangement and not volunteer his statement to other competing reporters until the man to whom he has given the exclusive material in question has had an opportunity to publish it. Subsequently, he should confirm the statement to any who ask about it. On the other hand, if the idea for a public statement originates with the public man himself, and he wishes to make a release of it to the press at large, he should make it his business, or that of his office assistants, to see that adequate copies are provided and that each of the press offices receives one. No legislator is under the slightest obligation to follow this procedure, but it does constitute a simple means of avoiding misunderstanding and confusion.

These few points about the Capitol press corps and its functioning have been set down, at the request of Members of the Legislature, for this presession procedural conference in the hope that the excellent existing relationship between the Legislature and the accredited press can be improved even more in the years ahead. There may be other related matters which will occur to new legislators. Representatives of the Capitol Correspondents Association will be happy to discuss them at any time. The officers of the association and the members of the association's standing committee are listed, along with all accredited press and radio representatives, in each session's Legislative Handbook.

It may be said, generally speaking, in conclusion, that the press, while keenly concerned with its own problems, fully appreciates the multiple problems of lawmaking in a state such as California, and the great pressure of time and issues under which the membership of the Legislature does its work. It is appreciative, too, of the understanding co-operation which, as a general thing, the press has received over the years from the legislative leadership.

The press of California, as noted earlier, is intent upon reporting the business of the Legislature, and the work of its individual members, with the greatest possible degree of thoroughness, accuracy, speed, and fairness. Representing that press, the members of the Capitol Correspondents Association, like the Members of the Legislature, have one primary goal—better service to the districts of the State from which they individually come, and better service to the California public generally.

THE FUNCTION OF THE AUDITOR GENERAL

By WILLIAM H. MERRIFIELD
Auditor General

(WILLIAM H. MERRIFIELD—A native of Illinois; educated in Illinois; certified public accountant of Illinois and California; formerly controller in private industry, partner of George Rossetter & Co., Certified Public Accountants, Chicago, Illinois, manager of governmental and institutional auditing with Peat, Marwick, Mitchell & Co., Certified Public Accountants, Chicago, Illinois; appointed Auditor General of the State of California in May, 1956.)

THE FUNCTION OF THE AUDITOR GENERAL

By WILLIAM H. MERRIFIELD
Auditor General

CALIFORNIA'S JOINT LEGISLATIVE AUDIT COMMITTEE AND AUDITOR GENERAL

I. *History of Legislative Auditing Service*

By the year 1950, 12 states had established an independent audit function in the legislative branch of the government or had transferred the auditing responsibilities from the executive to the legislative branch. Since 1950 eight additional states, including California, and two territories have taken similar action. Generally this development is attributed to a drive to centralize operating responsibilities under the governor as the general manager, and to provide independent auditing and reporting under the legislature as the board of directors. This independent audit compares with that performed by independent firms of public accountants for boards of directors in private industry. There is strong evidence that other states will be following the example of the 20 states and two territories which have established independent legislative auditing services.

This movement, which has been gaining impetus throughout the Nation, is a clear indication of the growing recognition of the right and the duty of state legislatures to inform themselves concerning:

The efficiency of the conduct of activities by the executive branches of state governments,
The adequacy of the machinery for collection of revenues,
The integrity of the system of utilizing the safeguarding assets, and
The propriety of the expenditure of funds appropriated by the legislatures.

There obviously is an increasing awareness in the state legislatures of the need of establishing facilities for supplying to them such information, obtained and reported factually and without bias by qualified auditors who are directly responsible to the legislatures.

The Federal Government recognized the importance of the Congress informing itself as to the activities of the Executive Branch by independent means when it established the General Accounting Office in 1921, part of the duties of this office being to audit and report directly to the Congress on the financial functioning of the various agencies. The Division of Audits of the General Accounting Office was established in 1952, and brought together several divisions which had been formed in earlier years to perform specific auditing tasks.

As early as 1936 the Legislature of the State of California began consideration of the advisability of creating the means whereby it could be informed independently as to whether the Executive Branch of the State Government was carrying out the intent of enacted legislation

relating to expenditures and taxation. In that year the California Conference on Government and Taxation-Interim Committee of Twenty-Five was organized and retained a consulting firm to conduct a study of the existing governmental structure. Included in the consulting firm's recommendations was the creation of an office whereby independent audits would be made of the activities of the Executive Branch of the State Government by an auditor appointed by and responsible to the Legislature.

As a result of this and other studies, bills to establish such an office were presented to each regular session of the California Legislature from 1937 through 1953, but all of them either failed of enactment or were not approved by the Governor.

II. *Creation of Joint Legislative Audit Committee and Office of the Auditor General*

The 1955 Session of the State Legislature established the Joint Legislative Audit Committee and the Office of the Auditor General by the enactment into law of Senate Bill No. 1540, of which Senator Donnelly was the author, as Chapter 1699, Statutes of 1955. This act added Chapter 4 to Part 2, Division 2, Title 2 of the California Government Code.

The provisions of the act were prepared insofar as possible in conformity with the recommendations of the report of Price Waterhouse & Co. on their survey of accounting and auditing for the State of California made in 1954 for the Joint Legislative Budget Committee. The Price Waterhouse & Co. recommendations were in agreement with the recommendations of the Senate Interim Committee on Government Organization as shown in that committee's reports to the Legislature in 1953 and 1955.

The Joint Legislative Audit Committee consists of three members of the Senate and three members of the Assembly. The act provides that the members of the committee shall be selected and vacancies occurring in the membership shall be filled in the manner provided for in the Joint Rules of the Senate and Assembly. The Joint Rules currently provide that the Senate members shall be appointed by the Senate Committee on Rules and that Assembly members shall be appointed by the Speaker of the Assembly. The act also provides that the Joint Legislative Audit Committee has continuing existence and that it may meet, act, and conduct its business at any place within the State, during the sessions of the Legislature or any recess thereof, and in the interim period between sessions.

The duties and responsibilities of the committee are to appoint an Auditor General and a deputy, to determine the policies of the Auditor General, ascertain facts, review reports and take action thereon, and make recommendations to the Legislature concerning the state audit, the revenues and expenditures of the State, its departments, subdivisions, and agencies. The committee is authorized to make rules governing its own proceedings and to create subcommittees from its membership and assign to such subcommittees any study, inquiry, investigation, or hearing which the committee itself has authority to undertake or hold.

The permanent office of the Auditor General is designated as Sacramento and provisions are made for the establishment of offices in other

places when in his judgment they are required for the conduct of the work.

The Auditor General during regular business hours has access to, and authority to examine, any and all books, accounts, and other records and property of any agency of the State whether created by the Constitution or otherwise.

It is the duty of the Auditor General to examine and report annually upon the financial statements prepared by the Executive Branch of the State to inform the Legislature as to the adequacy of such financial statements in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year. The Auditor General is authorized to make such examinations of the accounts and records, accounting procedures and internal auditing performance as in his judgment are necessary to disclose all material facts for the use of the legislative and executive branches in establishing a sound fiscal and administrative policy for the Government of the State.

It is also the duty of the Auditor General to make such special audits and investigations of any state agency as requested by the Legislature or any committee of the Legislature.

III. *Recruitment of Audit Staff*

The Joint Legislative Audit Committee, as the appointing power, voted unanimously to recruit a staff for the Office of the Auditor General exempt from civil service as permitted by the Joint Rules of the Senate and the Assembly. Because of the complexities and magnitude of the auditing task to be performed, high standards of competence were established as prerequisites. These standards generally are:

- A bachelor's degree or higher with a major in accounting from a recognized college or university;
- Possession of a certified public accountant's certificate, at least at the higher staff levels;
- Progressive, diversified experience with a firm of independent certified public accountants of some substance;
- The ability to work with others on a professional plane;
- A high degree of personal integrity; and
- An unusual amount of curiosity, industry, perseverance and resourcefulness.

The composition of the staff at December 31, 1958, by classes of accountants is as follows:

	Total	*CPAs*	*Average age*
Audit managers	3	3	38
Seniors	10	8	32
Semiseniors	7	4	32
Juniors	8	–	29
Total	28	15	32

The audit managers, the senior accountants and semisenior accountants had several years of experience on audit staffs of public accounting firms prior to their recruitment for the staff of the Auditor General. Throughout our recruiting efforts, we have insisted on obtaining men of high quality, with the result that we have an excellent staff

which compares favorably with those of high grade firms of certified public accountants.

IV. *Activities of the Office of the Auditor General*

The first assignment of the Auditor General was a special study of the State's claim processing procedures in the Office of the State Controller and in selected state agencies. This study was requested by a subcommittee of the Senate Finance Committee.

The general audit program of the Office of the Auditor General was started with an overall study of the system of internal control in state agencies. While the State Government as a whole may be compared with big business, its functions are carried out through highly dispersed operations. Many of these operations are comparatively small with resultant weaknesses in controls which are usually associated with small businesses. As a result of these studies recommendations have been made to provide the maximum safeguards practicable with due consideration to the cost of maintaining controls.

The importance of acquiring and maintaining an effective system of internal control in the State Government is manifested in the following factors:

1. The scope and size of state activities have grown to the point where the structural organization of the State has become complex and widespread. To control operations effectively, the management of departments and agencies must depend on the reliability of numerous reports and analyses.
2. The primary responsibility for safeguarding the assets of the State and preventing and detecting errors and fraud rests on the management of departments and agencies. Maintenance of an adequate system of internal control is indispensable to a proper discharge of that responsibility.
3. The protection which a properly functioning system of internal control affords against human weaknesses is of paramount importance. The check and review which is inherent in a good system of internal control reduces the possibility that errors or fraudulent attempts will remain undetected for any prolonged period and enables management to place greater confidence in the reliability of data submitted to it.
4. It is impracticable to make detailed audits of all departments and agencies because of the excessive cost that would result. Furthermore, a subsequent examination cannot be regarded as a substitute for the exercise of proper controls in the actual handling of transactions.

Internal control comprises the plan of organization and all of the co-ordinate methods and measures adopted within the government to safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies. This definition possibly is broader than the meaning sometimes attributed to the term. It recognizes that a system of internal control extends beyond those matters which relate directly

to the functions of accounting and finance. The characteristics of a satisfactory system of internal control should include:

1. A plan of organization which provides appropriate segregation of functional responsibilities.
2. A system of authorization and record procedures adequate to provide reasonable accounting control over assets, liabilities, revenues and expenses.
3. Sound practices to be followed in the performance of duties and functions of each of the departments and agencies.
4. A degree of quality of personnel commensurate with responsibilities.

The essence of an effective system of internal control is the segregation of duties in such a way that the persons who are responsible for the custody of the assets and conduct of the operations have no part in the keeping of, and do not have access to, the records which establish accounting control over the assets and the operations. Duties of individuals should be so divided as to minimize the possibility of collusion, perpetration of irregularities and falsification of the accounts. The objective is to provide the maximum safeguards practicable in the circumstances, giving due consideration to the risks involved and the cost of maintaining the controls.

The internal auditing being performed within the Executive Branch of the State Government, both by the Audits Division of the Department of Finance and by internal auditors within the operating agencies, is an important part of the various systems of internal control in effect throughout the State. The effectiveness of the systems vary somewhat between agencies and also as to different accounting procedures within an individual agency. We have planned our auditing work to avoid as far as possible duplicating the work of the internal auditors. Therefore, we review the audit programs, working papers, and reports of the internal auditors to determine the scope and effectiveness of their work and limit or extend our work accordingly. It is the goal of the auditing groups in the State Government to work co-operatively to achieve a co-ordinated audit effort that is both effective and economical.

In those cases in which formal reports on internal control have been issued, the committee has received replies from the agencies indicating whether or not they have accepted the recommendations made for improvement in internal control. Most of the weaknesses in internal control that have been disclosed by our studies were due to failure of the agencies to follow procedures prescribed by the State Administrative Manual. The co-operation by state agencies with efforts to strengthen internal control has been very good. The replies received from the agencies indicate that there was prompt concurrence with about 75 percent of the recommendations made. As to many of the recommendations which were not adopted immediately, the agencies agreed to make further studies and take the action that such studies indicated was advisable. In many cases our reports have called attention to deficiencies in accounting methods and procedures, and recommendations have been made that the Division of Organization and Cost Control of the Department of Finance make special studies. That division

has been very co-operative in these cases and has either made the suggested studies or has made arrangements to make the studies as soon as the limitations of their staff will permit.

Upon completion of the studies of internal control we made audits of selected funds and agencies for the year ended June 30, 1957. The smaller funds which account for the operations of one or two agencies or which are maintained solely by a single agency were selected for these first audits. Beginning in the early part of 1958 audits were started for the year ending June 30, 1958. The program for this period included the audit of many General Fund agencies.

In January and February, 1959, it is planned to start interim work on audits for the year ending June 30, 1959. The effort of the audit staff will be directed to General Fund agencies with the objective of expressing an opinion on the fairness of the financial statements of that fund as of June 30, 1959.

Our examination of the financial statements of the State is based largely on tests of the records. The testing is restricted to the amount we feel is necessary to constitute a fair sampling of the records, based on our evaluation of the system of internal control which we find in existence. If evidence exists that the system is effective, we may properly conclude that the accounting records and supporting data have a higher degree of dependability than would otherwise be the case, and we limit our testing accordingly However, if our investigation shows that the system has points of weakness, the scope of our testing must be extended. If the internal control were grossly inadequate or ineffective, we would have to review the entries in considerable detail before we could express an informed opinion on the financial statements.

Since much confusion exists as to the meaning of the term "auditing," we would like to state what it means to us in relation to the activities of the State of California. In a report on a survey of accounting and auditing for the government of this State made in 1954 by Price Waterhouse & Co., certified public accountants, a definition of governmental auditing in its most comprehensive sense is quoted from a publication of the United States General Accounting Office, slightly modified. The stated objectives of the audit are to determine:

1. That the agency is carrying out only those activities or programs authorized by the Legislature and is conducting them efficiently and in the manner authorized.
2. That expenditures are made only in the furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations.
3. That the agency collects and accounts properly for all revenues and receipts arising from its activities.
4. That the assets of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner.
5. That reports by the agencies to the Governor, Legislature or central control agencies, disclose fully the nature and scope of activities conducted and provide a proper basis for evaluating the agencies' operations.

The procedures to achieve these objectives include:

1. A study of the pertinent laws and legislative history to ascertain legislative intent as to the purposes of the activities engaged in by the agency.
2. A review of the policies established by the agency.
3. A review of the procedures, practices, forms of organization (particularly as to the segregation of duties and responsibilities), and the system of reporting, review, and inspection as well as other elements of internal control.
4. A review and analysis, by activities, of receipts and revenues, expenditures, and the utilization of assets together with all related control processes as a basis for evaluating the effectiveness with which public funds are applied and properly utilized.
5. The examination of individual transactions, the confirmation of balances with debtors, creditors, and depositories, and the physical inspection of property, to the extent necessary to determine whether:
   (a) Transactions have been consummated in accordance with applicable laws, regulations and decisions, and have been correctly classified;
   (b) Resources and financial transactions have been properly accounted for; and
   (c) Control processes of the agency are functioning effectively.
6 The exploration and full development of all important deficiencies encountered and the presentation of appropriate recommendations for corrective action.

The auditing program of this office generally follows along these lines, with modifications where it appears advisable. By statutory definition, the activities of this office are confined to examining and reporting, and therefore we do not act as an administrative or policy-making body.

Our approach to each problem is completely objective and independent, unhampered by preconceived judgments, bias, or political considerations. A fair parallel could be drawn between our work and that of a firm of independent certified public accountants serving its clientele. Such a firm concerns itself with factfinding by critical analysis, evaluation of relative importance of findings, interpretation of the financial statements, the expression of an opinion concerning the fairness of the representations made in the financial statements, and recommendations for improvement. In our audit program we concern ourselves with procedures much similar to those of the independent certified public accountant.

In the program we have undertaken to date, we have received excellent co-operation from the Executive Branch of the government. While in a sense we are engaged in a public accounting practice, with the departments and agencies of the State Government as a captive clientele, we deal with all members of the Executive Branch diplomatically and courteously as though they sought our services voluntarily, but at the same time we make full and prompt disclosure to the Joint Legislative Audit Committee of any material deficiencies made apparent

by our examinations. It is the policy of this office that all information which is obtained by us in the course of our work will be held in strict confidence, and will be divulged only to the Joint Legislative Audit Committee or to the committee of the Legislature for whom special work is performed. Release of any such material will not be made by this office. Such release will be the prerogative solely of the committees.

Any recommendations we may make toward improvement will represent the judgment of this office and will not be binding upon the Joint Legislative Audit Committee or any member thereof. We may recommend corrective action for the establishment or change of operating policy or procedure, but we have no authority to put into effect or enforce any recommended action. That authority and responsibility rests with the Legislature.

Our offices are located in Room 430 of the State Capitol. We extend to you our cordial invitation to visit us at any time. We are always available for the discussion of accounting and auditing problems and the discussion of preliminary arrangements for special studies and investigations. The actual performance of special studies is subject to the approval of the Joint Legislative Audit Committee, which formulates the policies under which we operate.

Our primary aim is to provide good service in informing the Legislature independently as to the integrity of the financial reporting of the Executive Branch of the State Government.

THE LEGISLATIVE BILL ROOM

By PAUL E. GALLAGHER
State Printer

(PAUL E. GALLAGHER—a native of California, educated in San Francisco, engaged in his family's printing business there and with major San Francisco printing firms, 1910-1935; representative of printing machinery firm in Los Angeles 1935-1942 as printing process and production engineer; partner in San Francisco printing firm 1942-1946. Active in graphic arts educational work since 1924. Active member of San Francisco Typographical Union No. 21 since 1919. Military service in U. S. Army during World War I and U. S. Coast Guard Reserve during World War II. State Printer since June 14, 1946.)

THE LEGISLATIVE BILL ROOM

By PAUL E. GALLAGHER
State Printer

Section 9790 of the Government Code provides:

> "The Department of Finance shall maintain a bill filing room for the Senate and Assembly, and file all bills, resolutions, journals and other documents ordered by the Senate or Assembly. It shall also place all such bills, resolutions, journals and other documents in binders for the use of the Members of the Legislature and perform such other duties in connection with their distribution and filing as may be required by the rules or special orders of either house."

The Department of Finance has historically delegated this function to the administration of the State Printer. The State Printer is also charged with the administration of the State Printing Division, which operates the State Printing Plant; a centralized Reproduction Section housed at 1021 O Street, where simple mimeographing and multilithing service is rendered to the Legislature, and all state agencies; and a Documents Section which publishes materials on its own account and offers them for sale, along with other salable documents published by the Legislature and other state agencies. We will supply a packet to you containing a pamphlet concerning the operation of the State Printing Division, and a group of price lists covering various documents for sale by our Documents Section, which will be distributed later in the session for your information and reference.

The Legislative Bill Room is under supervision of Mr. Al Knapp who has had some 12 years of experience on the job as Legislative Bill Room Supervisor.

The rather few words in Government Code Section 9790 really cover a considerable amount of detail and effort, about which we feel you should have some further information.

All legislative bills as introduced, and subsequently amended, enrolled and chaptered, are stored in authorized quantities in the Bill Room. Over 6,000 honeycombed metal bins are used for the numerical storage of Senate and Assembly bills. Due to the large number of bills introduced in the 1957 Session, some new wooden binning to store an additional 1,000 bills had to be added in a hurry. Each bin will hold 500 single-page bills, with the surplus of multiple-page bills being stored in Rooms 2 and 3, Capitol Basement, in some 5,000 large-size metal bins. Surpluses are filed in numerical sequences to expedite orderly replacing of exhausted supplies in the Legislative Bill Room. Additional binning and shelving are also available in a few other areas in the Capitol basement assigned to the Legislative Bill Room.

Down in a basement room, eight men from our counter crew insert the Daily Journals and Histories of each house in the members' desk binders. This morning operation takes upward of two hours and the

completed binders are then placed on the members' desks by house attaches prior to the start of each daily session. These binders are picked up after the adjournment of each daily session, with the distribution and return of these binders being accomplished by the Sergeant-at-Arms staffs of the Senate and Assembly.

The quantities of legislative printed matter is determined by the Secretary of the Senate and the Chief Clerk of the Assembly and, based on the prior regular sessions, are as follows:

Daily Journals	1,750 copies
Daily Histories	1,400 copies
Daily Files	1,050 copies
Weekly Histories	2,700 copies
Bills as introduced	1,900 copies
Bills as amended	1,900 copies
Bills as enrolled	500 copies
Chaptered Laws	1,500 copies

Copy "text" for the foregoing legislative items is forwarded to the Printing Plant after the close of business of each daily session, and the completed publications are usually available about 8 a.m. the following morning, with the bills following shortly after. The one exception is the Weekly Histories, which are printed on Monday nights and usually available by Tuesday noon. This procedure was adopted as a cost-saving measure to eliminate heavy overtime penalties for weekend work. In the past, during the last few days of the introductory period of general sessions (just prior to the now obsolete constitutional recess) when bills were introduced by the thousands, there was some reasonable production delay, although the printed bills usually come back to the Bill Room at approximately 350 per day from the Printing Plant. The 1959 Session will be historic in operating under a new procedural pattern, and none of us know exactly what will happen as the session rolls along. Needless to say, by the end of June, we may have had it, but we will all be wiser from the experience and will profit from it for the future.

The Bill Room counter crew is built up to a maximum complement of 15 temporary employees (male only) to handle the many requests for legislative bills and publications from the Legislature, the press, state departments and the general public. Young men are preferable as employees, since the hours have been long and strenuous. Many of these requests contain long lists of bills pertaining to a certain subject such as transportation, judiciary, education, etc. Long lists are usually filled during slack moments, but ordinary small requests are filled while the person waits. Also available from the counter are copies of approximately 200 current Assembly, Senate and joint interim committee reports on many subjects. Copies of most of the chaptered laws from 1949 to date are also available.

There always has been very close co-ordination between the legislative houses, State Printer and the Legislative Bill Room. The houses, together with the State Printer, establish policy, and the Bill Room acts as the intermediary on the receipt and dispatch of all legislative printing orders and copy. During the session many amended bills are handled on *RUSH* orders issued by each house. Bills amended during any given legislative day are taken to the Printing Plant, and if they are on file for the next day, they are printed and returned as soon as

possible, so that the members' "file binders" can be processed the same night and become available for the next day's session.

The Bill Room night crew is composed of approximately 25 women and one man. This personnel maintains an individual complete set of bills with all amendments for each legislative member, attache, and members of the accredited press, as well as for the Governor's Office. Reference sets of such bills also are maintained in each chamber and are processed daily by a "roving crew" from the night group. Experienced civil service personnel on temporary employment compose this group, which assures efficient maintenance of these books. Most of the members' books are maintained in the Capitol basement storage and are available for their legislative or business offices right after the close of the session. The Sergeant at Arms of the Senate and Assembly will either ship or transport these bill books at the direction of the individual member. In the long regular sessions, there are approximately 20 volumes to these sets. The "Daily File binder," which is the physical agenda of each daily legislative session, is processed by the same night group. As the amended bills are received from the Printing Plant, they are placed in their respective numerical sequences and assembled into uniform sets for insertion into the bill books and the "Daily File binder." The file clerks of Senate and Assembly keep a rough draft of "file items" as each legislative day progresses. Bills reached for floor action are stricken by number with a legible deletion and the new items from committee are added to this list. When the file information is received by the Bill Room, it is computed and compiled into a workable pattern to reflect the dead "takeouts" as well as the new "insertions." Any bill on file must also include copies of all subsequent amendments so that the bill in its entirety will be available to the membership for inspection before passage.

Bills received from each house are receipted for by the Bill Room, and then picked up by the Printing Plant messenger service. As they are returned, eight copies are placed in the "bill jackets" and their numbers recorded in a receipt book, which is signed by a responsible attache of the respective houses. Additional distribution is then made to authorized members, the press and other legislative service agencies.

The Legislative Bill Service, as authorized by Legislative Joint Rule 13, is a package deal which includes the Journals, Histories, Weekly Histories, and also all bills as introduced and amended. This service is sold for $150 for the general sessions (odd years), $25 for the Regular Budget Sessions (even years) and $15 for all Extraordinary Sessions, as called by the Governor. The above prices include the Final Calendar of Legislative Business, which is the chronological history of all actions on all bills. Over 350 services are sold during the general sessions. The sale prices only recapture the handling and postage costs.

The Bill Room staff prepares all legislative printing work orders that are authorized by Senate and Assembly, covering items such as interim reports, members' letterheads, business cards, postal cards, scratch pads, etc. A requisition and card file is maintained in the Bill Room for both Senate and Assembly orders, which serves as a suspense file until the printed product is received from the Printing Plant. When this material is delivered from the Bill Room to the respective houses or mem-

bers, it is receipted for by a responsible person to completely clear the records of the Bill Room.

On all printed material placed in the various "binders," *it is respectfully requested that no individual "item" be removed.* If a member wants copies of any one or a number of bills or other publications, a sergeant-at-arms or page may be dispatched to the Bill Room to pick up the necessary desired copies. All the binders are maintained and processed on a mass production basis, and withdrawing material by the members leaves the binder in an uncompleted status and requires much special attention, when time is short, to put it back into shape. Your co-operation will be most appreciated in maintaining these Daily File binders as intact as possible.

A cordial invitation is extended to all members and especially the new members serving their first term, to visit and see the Bill Room in action. Your observations will take you through the Main Bill Room, (Rooms 213, 214, and 215 Capitol Building), and Rooms 2, 3, 4, 6, and 8 of the Capitol basement. Competent personnel will be available to show members and their friends our entire responsibility. Over the years a great many Senators and Assemblymen have taken this "tour" and seemed greatly interested in what goes on behind the scenes. Our Mr. Knapp will be pleased to co-operate with you to arrange such a visit at your convenience.

The mechanics for the Budget Session and Extradordinary Sessions are similar and personnel complement for the short sessions is curtailed accordingly.

The workload of the Bill Room has been increased over 80 percent in the last six general sessions as can be noted from the following totals of bill items handled—(original bills, amended bills, enrolled bills, chaptered bills):

1947	10,765 items
1949	11,762 items
1951	12,629 items
1953	13,544 items
1955	15,215 items
1957	18,876 items

A recapitulation of the effort of the 1957 Session revealed a total of 30,528,650 copies of bills in various forms were printed, involving a total of 69,959 type pages, containing some 210,000,000 type characters and a paper consumption of 176 tons of newsprint.

819,000 copies of the various legislative publications were produced for the same session involving a total of 76,718 type pages and a paper consumption of 152 tons.

Also produced were a total of 154,000 copies of some 111 various legislative interim committee reports involving a paper consumption of approximately 24 tons.

Thus, a total of some 390 tons of paper were printed for this 1957 Session, involving type pages weighing approximately 756 tons. One copy of each item would fill a shelf 26 feet long, and the entire tonnage would make a solid cube 49 feet wide by 49 feet long by 49 feet high.

The printing and distributing cost of legislative printing for the previous 1955 Session was billed by the Printing Division in the amount of $1,103,453.84.

The workload involved in the 1957 Session was about 20 percent greater than that in the 1955 Session, and the printing cost totaled $1,527,931.68.

We have always been hopeful that some means could be devised whereby the introduction of bills could be somewhat controlled. Elimination of the presentation of unnecessary bills would lighten house committee work, speed up the legislative process, reduce legislative overall cost, reduce legislative Bill Room cost, and finally reduce bill printing costs due to smaller number of bills printed. Fewer bills handled would also reflect in lowered printing costs on daily journals, histories, and files due to reduced number of pages being required for necessary entries. It is possible some of these goals may be achieved in the present session under the new pattern of procedure.

We are also pleased to extend to you an invitation to visit our fine State Printing Plant, when you feel able to take an hour or so from your Capitol offices.

I will always make myself, or someone of our staff, available to personally conduct you through the plant and brief you as much as we can on the various operations you will observe.

You will also find my deputy, Ralph Titus, Assistant State Printer, eager to help your committee staffs in every way possible in producing your interim committee reports.

It has been a pleasure to present these few remarks concerning our part in the legislative process and we trust they have been informational to you. We are always ready to serve and assist you in any way we can while you are in Sacramento.

THE FUNCTION OF THE LEGISLATIVE ANALYST

By A. ALAN POST
Legislative Analyst

(A. ALAN POST—A native of California; educated in California, with an A. B. in economics from Occidental College in 1938, and graduate study at Princeton University in 1939 and 1940; engaged in banking and college teaching at Occidental College and at American University at Washington, D. C., 1940-1943; U. S. Navy, 1943-1945; U. S. State Department, 1945; Chief Assistant Legislative Auditor, 1946-1949, Legislative Analyst, 1950 to date.)

THE FUNCTION OF THE LEGISLATIVE ANALYST

By A. ALAN POST
Legislative Analyst

CALIFORNIA'S JOINT LEGISLATIVE BUDGET COMMITTEE AND LEGISLATIVE ANALYST

I. *Introduction*

The Joint Legislative Budget Committee and the Legislative Analyst were created by concurrent resolution of the Legislature in 1941 for the purpose of providing the Legislature with its own independent source of fiscal and research information. In 1957 the original title of Legislative Auditor was changed to Legislative Analyst.

The establishment of the committee and its staff, acting for the Legislature, was the outgrowth of a growing awareness on the part of the Members of the Legislature that the increasing complexities and size of State Government were creating increased responsibilities and workload on the Legislature which demanded additional staff services. Reports made to the Legislature during the 1930's pointed up the fact that the Governor possessed large and trained budget and audit staffs which were available to him to furnish the information necessary to formulate proposed programs and to support his requests before the Legislature. The Legislature, for its part, had no such assistance in carrying out its function of reviewing executive proposals, or independently evaluating the cost of proposed legislation. It had no staff for appraising the effectiveness with which the administration was carrying out legislation enacted by the Legislature and the Governor.

These factors led the Legislature to attempt to establish a technical staff directly responsible to it. Several attempts were made in the form of bills introduced from time to time to create a Legislative Audit Bureau, a Legislative Research Bureau, a Bureau of Administrative Research, and others, but none became law. In 1941, a bill providing for an independent fiscal post audit of all state agencies by an office directly responsible to the Legislature was approved by the Legislature but was vetoed by the Governor on recommendation of the Department of Finance.

II. *Joint Legislative Budget Committee Created*

Failing in attempts to establish a research and advisory staff by statute, the Legislature in 1941 created the Joint Legislative Budget Committee by a Joint Rule of both houses. Continuity of the committee's existence was maintained in succeeding years by reaffirmation of the Joint Rule by each succeeding general session until 1951. In that year Chapter 1667, Statutes of 1951, was passed by the Legislature and signed by the Governor providing a statutory basis for the Joint Legislative Budget Committee and the Legislative Analyst. The statute provides that the duties and functions of the committee and the Legislative Analyst shall be defined in the Joint Rules of the Senate and the Assembly.

The Joint Legislative Budget Committee was first organized on October 4, 1941. Four days later, on October 8, it employed the first Legislative Analyst. The committee consists of seven Senators and seven Assemblymen. The Senate members are the President pro Tempore and six members appointed by the Committee on Rules, while the Assembly members are appointed by the Speaker. The committee thus constituted selects its own chairman and vice chairman.

The Joint Legislative Budget Committee is authorized by statute and the Joint Rules to appoint a Legislative Analyst, to fix his salary, prescribe his duties, and to provide for such other technical and clerical employees as are necessary to accomplish the committee's activities as prescribed in the statute and the Joint Rules. The Legislative Analyst serves as secretary of the committee and acts as staff director. There have been only two such appointments since the establishment of the position.

The present staff of the committee consists of 31 technical and 10 clerical positions. The staff is organized into units specializing in certain fields of state government activity. Each unit head is responsible for the analysis of budgets of agencies or departments assigned to him, for the analysis of appropriation or cost bills pertaining to his assigned agencies or any related activities, and for making any required adminstrative or management studies relating thereto, including informational studies requested by members and committees relating to the subject matter of such agencies. Staff members are expected to have considerable knowledge of organization, legal basis, activities, and workloads in each assigned agency, and to accumulate a general research background in the related subject matter.

III. ACTIVITIES

Joint Rules

Chapter 1667, Statutes of 1951, provides that the Joint Legislative Budget Committee "shall ascertain facts and make recommendations to the Legislature and to the houses thereof concerning the State Budget, the revenues and expenditures of the State, the organizations and functions of the State, its departments, subdivisions, and agencies, and such other matters as may be provided for in the Joint Rules of the Senate and Assembly."

Several duties of the Legislative Analyst are specifically enumerated in the Joint Rules. The more significant are:

1. To ascertain facts and make recommendations concerning the State's Budget, revenues, expenditures, and organization;

2. To assist the Senate Finance Committee and the Assembly Ways and Means Committee in considering the Budget and all bills carrying express or implied appropriations and all legislation affecting state departments and their efficiency, and to appear before and assist any other legislative committee upon instruction by the Joint Legislative Budget Committee;

3. To provide all legislative committees and Members of the Legislature with information obtained under the direction of the Joint Legislative Budget Committee;

4. To receive working papers and reports from all interim committees which have completed their work;

5. To maintain a record of all work performed by the Legislative Analyst under the direction of the Joint Legislative Budget Committee, and to keep and make available all documents and data submitted to him by any Senate, Assembly, or joint committee.

Budget Committee Instructions

The Budget Committee has further defined the duties of the Legislative Analyst through instructions to him and his staff. These include requirements that he:

1. Prepare cost estimates on all proposed appropriation bills, expressed or implied.

2. Report any instance in which he believes the administration is failing to carry out the expressed intent of the Legislature.

3. Call to the committee's attention each proposed new service contained in the proposed Budget.

4. Point out to the committee and the Legislature each item in the proposed Budget which has been denied previously by the Legislature.

5. Propose statutory changes to effect operational economies or more effective administration.

6. Recommend areas and methods for research studies to be undertaken by the administration, the Budget Committee, or any other legislative committee.

7. Prepare, following each session of the Legislature, a summary showing the effect of the final legislative program on the financial condition of the State.

8. Upon request of the chairmen, respectively, of the Senate and Assembly Revenue and Taxation Committees, the Legislative Analyst provides an analysis of all bills referred to those committees.

Thus, a major effort of the Legislative Analyst and his staff is directed to a continuing analysis of factors influencing the State's financial program and activities. Each year findings and recommendations are reflected in the Legislative Analyst's "Analysis of the Budget Bill," a printed volume approaching 900 pages containing a detailed critique of the Administration's proposed Budget.

While the Legislative Analyst shares no responsibility for the preparation of the Governor's proposed Budget, he and members of his staff are privileged to attend preliminary hearings between the Department of Finance and state agencies when the tentative Budget is being developed. Through this medium the staff becomes familiar with the basic information and policies underlying the agency requests. While the Legislative Analyst does not participate in Department of Finance staff meetings nor in final policy determinations by the Governor, he and his staff are free to pursue any course of action in gathering information necessary to a full understanding of the Budget requests and policies. The Legislative Analyst's Analysis of the Proposed Budget is printed and available to the Legislature at approximately the time the Governor presents his Budget Message.

As a matter of policy, the recommendations of the Legislative Analyst are presented to the Legislature and its committees without recommendation by the Joint Legislative Budget Committee. In this way, the Legislative Analyst is free to recommend any action without in any sense committing any member of the committee to any established committee policy. Members of the Joint Legislative Budget Committee are free to accept or oppose his recommendations before other legislative committees and on the floor of their respective houses. Generally, members of the committee are also members of the appropriations committees of their respective houses. While the Legislative Analyst is specifically instructed to make recommendations either for or against proposals, he does so bearing in mind that factual and policy questions should be brought out by such means for legislative appraisal and decision.

When the Budget Bill is heard before the Assembly Ways and Means Committee and the Senate Finance Committee, the Legislative Analyst and his staff present his recommendations and assist the committees in obtaining the facts necessary for legislative determinations. The Governor's representatives and the state agency concerned participate freely in these hearings.

Research Reports

During the interim the Legislative Analyst makes studies of numerous matters of fiscal concern and presents these periodically to the committee. These reports in turn are frequently sent on to the affected agencies, or interested committees of the Legislature and the public. A number of the most significant are sent to all members. These reports include organizational and management studies in selected areas. On a number of occasions the Budget Committee has been selected to enter into contracts with outside research firms where the Legislature has specifically appropriated funds to the committee for such independent surveys.

Registration of Legislative Advocates

In 1950, the Legislature adopted a statute requiring all persons (other than government representatives and employees) advocating legislative action to register and to file specified data concerning whom they represented, salaries, expenses, et cetera. The Legislative Analyst was charged with the responsibility for receiving and maintaining a file of these registrations, although he was not required to enforce any provisions of the registration requirement. Approximately 350 advocates register during general sessions of the Legislature.

The office maintains a comprehensive filing system and makes available to the public and the committees which by law administer the provisions of the registration requirement the information contained in these files.

Servicing Interim Committees

Under the Joint Rules it has always been a responsibility of the Legislative Analyst to provide all legislative committees and Members of the Legislature with information obtained under the formal direction of the Joint Legislative Budget Committee. In effect, this has meant that the Legislative Analyst's staff, insofar as time would per-

mit, did a great deal of research for other legislative committees and members. However, many committees maintained their own staffs and the Legislative Analyst's services were usually requested on fiscal aspects of an inquiry or to supplement other staff efforts.

Beginning in 1953, however, the requests of legislative interim committees for services by the staff of the Joint Legislative Budget Committee began to increase materially. Concurrently, there was an increasing legislative expression that a central staff pool for legislative research was considered desirable. This permanent staff pool would reduce the necessity to rely upon a relatively small group of persons who were available for temporary employment of this type. Because of the temporary and specialized nature of the employment, it was increasingly difficult to recruit competent personnel. Moreover, the value which should have been obtained through the experience gained in the various studies was lost when the research staff was relinquished at the completion of the committee's study. Likewise, most of the research materials became scattered and lost and the product of many thousands of dollars of research was required to be duplicated in subsequent years.

Recognizing the desirability of securing a permanent staff of qualified persons for these studies and in the same way obtaining a permanent reservoir for the experience and materials gained through such study, many of the Members of the Legislature felt that the Legislative Analyst's office provided the appropriate vehicle for creating the needed staff pool The major reasons for this were apparent:

1. The Legislative Analyst's staff contained an extensive knowledge of the details of state and local government because of its many years of research and budget analysis.

2. A majority of the staff members had already had valuable experience working with interim committees.

3. There was an inherent overlap in the work performed for the Legislature in providing fiscal information and that which would be required to service committees generally, such that the creation of an independent staff for the latter function would appear to create duplication and unnecessary cost to the extent that a specialist in a given field could be made available primarily to the Legislature for fiscal review during the session and for related research work for study committees during the interim, a significant economy in staff requirements could be achieved.

The experience gained by these staff members would be available also to the individual Members of the Legislature to assist them with their individual requests for research assistance.

On this basis, during the 1955 General Session, resolutions were introduced and passed in both the Senate and Assembly calling attention to the availability of the Legislative Analyst's staff for services to all committees and urging the committees "to ascertain whether their needs can be met through the use of these permanent staff members before determining to employ any special research personnel to furnish legislative research services * * *." Following this, a policy was established that the Legislative Analyst would be reimbursed for staff services in accordance with contracts to be entered into between the Joint Legislative Budget Committee and the committees acquiring the staff services.

During 1957, 14 contracts were in effect providing for major research and investigation activities on a variety of subjects of legislative interest.

Out of some 378 man-months of total staff time, some 66 man-months were spent servicing these contracts during 1957. Another 68 man-months were spent on special nonreimbursable studies for committees and Members of the Legislature, which was in addition to the work customarily carried on for the Joint Legislative Budget Committee.

The work done on contract is generally superimposed upon the staff's continuing programs of budgetary and administrative analysis. Depending upon staff availability, this means that productivity in terms of budget and fiscal research is reduced as interim and special assignments are increased.

Pursuant to Joint Rule, any Assembly, Senate, or joint committee, other than a standing committee, is required upon the conclusion of its work to deliver to the Legislative Analyst for use and custody available to the Members of the Legislature all documents, data, reports, and other materials that have come into the possession of such committee and which are not included within the final report of such committee to the Assembly, Senate, or the Legislature as the case may be. This rule insures that the extremely valuable research materials developed by interim committees will not become lost to the Legislature.

In making available to the members and committees of the Legislature the information within his control, the Legislative Analyst follows the rule of strict confidentiality between the member and the office. The confidential nature of the relationship between the Members of the Legislature and the staff of the Legislative Analyst is required by Joint Rule.

IV. *Conclusion*

The Legislative Analyst's Office has now been in existence for 18 years during which period of time it has accumulated extremely valuable files from which information is made available to the members and committees of the Legislature. Because of the continuing relationships with state agencies, a large body of written materials flows into the office and is maintained in file and library form available for such reference purposes. The number of legislative members who use the staff services provided by the office has steadily increased, and the staff has been enlarged to meet this demand. By following civil service practices and procedures, although the staff itself is not civil service, it has been possible to secure professionally qualified staff and to successfully retain such staff.

THE FUNCTION OF THE LEGISLATIVE COUNSEL

By RALPH N. KLEPS
Legislative Counsel

(RALPH N. KLEPS—A native of New York; educated in New York and California, with an A.B. and LL.B. from Cornell University; admitted to practice law in California in 1939; private practice in San Francisco, 1939-1940 and 1942-1943; Law Clerk for Chief Justice Phil S. Gibson, 1940-1942; Director of Judicial Council Administrative Agencies Survey, 1944 and 1945; Chief, State Division of Administrative Procedure, 1945-1950; Legislative Counsel, 1950 to date.)

THE FUNCTION OF THE LEGISLATIVE COUNSEL

By RALPH N. KLEPS
Legislative Counsel

1. INTRODUCTION

A description of the functions performed by the Office of Legislative Counsel requires a brief summary of the historical background of the office. The California Legislature recognized the need for a legal adviser as early as 1895. During that session the Legislature created a Commission for the Revision and Reform of the Law (Statutes of 1895, Chapter 222) and the commissioners were directed, when requested by the Legislature or any committee thereof, to attend sessions of the Legislature and to act as "legislative counsel or adviser, in drafting or passing upon the form of any bill or proposed bill, pending, or to be introduced before the Legislature." This responsibility was given to succeeding commissioners for the revision and reform of the law until 1911.

In the midst of the great volume of legislation which accompanied Governor Hiram Johnson's first term, the 1913 Session found itself overwhelmed. A number of bills were submitted to the Legislature that year providing for the creation of staff agencies to assist the Legislature One of these (Statutes of 1913, Chapter 322) was enacted into law after once being defeated on the floor of the Assembly. It provided for the creation of the Legislative Counsel Bureau, and for its bill-drafting and statutory revision functions. It is worth noting that the creation of a Legislative Counsel for the Senate of the United States Congress and for the House of Representatives dates back to approximately the same period.

The first Legislative Counsel was selected by a board consisting of the Governor and two members of each house of the Legislature. This procedure was continued until 1917, when the position was made appointive at the pleasure of the Governor, with the result that Legislative Counsels tended to change with the Governors in those years. The first Legislative Counsel, Judge Arthur Will, served from 1914 to 1920. Thereafter, George Bush, John McGilvray and Thomas Gannon served for the Sessions of 1921, 1923, and 1925.

Commencing after the appointment of Fred B. Wood by Governor C. C. Young in 1927, the statutes were changed to provide for the selection of the Legislative Counsel by the Legislature, and this procedure continues to the present day (Gov. Code Sections 10200-10246). Fred Wood served as Legislative Counsel under continuous selection by the Legislature until his appointment as a Justice of the District Court of Appeal in 1950. I have had the honor of serving as Legislative Counsel since 1950, when I was given an interim appointment by the joint committee responsible for filling the vacancy. Thereafter, each session of the Legislature has adopted a concurrent resolution continuing my services.

This resolution customarily is adopted early in each regular session, and the law requires that the Legislative Counsel be selected without reference to political party affiliations and solely upon the ground of fitness to perform the duties of his office (Gov. Code Sec. 10203).

2. STAFFING

As I have indicated, the Legislative Counsel himself has no tenure of office other than that given by the assumption that, if a good job is done, the Legislature will see fit to continue him in office. Under the civil service amendment to the California Constitution (Article XXIV) there are two appointments exempt from civil service which may be made by the Legislative Counsel. Other than these two exempt appointments, the entire staff is required to be appointed under the civil service system. Thus, the office operates under the fiscal and personnel controls which apply to the agencies in the Executive Branch and is, in this respect, distinguishable from the noncivil service staffs which are employed by the interim committees of the Legislature.

The staff of 27 lawyers is supervised by two principal deputies and a chief deputy. Mr. Angus C. Morrison, Chief Deputy Legislative Counsel, will speak to you later in the program, and will present an analysis of the Assembly Standing Rules. Each of the principal deputies supervises the work of approximately half of the lawyers, and each of them bears primary responsibility for half of the legal subject with which the office deals. In each of these sections of the office, at any given time, approximately half of the deputies are relative newcomers to state service and to the Office of Legislative Counsel. The other half consists of men who have had long service and wide experience. These senior deputies are our "experts" and you will find, when you have a problem which goes deeply into the heart of any one of the complicated areas of our statute law, that you can be given great assistance by one of our seniors who has dealt with problems in that field for periods ranging up to 15 or 20 years.

I should like to mention our indexing section briefly. One of our senior attorneys is in charge of a staff of about four persons, who index the bills pending before the Legislature and the statutes passed by the Legislature. They also compile the tables indicating sections of the existing statute law which are affected by measures pending before the Legislature. This indexing staff is also used in compiling and indexing the state publication of the session laws and the state publication of the California codes.

You will find the Office of Legislative Counsel located on the third floor of the new wing of the Capitol directly across from the main bank of elevators. It is halfway between the Senate and the Assembly (a most appropriate situation) and on a route which is followed by every member and every person dealing with the Legislature. I would like to invite each of you at your convenience to inspect these quarters, and any member of the staff will be willing to guide you through the office at your request.

I cannot leave this topic of staffing without commenting upon the office hours. The office remains open during a session of the Legislature seven days a week. On weekdays we are open from 8 in the morning until 10 o'clock at night, except on Fridays. On Saturdays and Sun-

days, we are open from approximately 9 a.m. to 5 p.m. You will find that many of the experienced Members of the Legislature make excellent use of the weekend periods when other demands on the office are low in order to have time for extended discussion of their more complicated problems.

3. LIMITATIONS

There are a number of limitations or restrictions on the service which we render, and I know from past experience that these come as something of a surprise to the newer members. Perhaps the most important arises out of the attorney-client relationship which the Office of Legislative Counsel has always maintained with respect to the work performed in that office. Unless otherwise specifically directed, every member of our staff is instructed to treat a request as confidential to the person making that request. This means that we will not discuss your request, or the fact that we have the request, with any other Member of the Legislature or with any member of the press or with any member of the public. When the work is complete, it will be delivered directly to the member who requested it, and the only copies are the ones which we maintain in our own files. The attorney-client relationship has been modified by the Joint Rules of the Legislature in two instances. Joint Rule 34 requires the office to furnish two copies of any opinion concerning a member's bill to that member regardless of the desires of the requester for whom the opinion was written. This means that one member cannot secure an opinion respecting another member's bill, keeping to himself the problems which the opinion raises until the point at which he intends to use that opinion in raising the problems. It is our practice to make simultaneous delivery of any opinion prepared under these circumstances insofar as that is possible. Under Joint Rule 34.1 the office is required to advise any requester when a prior request has been taken for a resolution commemorating any event or congratulating or expressing sympathy to any person, the purpose behind the latter provision being, obviously, to reduce the duplication which often occurs in connection with such resolutions.

When an opinion has been delivered to a member, it frequently becomes of interest to other members and to members of the public. Under those circumstances, we occasionally ask whether the original requester is willing to have copies of the opinion made available to others. Upon his authorization, and his alone, the material will be released, and in the event that he declines to make the opinion public, we continue to retain it in our files and notify those interested that it must remain confidential.

One other limitation upon the operation of the office is expressed in Government Code Section 10210 as follows:

> "Neither the Legislative Counsel nor any employee of the bureau shall oppose or urge legislation."

This prohibition has been scrupulously observed. You will perhaps find that, in your discussions with members of the staff, you will desire suggestions as to the best method of procedure. You will find that the various alternatives will be presented to you, but that no member of the staff of the Legislative Counsel will undertake to make the policy choice

as to which of the possible methods you should follow. The staff is maintained, in other words, for the purpose of giving you the best possible advice concerning the legal restrictions under which your problem must be approached. Once you have chosen the path you desire to follow, the members of our staff will undertake to prepare the material necessary to accomplish your purpose. No member of the staff, however, will undertake to make policy decisions or to influence you as to the direction in which you should proceed.

A final limitation upon our service is practical rather than legal. During sessions of the Legislature we operate on exceedingly close deadlines, and we process a tremendous volume of requests. Each request is taken in writing by the deputy with whom you consult. Thereafter, it is typed with multiple copies so that one copy can be given to the deputy who is assigned to do the request and the remaining copies are used for control purposes. We undertake to complete every request by the indicated deadline, and in situations where complications develop, we undertake to consult with the requester before the deadline is reached in order to determine what can best be done under the circumstances. You will find that this system breaks down occasionally due to circumstances beyond our control, and under those circumstances you should not hesitate to ask questions as to the status of the work. In situations where the work which you have received does not completely satisfy your request, do not hesitate to ask either the chief deputy or to ask me to check into the matter in order to see to it that your needs are met.

As an indication of the kinds of pressures under which this system is operated, you might be interested in the following statistics:

	1951	*1953*	*1955*	*1957*
Number of requests	6,700	9,900	10,950	11,601
Percentage of bills prepared	55%	70%	77%	78%

4. DRAFTING OF LEGISLATION

The major reason for the existence of the office has always been the fact that it provides a permanent staff of expert draftsmen. No Member of the Legislature, however, and no state agency or member of the public is required to use its services. It exists as a service agency, pure and simple, for the use of those who desire the service.

One question always arises in this regard: Assuming that we exist to do drafting for the Legislature and its members, who else may use the drafting services of the office? The short answer is that only legislators may, but for two statutory exceptions to that rule. Government Code, Section 10232, requires the office to assist any state officer or agency in the preparation of legislation to be submitted to the Legislature, and this service is widely used, particularly by those agencies which do not have any attorneys on their own staff trained in the preparation of legislation. This includes the drafting of legislation at the suggestion of a judge (Gov. Code, Sections 10237-10241). The other exception is found in Government Code Section 10243, which instructs the Legislative Counsel to co-operate with the proponents of any initiative measure when requested to do so by 25 or more electors. Both of these exceptions are based upon the theory, of course, that the statutory law of the State will be maintained in a better condition

through the use of the Legislature's permanent drafting staff by non-legislative agencies.

One other question has frequently been asked: What about the fact that legislative advocates and representatives of interest groups are frequently seen discussing drafting problems with deputies of the Legislative Counsel? The fact is that each of these persons is discussing the particular problem because he has been authorized to do so by a Member of the Legislature. No formal authorization in writing is required, although this is desirable when any continuing problem is involved. Members frequently send a member of the public into the office with a note written on the back of the member's card, or I may receive a telephone call instructing me to discuss a problem with someone who is being sent in by the member. In each instance, the request is written up in the member's name, and the work (when completed) will be delivered to the member for such action as he desires to take. The work is being done, in other words, not for the legislative advocate, but for the Member of the Legislature who authorized us to work with him on the member's behalf.

Bill drafting involves widely varying situations. Occasionally the only service requested of the office is that of digging up a bill introduced in a prior session for the purpose of having it introduced in the current session. More than once such a bill has been enacted into law without this office ever having considered it further, much to our embarrassment if the original draft was full of bugs which never were worked out of it. Similarly, we are frequently asked to "expert" a bill prepared under private sponsorship with a view to making technical suggestions which might improve the bill. When those suggestions are not adopted, as is sometimes the case, we may find ourselves having to explain how such a bill could have come from our office with such inadequacies. We normally bear up under these difficulties without comment, only seeking to insure that the member for whom the job was done understands the situation and does not hold us responsible for the things we didn't do.

The ideal drafting assignment is one which we get too seldom. That is the situation in which we have plenty of time prior to drafting to discuss the problem with those who are interested and informed on the subject. Ideally this should be done during the recess period prior to the session when we could check back as to any problems encountered during the drafting. Such a bill would be in final form when introduced, and all factual and legal problems would have been worked out in the course of drafting. Under these circumstances, we are sure that we would have no difficulty in satisfying our requester and in guaranteeing the work. As you will see during the course of the forthcoming session, however, this ideal is reached in the Office of Legislative Counsel no more easily than it is anywhere else—though we keep striving.

5. OPINIONS AND LEGAL ANALYSIS

Dating back to about the time that Justice Fred Wood became Legislative Counsel, more and more use has been made of the office for the preparation of opinions concerning legislative problems. While each of these opinions is confidential to the member for whom it was prepared, a complete file has been maintained since 1927, and is bound

for the use of the deputies in our office. This material is indexed, and it furnishes, of course, a valuable record of the advice given to the Legislature over a period of nearly 30 years, a record which could not be duplicated (so far as I know) in any other state legislature. Thus, over the years, the Legislature has come to look upon the Legislative Counsel as its legal adviser in all matters of legislation and legislative procedure.

Since the Attorney General is the elected law officer for the State and its agencies, some new members find it puzzling to determine their relationship with respect to the two offices. The important fact to be remembered is that the member is free to make his own choice with respect to which office can be of service to him; he is not required to use either. Where the problm involves the administration of existing law, the Attorney General can obviously be of great assistance, however, since he is also the legal adviser for the state officer or agency charged with administering the law involved. The same often is true where local problems are involved, since the local district attorney will normally turn to the Attorney General for advice. On the other hand, the Attorney General does not operate upon the confidential, attorney-client relationship which governs our operations, with the result that any opinion rendered to a member will normally be released to the press directly by the Attorney General and will be published in the formal opinions of that office. These considerations, together with the fact that the Attorney General is burdened with work for all other state agencies, often dictate that the Legislature's law office should be used by the member on the particular problem. While we do assist them with the preparation of legislation, the Office of Legislative Counsel does not furnish state agencies with legal advice as to the administration of existing statutes; we refer them to the Attorney General as their legal adviser in all such cases.

Opinions of this office are confidential to the member for whom prepared until he releases them. Occasionally you will find opinions printed in the Journals of the houses. This is due to the fact that the opinion then becomes available to the courts as an indication of the intention with which the Legislature acted. The decision to publish an opinion of the Legislative Counsel for such purposes rests completely with the member, in the first instance, and with the house.

Many times the request made of the office calls simply for an impartial analysis of the legal effect of the measure. Over the years these analyses have proved very valuable to the Members of the Legislature and to members of the public. As a result, the Legislature has directed the Office of Legislative Counsel to prepare a digest of each measure introduced. Under the procedure proposed for the 1959 Session this digest must be submitted with the bill at the time of introduction. The digests will also be published separately in consecutive order, with separate pamphlets for the Senate and the Assembly. Our indexing staff will prepare an index, by subject matter, of all the measures introduced before the Legislature. The indexing staff also prepares a table showing the bills which affect each section of our California code system. All of this material will be available in the *1959 Legislative Index,* which will be published several times during the session and will cumulate all information up to the date of publication. When the session ends, we pre-

pare, at the instruction of the Legislature, an analysis of each of the measures enacted into law. This document, entitled "Summary Digest of Statutes Enacted" furnishes the analysis, index, and tables of sections affected which I have previously described, but with reference to those bills which actually became law. We undertake to have it available and in the hands of each of the members as rapidly as possible after the conclusion of the Governor's bill-signing period.

While discussing the question of legal analyses, I should mention the fact it comes as a surprise to many new members that we are directed by Section 10235 of the Government Code to respond to requests from the Governor for analyses of bills pending before him for approval. The Governor customarily requests an analysis of each measure which reaches his desk, but the member whose bill is involved is entitled to receive a copy of that analysis under the provisions of Joint Rule 34 which I have previously mentioned. The reputation of the office with respect to preparation of impartial analyses led to the enactment of Section 1509.7 of the Elections Code in 1949. That section provides for the preparation by the Legislative Counsel of an impartial analysis of each measure which appears on the general election ballot. As a result, the ballot pamphlet containing proposed amendments to the Constitution contains, in addition to the arguments to the voters, an impartial analysis of the effect of the measure prepared in the Office of Legislative Counsel.

6. GENERAL LEGAL SERVICES

The creation of a permanent, full-time legal staff for the Legislature has naturally led to its use in a variety of situations in which the Legislature and its committees have had general need for legal services. Occasionally it is necessary for this office to appear in litigation or to prepare briefs in pending lawsuits on behalf of one of the committees of the Legislature or on behalf of one of the members acting for the Legislature as a whole. Several important decisions in the Supreme Court of California have been won, permitting the Legislature to create a retirement system for its members, to pay expenses to the members during sessions and to create commissions upon which Legislators might serve as members. In some instances, litigation has resulted from the Attorney General taking a position contrary to the Legislative Counsel with respect to the power of the Legislature, and in most instances, I am happy to say, the courts have resolved the doubts in favor of the Legislature's power to act. In some instances, normally in situations in which a committee of the Legislature is sued by a private party, the Attorney General and the Legislative Counsel have cooperated in the defense of the action brought against the committee. Such a case was won in the District Court of Appeal of California in 1958 and in 1951 such a case was won in the Supreme Court of the United States. This use of the office for purposes of litigation is, of course, a very limited one, and the statutes require that permission be granted by a joint committee of the Legislature prior to appearance by the Legislative Counsel in a court proceeding (Gov. C. Sec. 10246).

Members of the staff are customarily assigned during recess periods to work with interim committees. The work generated by some of the interim committees is so substantial that in some cases it is almost

necessary to assign a single deputy to work nearly full-time for the particular committee. In connection with a number of the very important programs prepared by interim committees in recent years, a deputy from the Office of Legislative Counsel has worked very closely with the committee and its chairman at each step in the committee's work. The work performed by the deputy legislative counsel is, however, limited to legal services. General investigation for the committee is normally performed by members of the staff of the Legislative Analyst or by directors of research hired on behalf of the particular committee.

Finally, the Office of Legislative Counsel has been used generally, almost from the very beginning, for purposes of statutory revision. In the early days of the office it was a common practice to adopt resolutions directing the Legislative Counsel to make studies during recess periods leading to the revision of statutes, and, as I indicated earlier, the existence of the office may well have grown out of the work of some of the early commissioners for the revision and reform of the statute law. The Legislative Counsel was charged with the duty of preparing the 1929 School Code, and his staff acted as the official draftsman for the California Code Commission during the period from 1931 to 1953 when the present California system of codes was being created. At the present time the Legislative Counsel is required to report to the Legislature any action which is needed to maintain our system of codes, but is prohibited from including in those recommendations any suggestions for change in the substance of the law (Gov. C. Sec. 10242). These reports concerning legislation needed to maintain the codes are filed biennially at each budget session of the Legislature so that the recommendations can be considered by the Interim Judiciary Committees of the Legislature prior to each general session of the Legislature. Normally the recommendations concern only matters of detail and are not of general interest to the members.

7. CONCLUSION

While I have covered many of the questions which have been asked of me by new members in recent years, I am sure there are many more which will arise as you have continuing experience with the procedures of the Legislature and the part which our office plays in connection with those procedures. I would welcome your asking me or any member of the staff any questions relating to our operations. It is a privilege to have appeared on this program, and I hope that this summary concerning the Office of Legislative Counsel will be of value to you, not only during the forthcoming session, but for many years thereafter.

FUNCTIONS OF THE SERGEANT AT ARMS

By TONY BEARD
Sergeant at Arms of the Assembly

(TONY BEARD—A native of California; educated at Sacramento, with an A.B. from the University of Southern California; employed in various positions in private industry, and in the Office of the Attorney General; Assistant Sergeant at Arms of the Senate; Sergeant at Arms of the Assembly since 1956.)

FUNCTIONS OF THE SERGEANT AT ARMS

By TONY BEARD
Sergeant at Arms of the Assembly

In speaking to you today I would like to outline the duties of the Sergeant at Arms. The word outline is used because of the fact that it is almost impossible to detail everything we do for the Members of the Assembly and for the Legislature.

The Sergeant at Arms works for all 80 Members of the Assembly. Necessarily this sometime or other will produce some conflicts. As Sergeant at Arms I shall do my best to serve each one of the Members of the Assembly, but there will be times when it will be impossible to do exactly what you want us to do at the time you want it done.

During sessions of the Legislature the Sergeant at Arms has a staff of several assistants and deputies. This number is varied from session to session and has been adjusted as necessary to meet the demands of the Legislature for service. Between sessions of the Legislature this staff is practically eliminated. During 1956 we had only the Sergeant at Arms and the Assistant Sergeant at Arms and one deputy working with the interim committees. With this staff it is impossible for us to assist all interim committees on demand since the meetings are held at various places throughout the State. We have, however, on occasions employed Sergeant at Arms for special jobs; there is always that possibility in the event the permanent staff is unable to properly serve the members.

The office of Sergeant at Arms is provided by statute (Government Code 9171) and the statutes require he be elected by a majority of the membership of the Assembly (Government Code 9172). As Sergeant at Arms of the last regular session of the Legislature, I am required by statute to attend the opening session of the 1959 Session (Government Code 9150). Generally, the duties of the office are specified by statute and rules (Government Code 9194 and Assembly Standing Rules 28 and 29).

During sessions of the Legislature the Sergeant at Arms is required to attend all sessions of the House and to carry out the directions of the Speaker. Our duty is to prohibit any unauthorized persons from coming onto the floor of the Assembly. For this purpose we have stationed at the entrance to the Assembly floor Assistant and Deputy Sergeant at Arms whose job it is to stop all unauthorized persons from entering the chambers. On occasions this duty has led to some difficulties. Sometimes a new Deputy Sergeant at Arms given this task will fail to recognize a member and may stop the member. On occasion, too, a new Senator has been denied access to the floor. Fortunately this does not happen very often. The repercussions are always unpleasant and we try our best to avoid such unpleasantness.

During sessions the Speaker of the Assembly is authorized to maintain order upon the floor of the Assembly. His "arm" in doing so is the Sergeant at Arms. Consequently, when the members or the visitors

in the rear of the chamber are creating a disturbance it falls upon the Sergeant at Arms to request them to maintain order. In addition to this function we maintain during the sessions of the Assembly a group of men who act as Deputy Sergeants at Arms for the Assembly. It is their function to carry messages for members, to notify members of incoming telephone calls, and to see to it generally that the needs of the members are met. One of the most useful aspects of this phase of our work is securing for the members from the Bill Room copies of any bills that a member may want. Each desk in the Assembly is equipped with a button and to secure a Deputy Sergeant at Arms it is necessary only for the member to press the button. Deputy Sergeant at Arms will arrive at his desk as soon as possible.

There is one special function of the Sergeant at Arms during sessions of the Legislature which should be called to your attention. When a call of the House is ordered, it is the duty of the Sergeant at Arms to enforce that call. This means that it is his duty to keep on the floor of the Assembly all of the members who are present at the time the call is ordered. It is also his duty to locate and bring back to the floor of the Assembly any Members of the Assembly who may be absent at that time. In carrying out this duty the Sergeant at Arms is authorized to "arrest" Members of the Assembly and to take them into physical custody. It has been a long time since the Sergeant at Arms has met any difficulties in this connection. The rules recognize former difficulties when members did not wish to be present during a call and specifically provide for the use of force if necessary. They also authorize the Sergeant at Arms to utilize the services of the members of the California Highway Patrol, the State Police, and the sheriff's office to bring Members of the Assembly back to the chamber (Assembly Rule 105). It is unlikely we will have occasion to utilize this power during the 1959 Session.

A special aspect of our work during the session is the service which we perform for the standing committees. A Deputy Sergeant at Arms attends all meetings of standing committees and his job is to see the committee room is in order and ready for the hearing. He assists the chairman of the committee in obtaining a quorum of the membership and in maintaining order during the commitee meeting. In the committee rooms where there is recording equipment, a Deputy Sergeant at Arms operates the recording equipment and in connection with the work of the standing committees the Sergeant at Arms has the power to "arrest" and bring before the committee any witness that the committee desires (Government Code 9409). I should like to point out that the rules of the Assembly also provide for a committee placing a call upon the committee just as a call is placed upon the members by the Assembly during sessions. There is a distinction here in the powers of the Sergeant at Arms. As I pointed out, during a call of the House the Sergeant at Arms has the power to "arrest" a member and take him into physical custody for the purpose of returning him to the Assembly Chambers. This power does not exist during a call of the committee, and it is highly doubtful the Sergeant at Arms can do any more than request an absent member to attend a committee meeting. I mention this for the reason calls of a committee are now becoming more common

and there has been some misunderstanding as to the powers of the Sergeant at Arms when a committee orders a call of the committee.

The foregoing is a summary of our general powers during sessions of the Legislature. Between sessions our primary function is to assist the interim committees of the Legislature. Here again we attend committee meetings upon request of the chairman of the committee wherever possible. We can make arrangements for the room in which the committee is to meet and for the physical arrangements of the meeting. If the hearing is to be transcribed, we can furnish a Deputy Sergeant at Arms to operate the dictating equipment owned by the Assembly. If the committee chairman wishes, we can also arrange for a hearing reporter to transcribe the hearings.

Our most important function in connection with interim committees is to serve subpoenas at the request of the chairman upon witnesses who are to appear before the committee.

This is a general summary of the services which we perform for the Members of the Assembly. I believe it is obvious I cannot detail all of the services we perform. The general category of service for the members covers a host of tasks and at times it seems we have done just about everything imaginable for the members.

Thank you for your attention.

THE STATE ARCHIVES

By DR. WILLIAM DAVIS
Historian

(DR. WILLIAM DAVIS—A native of California; A.B. from Fresno State College, 1936; and M.A., 1938, and Ph.D., 1942, from University of California at Berkeley; college teaching in history at University of Missouri and University of California, 1946 to 1955; United States Army Air Force during World War II, 1942-1946; State Historian, State Archives, 1955 to date.)

THE STATE ARCHIVES AND CENTRAL RECORD DEPOSITORY

By DR. WILLIAM DAVIS
Historian

The State Archives, in the Office of the Secretary of State, accords with Webster's definition that: (1) an Archives is a place for keeping public records; and (2) the Archives are the public records themselves. The archival agency is logically placed with the Secretary of State, for the Constitution has required since 1849 that that officer "shall keep a correct record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matter relative thereto, before either branch of the Legislature." Moreover, the various types of statements and instruments filed, deposited, or recorded under law in the Secretary's Office entail a large amount of reference and copying service. The Archives is an important part of the arrangement of the office for housing and ordering these records for expeditious reference service.

From the beginning of the State's history, the Archives has also served as a central collection agency for records of historical and permanent value created by other offices of the State Government. Indeed, the first law enacted by the First Session of the California Legislature sitting in San Jose in 1840-50 was "An act concerning the public archives" which provided for the safeguard of such material.

The historic act of January 5, 1850, reads in part:

> "*The people of the State of California represented in Senate and Assembly do enact as follows:*
>
> "SEC. 1. That the Secretary of State be and is hereby instructed to call upon, ask and receive, of the late Secretary of the State of California, all public records, registers, maps, books, papers, rolls, documents and other writings, which he may have in his possession, which appertain to, or are in any wise connected with the political, civil and military history, and past administration of the Government in California; the titles to bonds within the territory, or to any other subject which may be interesting, or valuable as references or authorities to the Government, or people of the State—And that the Secretary of State be directed to classify and safely keep and preserve the same in his office."

The Archives thus, from the outset, was invested with the double function, however limited the initial implementation, of (1) preserving the records accumulated by the Secretary of State and (2) preserving records of enduring value created by other governmental offices.

DEVELOPMENT OF THE ARCHIVES

The development of the Archives in the direction of its becoming a tolerably effective interservice agency proceeded rather haltingly for many years. The low state in California of what is now called archival

and records management differed but little from the records situation in most state governments and in the Federal Government at the time.

The Secretary of State declared in 1862, for instance, that, "The archives in this office, especially those of the early days of the State Government, are in a most deplorable state of confusion * * *. In such disorder are they, that to find any document more than a few years old, is the work sometimes of vexatious tediousness and uncertainty * * *."

After a repetition of the charge the next year, funds were appropriated which enabled the collation and arrangement of all records in the Archives antedating 1860. In the period 1866-71 the State underwrote the transcription and translation of the records of the Spanish-Mexican land grants then in the custody of the U. S. Surveyor General for California, which work resulted in the deposit in the Archives of a valuable manuscript file of 18 volumes now known as the "Spanish Archives."

It was in 1869 that the state offices began to move into the present State Capitol and apparently the better part of the next two decades passed before a serious records storage problem arose. Whatever the reason, in 1888 Secretary of State William C. Hendricks first advanced the idea of establishing a true interagency archives, a central storage facility for the archives of all the offices in the Capitol. He described archival records honestly as "those which are rarely referred to, yet valuable, and have become cumbersome." Governor R. W. Waterman's strong endorsement of the plan included knowledgeable comment on the benefits from better management that would accrue.

The Legislature answered the call with, "An act to provide for fitting up in the basement of the Capitol building a moisture-proof, fireproof, and burglar-proof vault for storage and care of the archives of the State offices, for the appointment of a Keeper of the Archives, defining his duties * * *." etc.

This vault, "fitted up with a view to the requirements for space of all the various state offices," the Secretary of State opened to use in 1891. As part of Room 12 in the Capitol basement it still serves the Archives. The transfer of records under this early archives and record-center program was brisk, so much so that by 1898 the basement vault, as well as a second vault on the first floor, had been filled. Thereafter records piled up in the respective offices as in earlier times, to be moved into whatever out-of-the-way space could be found, or destroyed outright.

The slackening, after the turn of the century, of the practice of centralizing archival material and the consequent rise in the agencies of loosely controlled records retention and disposition practices, explain many of the present lacunae in the records of the post-1900 period. But owing to the Act of 1889 a substantial body of records of the first half century of the State's existence was safeguarded for future use.

During the 1920's and 1930's a number of agencies again looked to the Archives for a way out of their records storage problems. For example, in 1928 the State Controller handed over his file of inactive claim schedules, in volume the equivalent of 13,000 letter file drawers of records. The Secretary of State found it necessary to take over two floors of the State warehouse on R Street to keep up with the tide.

Faced with inundation by what today would be classified as record-center or noncurrent records, the Secretary of State in 1939 secured a revision of the 1889 act which permitted him to receive into the Archives only those records deemed by him to have historical value. The problem of storage of noncurrent, nonarchival materials was covered by legislation enacted in 1947 which enabled the Secretary of State to establish an out-and-out record-center type operation. This low-cost storage and service facility, where an agency can keep its less active files, is at the present time being used by some 45 state agencies. From these laws and previous archival enactments has developed the present integrated agency known as the Archives and Central Record Depository. The agency is located in Room 12 in the Capitol basement and in the Archives Building at 1020 O Street.

From an archival point of view the problem of providing adequate housing for records is matched by the problem of protecting archival interests in the operation of agency record-destruction programs. Throughout most of California's history permanently valuable records have been thrown out with the valueless. For three-quarters of a century each department of the State Government destroyed or disposed of its noncurrent records solely in accordance with its own requirements and interests, without question or review elsewhere. Interestingly enough, it was the problem of fiscal control resulting from the destruction of records before they could be audited that led to the first provision for a routine check outside the agency of records subject to destruction. As codified as Section 11092 of the Government Code, the 1927 statute provided that, "Except as otherwise provided by law, the head of any state agency may, with the approval of the Department of Finance, destroy or otherwise dispose of any records of the agency after they have served their purpose and are no longer required." All subsequent policies of records review rest on this law.

Since enactment of the legislation of 1927 and 1947, the Secretary of State and the Department of Finance have jointly developed an effective program for the orderly destruction of records, the selection of archival material, and the storage of noncurrent records in the Central Record Depository. The basic procedures may be briefly noted.

When an agency has a quantity of records that have served their purpose and are no longer required in the performance of duty, the agency enters on a simplified form a request for the destruction of those records. The request is forwarded to the Department of Finance for review by its Division of Audits and then sent on to the Secretary of State for a check by the Archives, after which the form is returned to the originating office with specific instructions entered on it. In the process Audits and the Archives have indicated what their interests are. Audits may strike certain items from the list or may approve witnessed or unwitnessed destruction of the records. The Archives may request that some or all of the records be transferred to the Archives or held until the Historian can visit the office to screen them, or, if none of the records merit permanent retention, approve their total destruction. In this way basic fiscal and archival interests are adequately protected. Since March, 1949, when the present plan began to function, 2,974 re-

quests for records destruction have been processed, involving approximately 4,700 tons of records. Considerably less than 1 percent of this material has been retained for archival purposes, the bulk being sold as waste paper.

The transfer of records to the Central Record Depository is accomplished through a similarly precise procedure, with observance of firm controls, which includes the recording of each step of the transaction on a single form, in the receipt, storage, subsequent reference use, and final disposition of all such records.

The Record Center provides serviceable storage of inactive nonpermanent records at a fraction of the cost of their maintenance in the agency offices. Because of the very substantial savings achievable from such a system, the record center type of operation has been widely adopted by private industry and by the Federal Government.

THE OPERATIONAL ORGANIZATION OF THE ARCHIVES AND CENTRAL RECORD DEPOSITORY

The principal functions of the Archives and Central Record Depository are the selection, receipt, classification, custody, reproduction, preservation, and service of: (1) active and inactive *permanent* records; and (2) *inactive nonpermanent* records of the State of California. The lines of control between these two types of material are clearly defined. The first category lies within the province of the Archives, the second category belongs to the Central Record Depository.

The duties of the co-ordinated agency are performed under the direction of Archivist and Manager Paul J. O'Brien. Besides the work suggested in the above listed functions, the program demands close adherence to the principles of archival economy, ranging from the maximum utilization of available cubic footage and linear shelving to adequate security and fire controls and the maintenance of cleanliness and proper atmospheric conditions in the storage area.

The screening or appraisal of noncurrent records for archival material is performed by the Historian, W. N. Davis, Jr. The screening program introduced and developed by Secretary of State Frank M. Jordan has served to overcome a serious deficiency in previous archival practices. Concentrated attention is now being given to the question, "Which records, out of the great mass being produced, should be sent to the Archives for permanent retention?" To generalize on the way the Archives operates here, two main areas are considered in the selection of records for permanent retention. One has to do with *evidential* values, the other with *informational* values. The first area relates to the evidence the records contain on the organization, functions, and operations of the office that created them. Here are considered such questions as: What level of the agency is involved? Do the records document policy-making or, on the other hand, only the performance of housekeeping duties? Do they relate to the administration and execution of agency programs?

The second main area of concern in the screening work has to do with the information the records contain on the persons, places, condi-

tions, or things with which the agency dealt. Here the principal tests for selection of archival material are. (1) the uniqueness of the record, that is whether or not the information exists as conveniently or as fully elsewhere; (2) the form of the record, that is the degree to which the information is concentrated; and (3) the importance of the information, that is whether or not it actually merits retention. It is particularly in respect to this last point that the appraisal must take careful note of the whole range of the users of records. These include, besides the various government branches and agencies, historians, political scientists, geographers, economists, statisticians, architects, engineers, lawyers, geneologists, students, authors, general researchers, etc. The Archives aspires to serve the broadest possible range of legitimate interests, both in the present day and in the immediate and distant future.

THE CONTENTS OF THE ARCHIVES AND CENTRAL RECORD DEPOSITORY

The materials housed in the Archives and Central Record Depository are classified according to three main categories:

I. *The Archive Proper*

1. The records of the Office of the Secretary of State. These include such items as the election returns for the whole period of the State's history, oaths of office, official bonds, nomination papers and other documents of persons standing for political office, the signed copies of all acts and resolutions passed by the Legislature from 1850 to the present, the original journals of each house of the Legislature, the legislative bills as they were handed up to the desk, petitions to the Legislature, certified copies of administrative regulations issued by the state agencies, incorporation papers, notary public documents, and transcripts of the Spanish Land Grants.
2. Records transferred by other agencies These include, for example, the letter books and other records of the Governors from 1851 to 1887, the Earl Warren papers for the period 1939-53, 19th century letters of the Controller, Attorney General, and State Engineer, motor vehicle registration books dating from 1905, early prison records, books of the Yosemite Valley Commission from the 1860's, the 1948-50 Centennial Commission papers, and records of the California Militia.
3. Still further, the Archives proper includes records salvaged from the obsolete records of the various agencies under the screening program begun in 1949. These include files of correspondence and administrative papers of nearly all state agencies, office forms, books of record of state institutions, Controller's claims, reports of hearings, county auditors' reports, minutes of various boards and commissions, such as those of the Reconstruction and Re-employment Commission of the 1940's, maps, blueprints, and photographs, including a series of over 3,000 photographs of the state buildings in the 1930's.

II. *The Deposited Records*

Records of a long, indefinite, or permanent retention period deposited by various agencies and remaining in their ownership. The case records of the Supreme Court from 1850 to the 1940's are an example of this type of material. The records of the pioneer courts of Sacramento County, which were transferred to the Archives a short time ago under the provisions of Section 12226 of the Government Code, are another example of deposited records.

III. *The Record Center Records*

Records to which there is continuing reference but at a rate less than two times per file drawer per month. Such records remain in the ownership of the originating agency as an extension of its files. The most voluminous single body of Record Center material is the 10-year file of Controller's claims which occupies more than 5,000 legal size drawers and over 7,000 warrant drawers.

The records in the Archives and Central Record Depository at present amount to approximately 74,000 cubic feet of drawer material and 2,500 lineal feet of bound materials, constituting in all documents numbering into the millions.

THE GENERAL SERVICES OF THE ARCHIVES AND CENTRAL RECORD DEPOSITORY

In addition to its primary task of providing secure and accessible storage facilities for noncurrent and permanent records, the Archives and Central Record Depository properly expends much staff time in making its holdings available to the many individuals and agencies who turn to it for information. Officials of the Federal Government have consulted its records in auditing welfare, highway, and education accounts. The FBI, Internal Revenue, Immigration, and the Congress are among other federal users of its holdings. The greatest users are of course the state agencies with requests for search services; a large percentage of such inquiries is handled entirely by telephone. Requests for the reproduction of records come from all quarters of the Nation and concern such subjects as citizenship, property, genealogy, historical points of interest, and the like. Students, teachers, and authors also make frequent requisition.

The Archives and Central Record Depository advises agencies upon request on various phases of records management such as the use of economical equipment, proper methods of reproduction, workable retention schedules, and the ultimate disposition of records. During the period 1948-1955 Dr. J. N. Bowman, Historian, State Archives, conducted file surveys to aid in the establishment of retention periods in 1,668 state offices.

SERVICES PERFORMED FOR MEMBERS OF THE LEGISLATURE

Doubtless the most immediate interest of the Legislature in the Office of the Secretary of State relates to the fact that the Secretary is: (1) the custodian of the journals of the Legislature and of the acts and resolutions passed by that body and is (2) the chief elections officer of

the State; and that (3) all official records pertaining thereto are received into the Archives.

The Archives offers the following services for Members of the Legislature in Room 12 of the Capitol basement:

1. Provides copies of past bills, legislation, and daily journals. Available at present are back copies of these items from 1947, and copies of chaptered laws from 1911. The Legislative Bill Room, Printing Division, Department of Finance, distributes all legislative publications, principally current material. Upon the periodic clearance of its files, the Bill Room transfers excess copies of bills, laws, and daily journals to the Archives where they may be obtained by legislators and state agencies thereafter. Legislators have most commonly consulted this material in connection with the drafting of new legislation bearing upon the objectives of previously introduced measures.

2. Search service with regard to specific measures of past sessions, such as the tracing of action on a given subject over a number of legislative sessions. The Archives contains the original author drafts of all bills and their amendments as well as the original statutes.

3. Search service with regard to documents deposited by law with the Secretary of State. This includes the broad range of records beyond those created by the Legislature.

4. Reference service with regard to published reports and annual reports of agencies. Under Section 13661 of the Government Code, two copies of each state publication as selected by the State Archivist are delivered to the Archives by the State Printer or the department, commission, or other agency concerned. The Legislative Bill Room contains copies of current legislative reports, whereas the Archives reference library contains copies of both current and past legislative reports and reports of all state agencies. Such archival holdings are available for reference use but not for distribution.

5. Reference and search service with regard to election papers, such as statements on campaign expenditures, nomination papers, oaths of office, and votes cast. Available on request are copies of the statements of votes and of the arguments on propositions submitted to the electorate for the period since 1910, election officers digests, statements on offices for whom candidates are to be nominated, statements on officers nominated and entitled to to receive votes, etc. No elaboration is needed here on the importance of the ready accessibility of these vital public records.

6. Reference and search service with regard to documents on file in the Archives and Central Record Depository. Beyond the interests of individual legislators, as, for example, the search by a Senator for official data on his legislator forbears, legislators have directed constituents to the Archives both in the case of individual researchers and groups on tour.

7. Reproduction of Archival records by means of the photostat facilities in the office of the Secretary of State.

CONCLUSION

The primary mission of the State Archives and Central Record Depository is to collect, preserve, and render usable the permanently valuable records of the State Government. What an Archives does, in its accessions program, is to assemble documentation on the activities and responsibilities of the comparatively recent day for the information of present and future generations. The clients and constituents of the State Archives are not the living generation only, but all generations to come. This is to say that the Archives, by its very nature, must have a kind of split vision, carefully watchful of present interests, but always mindful of the future. The survival and strengthening of the American heritage, which explains the blessings of our way of life, is, at bottom, the cause to which the Archives is dedicated.

THE STATE LIBRARY

By CARMA R. ZIMMERMAN
State Librarian

(CARMA R. ZIMMERMAN—A native of Oklahoma; educated in Oklahoma and California, graduate of University of California School of Librarianship and holds an M.A. from University of California at Berkeley, 1932; employed at Berkeley Public Library, head of Watsonville Public Library, head of Orange County Library and head of San Bernardino County Library; six years as State Librarian, State of Washington; California State Librarian, 1951 to date.)

THE CALIFORNIA STATE LIBRARY'S SERVICES TO THE STATE LEGISLATURE

By MRS. CARMA RUSSELL ZIMMERMAN
State Librarian

We wish to extend a welcome to you and wish you success and enjoyment in your new responsibilities as a member of the California State Legislature. We are glad to have you become acquainted with your State Library early in your legislative work. It supplements all of the other services that are available to you—with information, both quick and more extensive, reference service, and we are now prepared to undertake a limited quick research service exclusively for members of Legislature.

The California State Library was founded by the first State Legislature 109 years ago in January, 1850. Only the legislative branch of the State Government is older than the State Library. As you would assume, the Legislature founded the Library for its informational reference, and research needs. For a few years around 1909, a member of the State Library staff was loaned to the Legislature for bill drafting on a very informal basis. The Library occupied quarters in the State Capitol until 1928, when it moved to the Library and Courts Building, Capitol Avenue Circle, where it is now located, occupying four floors of the building. As one of you said to me, "Into the Highlands of the Mind Let Me Go." The public service and loan desk was originally planned to be on the first floor as you enter the building where such facilities are normally found in libraries. However, after a Supreme Court Room was completed on the fifth floor, members of the court requested and received the first floor space, and so the library public services were moved to the third floor.

MATERIALS AND SERVICES AVAILABLE TO YOU

What We Have for Study and Loan

The California State Library collection contains reading and reference materials of notable variety and value which are representative of nearly everything except technical medical material, fiction in the English language, light nonfiction, and children's books. Filling the 21 miles of shelves are over half a million volumes of general, California, and law materials in English and foreign languages and about twice that number of government publications The library currently subscribes to some 2,000 magazines in many subject fields, and nearly 160 newspapers from California counties and principal cities in California and 23 out-of-state newspapers.

Let Us Know What You Want

Several different sections specialize in different specialized materials, but you need not go to each. The Administrative-Legislative Reference Service provides a liaison for channeling your requests to all sections

and gives specialized reference assistance to you and members of your research staff in the use of the total resources of the State Library. This service issues four regular monthly bibliographies on public administration in the fields of accounting, management, personnel, and supervision; compiles a monthly bibliography on subjects being considered by legislative committees which is sent to each member of the Legislature throughout the year; prepares selected reading lists on materials for state in-service training aids in both general and specific categories, such as *Public Administration, Organization and Management, Statistical Methods*, and *Reading Improvement;* and provides several periodic checklists on special governmental problems of current interest to state officials. Special bibliographies are prepared on demand, and continuing slip files of recent literature on a subject are maintained when requested. Beginning in the 1959 Legislature this service will maintain a branch of the State Library in the State Capitol. I will describe the function of the branch later.

The Government Publications Section receives, processes and makes available the official publications of the Federal Government, California state agencies, California county and municipal governments. In addition, the collection contains official publications of other states and a selection from foreign governments. This section also prepares a monthly list of all California state publications which is issued by the library.

For almost a hundred years the State Library has been a federal depository for United States publications. We now receive one copy of each publication sent by the Government Printing Office to libraries. We receive the nonprint federal publications direct from the issuing agency. Particular emphasis is given to the publications of our own State. Each California state agency is required by law to deposit one copy of each publication in the State Library. Each city and county clerk in California also is required, by law, to file copies of publications of that city or county in the State Library.

Government publications range from the easily-read pamphlet on how to grow mushrooms to the highly technical and scientific report on nuclear physics. A recent addition to the Government Publications Section is a large collection of material on the *Central Valley Project.* The California State Library has been designated the central repository for documents and papers on this project collected by the House Committee on Interior and Insular Affairs under the chairmanship of Clair Engle of Red Bluff. The collection includes both published and unpublished material on the authorization, construction, and operation of the CVP, which is known the world over as a model of successful water resources development. Some of the materials, such as plans, specifications, contracts and project histories, are not readily available elsewhere.

The Law Section collection includes the laws and court reports of our own Federal Government, of every state and territory of the United States, of most of the English-speaking countries of the world as well as some which are non-English speaking; law reference books, law search books, law textbooks, legal periodicals, books on legal history, trials, form-books, Roman or civil law, canon law, etc. The State Library's first collection of books consisted of a few hundred law books donated by John C. Fremont and some early settlers.

The Law Section also receives and binds a copy of each of the printed "briefs and authorities" for cases filed in the Appellate and Supreme Courts of the State of California. In the Law Section also are some 24 loose-leaf services providing up-to-date information about changes in legislation. Many of these cover the 49 states. Of outstanding significance, might be mentioned State Tax Digest; California State Taxes; State Sales Tax Service; Liquor Control Law; Food, Drug and Cosmetics Law Reports; Congressional Index; Labor Service; Social Security; and Just Compensation, issued by Right of Way and Highway Consultants, and covering problems in highway condemnation. The Law Section issues a selected list of materials added to the law collection.

The California Section features source materials of current and historical information about the State and its people, its resources, and its industries. The collection also contains manuscripts, letters, diaries, and business papers of the Gold Rush era. In the California Section you can find biographical data on state officials; and we hope to have such biographical information from each of you soon; pioneers, artists, authors, musicians; pictures of persons, places and events; playbills, telephone and city directories, indexes to voters, and special subject indexes.

The California Section indexes systematically material of California significance in the *San Francisco Chronicle* and does spot indexing of selected items of interest found in other newspapers, in county histories, periodicals, or general books.

The Reference Section maintains an extensive collection of reference and research materials. In this section are dictionaries, encyclopedias, handbooks, yearbooks, indexes, bibliographies, periodical indexes. This section is equipped to supply information along the lines of general interest; history, economics, technical fields, sociology, and current events.

A major concern of the Reference Section is to fill incoming requests for books from the public; i.e. municipal and county, school, public institution, law, and special libraries throughout the State. The State Library lends books to individuals through their local libraries except here in Sacramento where loans are made direct to state employees and other Sacramento residents, and in areas where there is no public library. The Reference Section issues monthly lists of books in the field of education, and a quarterly list of our recent accessions in technology.

In the Map Room you will find a collection of over 25,000 maps. These are issued by such agencies as the United States Coast and Geodetic Survey, Engineers Department, Forest Service, Geological Survey, and also maps issued by the California Highway Planning Survey, State Division of Forestry, and State Division of Mines.

The map collection specializes in maps of California and of California cities and counties. We also have some rare old maps of California in this room.

We have a complete collection of the United States Geological Survey topographic maps showing contours of the land. All general atlases are also included in the Map Room collection.

The Prints Room contains some 5,000 prints owned by the State Library. Many famous examples of the printmaker's art are to be found in this collection; original prints by Durer, Rembrandt, Gaugin, Goya, and Whistler are available for observation and study, as well as many

others. There is an attempt to buy as widely from California printmakers as possible.

The exhibit in the Prints Room is changed each month. Sometimes it is made up of a traveling collection rather than of prints from our own files. Fine art crafts exhibits which are changed frequently are maintained in the Prints Room cases.

The Library's collection of around 1,500 reproductions ranging from old masters through contemporary artists is handled through the Prints Room. They are available for circulation to individuals, schools, or art groups. The Prints Room also has a collection of about 4,000 book plates.

The Library's collection of books on prints, print making, and printmakers is housed in the room, and these are available for circulation. Art magazines are also a part of the collection.

Although housed in the San Francisco Public Library, the Sutro Branch of the State Library constitutes one of its major collections, with rich resources in Mexican history and letters, English history, genealogy, general history, biography, voyages and travel, religion and science. Many of these materials are among the rarest books in the world, given to the State by the heirs of Adolf Sutro. The only collections in California that can compare to it are the Huntington and Bancroft. I have copies of a recent brochure issued by the Sutro Library for anyone interested.

Using all these materials, staff members of the State Library are able to provide both ready answers and more detailed replies to questions and problems which come before the Legislature or are concerned with the organization, function and operation of government; statistical information; information for preparation of speeches; California data; biographies including biographical records of state officials; technical and scientific information; and bibliographies and reading lists. To assist you in your work, printed materials will be searched to answer fact questions; bibliographies and reading lists will be compiled; other libraries and governmental agencies will be contacted to locate information; material will be borrowed from other libraries on interlibrary loan; or State Library staff members will be available for consultation for those doing their own research. Like the other services available to you, we also treat your requests as confidential and all are given priority.

How You Can Obtain Services and Materials

For the convenience of the Members of the Legislature, we are fortunate to have this year, a Capitol Branch of the State Library in Room 3184, where a librarian will be on duty from 9 to 5, Monday through Friday. This branch will be equipped to answer your quick reference questions, and will act as liaison between you and the sections of the main State Library in filling your requests. Request blanks, furnished by the State Library will be distributed to you for your convenience in asking for state library material or service. These may be left in the Capitol Branch. Needless to say, you are welcome to visit the State Library at any time, where about 42 professionally trained and experienced librarians are on duty.

The State Library is open Monday through Friday, state holidays excepted, 8 a.m. to 5 p.m.

Underlying the legislative reference service of the State Library is the realization that legislators coming from various parts of the State of California are confronted with an ever-increasing number of complex problems which they are expected to analyze and solve, and that assistance is needed which is dependable to secure the information required regarding such problems. The State Library's legislative reference service can, to a large extent, provide that information and thus prove an aid in the legislative process.

We hope that you will find the services and materials of the California State Library of assistance to you in your work during the legislative session.

LEGAL BASIS FOR THE ORGANIZATION OF THE HOUSES OF THE LEGISLATURE

By ANGUS C. MORRISON
Chief Deputy Legislative Counsel

(ANGUS C. MORRISON—A native of New York, educated in San Francisco; LL.B. Hastings College of the Law; admitted to the Bar in 1935; except for service in U. S. Navy 1943-46 has had continuous state service since 1938 including attorney and later referee, Department of Employment; Deputy, Principal Deputy, and Chief Deputy Legislative Counsel.)

LEGAL BASIS FOR THE ORGANIZATION OF THE HOUSES OF THE LEGISLATURE

By ANGUS C. MORRISON
Chief Deputy Legislative Counsel

I have been asked to discuss with you the legal background for the procedure of the Legislature. We are concerned with the effect of the Constitution, the Statutes, the Joint Rules, and the Rules of the Senate and of the Assembly. I shall not attempt to go into great detail. I think it would be more useful to you if I tell you generally the matters covered by the Rules rather than to attempt to tell you their specific content.

PUBLICATION OF RULES

The Rules are published in the Handbook. In it you will also find a section entitled "Assembly Explanatory Material" and a table of the vote required in the Assembly. Similar information on the vote required in the Senate may be found in Senate Rule 47. It is a convenient method of checking to determine what vote is required on a matter or what action should be taken. You will find the Handbook indispensable, and you will probably, as most of the old members do, carry a copy with you at all times.

CONSTITUTIONAL PROVISIONS

Article IV of the State Constitution governs the election of Legislators, their terms of office, the procedure of the Legislature, and a number of the powers of the Legislature. Most important to you are those sections dealing with the length of legislative sessions and the subject matter that can be considered at each.

There are three types of sessions. Two of these are types of "regular" sessions, and the third is the "special" session.

The first type of "regular" session is known as the "general" session and is held in odd-numbered years. At this type of session the Legislature may consider any subject it wishes. In the past the general session was divided into two parts by a recess known as the "constitutional recess" and no member could introduce more than two bills after that recess which had to be taken not later than 30 days after the start of the session. This was popularly known as a "bifurcated" session. The session which you now face is an historic one since the constitutional amendment adopted by the voters last November eliminates the constitutional recess and permits the unlimited introduction of bills at any time during the session. However, bills may not be heard in committee or acted on within 30 days of the date of introduction unless three-fourths of the members of the house of introduction vote to dispense with this waiting period.

Another change made by the amendment extends the duration of the session from a maximum of 120 calendar days to a maximum of 120 calendar days excluding Saturdays and Sundays. That means this 1959 General Session can last for 166 days including Saturdays and Sundays

and may extend until June 19th. Aside from the 30-day waiting period which I just mentioned, the only other constitutional time limitation on consideration of bills at a general session is the requirement that appropriation bills may not be "placed upon final passage" before the Budget Bill is signed by the Governor unless the Governor consents to the enactment of the bill and specifies it is an emergency bill.

The second type of "regular" session is the "budget" session. It is held in even-numbered years and at a budget session the Legislature may consider only the budget bill, revenue acts necessary therefor, and city and county charters. It may not consider any other type of legislation, including constitutional amendments. Curiously, the recent history of the budget session is almost the reverse of the general session. Whereas the voters have just eliminated the constitutional recess at a general session, they provided in 1956 for a recess of not to exceed 30 calendar days at a budget session and this provision still holds. The budget session is limited in duration to 30 calendar days exclusive of the recess. Unlike the general session, Saturdays and Sundays are counted in computing the 30 calendar day limit.

The third type of session is the "special" or "extraordinary" session. It is convened only upon the call of the Governor, but once it is convened it continues so long as the Legislature wishes. At a special session, the Legislature may consider any bill that is germane to the subject matter of the Governor's call.

Since the power of the Legislature has been so limited at the budget session, it has become customary for the Governor to call a special session to meet concurrently with the budget session. This enables the Legislature to consider any matters of urgency which may have arisen. When this happens, the two sessions are separate and distinct, and separate sessions are held and separate records kept.

The Constitution also specifies the method for the enactment of laws. It requires that laws be enacted by bill, and that they be given three separate readings in each house. It also requires that all bills be printed. This is the basis for the requirement that the bill be reprinted after it is amended, and is the foundation of the objection that the printed bill is not on the member's desk. It specifies that the voting be by yea and nay and that no bill may be passed by vote of less than a majority of the elected membership. In certain instances it requires a greater vote. For example, a two-thirds vote is required on certain revenue acts and to make an effective appropriation from the General Fund.

READING OF BILLS

The requirement of three separate readings is one which you will find has become largely a formality. A bill is read the first time when introduced, the second time when it returns from committee, and a third time before final passage. This constitutional requirement leads to a motion which never ceases to provoke amazement among those who hear it for the first time. That is a motion to suspend the Constitution. It is actually provided for in the Constitution, since the Constitution provides that the requirement for three separate readings may be suspended by a two-thirds vote of the elected members.

OTHER CONSTITUTIONAL REQUIREMENTS

There are many other provisions in the Constitution which govern your procedure but they are less important. A quorum is specified in the Constitution as a majority of the elected members—41 in the Assembly, 21 in the Senate. Some of the matters which must be in the Journal are there specified, and your sessions are required by the Constitution to be open except when the house, by order, requires secrecy.

WAIVER OF CONSTITUTIONAL REQUIREMENTS

These requirements of the Constitution, of course, cannot be changed by you except by constitutional amendment. They are basic and constitute the minimum requirements necessary to orderly procedure and a proper notification to the public of the action that you are taking.

ORGANIZING THE ASSEMBLY

Before discussing the statutory provisions, it might be well to discuss the nature of the legislative session and the process of adopting the rules, because this explains why you will find some of these provisions in the Government Code. Each regular session of the Legislature is a separate session and is organized as such. This applies to both the general session and to the budget session When you convene you will be without officers until you select them. The officers selected at the 1957 General Session have no authority with reference to the forthcoming session. Likewise the standing committees which were appointed at the 1957 Session have no standing in the following session. The house must organize, and when we say organize we mean that it must elect its officers, adopt its rules, and appoint its committees.

The rules of the prior session do not carry over and are not in effect at a subsequent session. Thus each regular session requires a separate organization and its rules terminate upon the convening of the next regular session.

STATUTORY PROVISIONS

Certain matters have been placed in statutory form in the Government Code, because it was desired to give them greater permanence, and also because it is necessary to have something to govern the procedure of the house prior to convening. The Government Code specifies the procedure to be followed when a regular session of the Legislature convenes. It designates the Chief Clerk of the Assembly as the person to call the Assembly session to order, and in the Senate the President of the Senate, or in his absence, the senior member present is designated to call the session to order. It provides for a roll call of the members and for administering the oath of office to the newly elected members. It provides that the Secretary of the Senate, the Chief Clerk of the Assembly, the Sergeant-at-Arms and the Minute Clerk of the preceding session for each house shall continue in office, and shall act at the succeeding session until their successors are chosen. It gives the Secretary of the Senate and the Chief Clerk of the Assembly the authority to obtain a staff necessary to accomplish those matters which are essential to the operation of the session until such time as a permanent staff can be established. Thus in substance the Government Code provides a tem-

porary organization until the Senate and the Assembly are organized for a session.

CONTINGENT FUNDS

The Government Code also creates the Assembly and Senate Contingent Funds. You will hear a great deal about the Contingent Fund while you remain in the Legislature, because those funds are the ones from which the operations of the Legislature are financed. They are established in the Government Code to give them permanence and to fix the responsibility for their administration by the Assembly Rules Committee and the Senate Rules Committee. They also insure the independence of the Legislature.

STATUTORY COMMITTEES

The desire for a more permanent form of organization has led the Legislature to provide in the Government Code for several committees. The State Capitol Committee, which is a joint committee of both the Assembly and the Senate, is created by the Government Code, and is charged by that code with the allocation of space in the State Capitol Building to the Legislature and to the executive offices which are found in the Capitol. The Joint Committee on Interhouse Co-operation is also created by the Government Code and its duties specified. Among your more important joint committes are the Joint Legislative Budget Committee and the Joint Audit Committee which examine the expenditure of state money by the Executive Branch of the State Government. There are other committees created by other statutes. For examples, there is the Wildlife Conservation Committee, the Committee on Interstate Co-operation and the Committee on Local Allocations.

The Government Code also specifies what officers shall be elected by each house. Thus, with respect to the Assembly it provides for a Speaker, a Speaker pro Tempore, the Chief Clerk, the Sergeant-at-Arms, the Minute Clerk and the Chaplain, and it specifies the powers and duties of each. With respect to the Senate it provides for a President pro Tempore, the Secretary of the Senate, the Sergeant-at-Arms, Minute Clerk and Chaplain, and specifies the powers and duties of each. At the present session, you must select each of these officers. If there is no contest, you will probably elect them by the adoption of a resolution. But if there is a contest, then you will have nominations from the floor, and vote for the candidate of your choice.

The Government Code also includes two provisions which will interest all of you but which have little to do with your actual procedure. They contain the statutes which govern the method of payment of your compensation as legislators and also contain the Legislators' Retirement Act.

ADOPTION OF RULES

Before turning to the Rules themselves a word about their adoption. The Joint Rules of the Assembly and Senate are adopted by a concurrent resolution passed by both houses of the Legislature and filed with the Secretary of State. They are rules which are binding upon both houses of the Legislature and which either house may at any time invoke. Normally a violation of the Rules is called to the attention of the chair by what we refer to as a "point of order." If a Joint Rule

is involved, the point of order or the charge that the Rule has been violated may be made in either house. This is very important to you. For example, one of the Joint Rules requires that amendments to a bill be germane to the subject matter of the bill. If the Assembly adopts amendments which are not germane, a point of order can be raised in the Assembly. The Assembly may disregard the point and pass the bill. But, since the violation is of the Joint Rules, the same point of order can be made in the Senate, and, if sustained there, will result in killing your bill. Compliance with the Joint Rules is invoked by both houses, whereas compliance with the Rules of one house is enforced only by the house which adopted the Rule.

It is customary for the Joint Rules to originate in the Senate, and they will usually be sent over to the Assembly within the first few days of the session.

The Assembly Rules and the Senate Rules are adopted by single-house resolution and are entered in the Journal of that house. This process normally takes a few days. Temporary Rules are usually first adopted. But, I should like to emphasize that there is no difference between Temporary Rules and Permanent Rules. In fact, during at least one session, the Assembly acted throughout the entire session under Temporary Rules and never did adopt Permanent Rules. The practice is to adopt the Standing Rules of the prior session without change as the Temporary Rules of the present session. Thus, in 1957, the Assembly Standing Rules for the 1955 Session were adopted as the Temporary Rules with practically no change. When the Permanent Rules were adopted they were revised quite extensively by the Assembly Rules Committee and were entirely renumbered. There is no requirement that either house first adopt Temporary Rules. Each house may, and on occasions has, adopted its Permanent Rules without having first adopted Temporary Rules. This has happened on several occasions in the Senate.

PROCEDURE PRIOR TO THE ADOPTION OF RULES

Since neither the Joint Rules nor the Assembly Rules are in effect at the time you convene, and since it takes a few days to adopt them, there is a period of time when no Rules are in effect except those stated in the Government Code. But there is nothing in the Government Code which relates to the manner in which either house acts upon a bill, nothing relating to the length of its sessions each day, and nothing is specified as to what standing committees shall be created. Therefore, the question immediately arises as to what happens during this period which could be utter chaos. The answer is quite simple. Entirely outside the Rules, there are the precedents of the House. This means simply that the Assembly or the Senate will act in the manner that it always has. During the period of time prior to the adoption of Rules, it has been customary for each house to follow its Rules for the prior session. So you will hear members arguing, before any Rules have been adopted, that there is a violation of Rule so and so, or that Rule so and so requires the body to act in such and such a way. What they really mean is not that the Rule requires them to so act, but that it has been the precedent of the house to follow its prior Rules and they are raising the point that the house is not following its precedent. It is important to realize this fact, because, during this period of time, the procedure of the house is

determined by the presiding officer in accordance with the precedent, and he is subject to the control of the majority of the elected membership.

"THE RULE OF 41"

Now when we say that the procedure is within the control of the majority of the elected membership, we are referring to what is termed in the Assembly the "Rule of 41." The Rule of 41 is merely a short way of saying that the house, itself, determines its procedure and that 41 members, being a majority at all times, can control. In fact, an examination of the Journals of the houses over the past years and of the procedure of the house will indicate that almost any type of rule gives way to the fact that a majority of the members wish to act in a particular way. For example, in the Assembly an appeal from a ruling of the Speaker is sustained by a vote of 41 members, and they can override, on such appeal, any ruling of the Speaker. In the Senate the required vote would be 21.

You have all heard references to parliamentary "hassles" on the floor and you will undoubtedly run into many of them. Usually they arise on the spur of the moment. If there is any advance planning it is usually concluded on the basis of 41 votes in the Assembly or 21 votes in the Senate. If one side or the other has that number of votes, there is little to be gained by the other side in parliamentary maneuvering. The best that could be hoped for is the possible delay and even that can be overridden by the 41 votes in the Assembly or 21 in the Senate. So the important thing to remember in all parliamentary proceedings is that the will of the majority will determine the method in which the House acts.

CONTENT OF THE JOINT RULES

The Joint Rules cover a number of subjects which are of concern to both houses of the Legislature. They specify, for example, that concurrent and joint resolutions are those which require action by both houses, and they specify that joint resolutions are those which relate to matters connected with the Federal Government. This is to secure uniformity of treatment by both houses of the Legislature. Joint Rules 7 to 13 cover the printing and content of bills and their distribution as a legislative publication. Joint Rule 7 requires the title of each bill to contain an accurate idea of its contents and specifies that a reference to a code section shall not be deemed sufficient.

TITLE OF BILL

When you examine a bill you will find that it has a title which contains a relating clause, that it is divided into sections, and, where it amends an existing law, each section of the bill will amend a separate section of existing law. You will find that new matter is in italics, and old matter is in strikeout type, a feature which enables you to read a bill and see the changes it is making in the existing law. You will find that the bill is reprinted each time it is amended, and that all bills are printed in the same size type and in the same format. All of these matters are covered by the Joint Rules so that there will be uniformity between the two houses. Likewise the Joint Rules govern the distribu-

tion of legislative publications and specify the number of copies to which each member is entitled.

If you examine an issue of the Senate Journal and of the Assembly Journal you will find that each is practically identical in content and organization. This is covered by Rules 14 to 18 of the Joint Rules. After a bill has passed both houses you will find that it is in a particular form, and that it is endorsed by both the Secretary of the Senate and the Chief Clerk of the Assembly. This too is required by Joint Rule.

PASSAGE OF BILLS

Likewise the Joint Rules specify how a matter is transmitted from the Assembly to the Senate and vice versa and what notice is given and by whom of the action of the Assembly and the Senate. What is very, very important to you, Joint Rule 23 provides that no Assembly bill shall be passed by the Assembly within 10 days prior to adjournment sine die of the two houses of the Legislature and no Senate bill shall be passed by the Senate within 15 days of adjournment sine die. This puts a deadline on the action on your bills and you must meet it in order to have your bills considered. It has an escape hatch in that permission may be granted to take up a bill during this period by a three-fourths vote of the house of origin. At a recent session of the Legislature we had a good instance of the operation of this Rule. It is a Joint Rule, and the point of order can be raised in either house The Senate acted on a measure for the first time within the last 10 days, and did not secure a three-fourths vote permitting its consideration. This was discovered when the measure was in the Assembly, and the matter came to the attention of the Senator who was the author of it. As a result, an entirely new measure was introduced in the Senate on the last night of the session. The necessary consent to take it up without reference to committee, print, or file was had, and the measure passed the Senate and was sent to the Assembly. It was the measure which was acted upon in the Assembly, because the other measure could not have been acted on under the Joint Rules.

CONFERENCE COMMITTEES

The Joint Rules 25 through 30.5 govern the handling of amendments, the transmittal of them from one house to the other, and the appointment of conference committees. A conference committee is a committee which is created to resolve a difference between the two houses of the Legislature. In other words, an Assembly bill has been amended by the Senate. The Assembly refuses to concur in the amendments made by the Senate. The conference committee is then appointed to work out the differences between the two houses and to report to its own house what compromise has been reached. There are two kinds of conference committees, the so-called "free conference" committee and an "instructed" conference committee. An instructed committee is one which is told by the house what terms it must insist upon. A free conference committee is given the right to rewrite the entire measure, and to reach any compromise that it can. While you can have an instructed conference committee in California, the precedent and the uniform practice over a large number of years has been to utilize free conference committees only.

ACCREDITED PRESS REPRESENTATIVES

The Joint Rules also contain Rules regulating the accreditation of representatives of the press. You have heard more of those from another speaker.

INTERIM COMMITTEES

Joint Rules 36 and 36.1 provide the basis of investigating committees and the method of organizing those committees. They also specify what expenses will be allowed a Member of the Legislature for interim committee work.

LEGISLATIVE AUDITOR

The Joint Rules specify the duties of the Legislative Analyst and the Joint Legislative Budget Committee which Mr. Post discussed yesterday.

INTERHOUSE CO-OPERATION

Finally, they provide for a Joint Committee on Interhouse Co-operation. In substance, the membership of this committee is that of the two Rules Committees and its function is to work on any matter pertaining to the two houses to expedite the affairs of the Legislature.

PROPOSED NEW RULES

Before leaving the subject of the Joint Rules, I should mention that the Joint Committee on Legislative Procedure has decided to recommend certain new Joint Rules designed to achieve the objectives of the constitutional amendment made by the adoption of Proposition 9.

One such proposed Rule would prohibit the introduction of bills or constitutional amendments after 120 calendar days (including Saturdays and Sundays) of the 1959 Session have elapsed. This prohibition could be waived only if five days' notice of intention to introduce the bill is given, the approval of the Committee on Rules is secured, and two-thirds of the elected members vote in favor of introduction by a roll call vote.

Another proposed Joint Rule would make constitutional amendments as well as bills subject to the 30-day waiting period It would also provide this constitutional waiting period could be dispensed with only after five days' notice, approval of the Committee on Rules, and a favorable roll call vote of three-fourths of the elected members. Other proposed rules relative to digests of bills have been discussed by another speaker.

TYPES OF COMMITTEES

Before embarking upon the Assembly and Senate Rules, a word about committees. I have already mentioned several interim committees. In the early thirties the Supreme Court of this State held that the Legislature was without authority to create an interim committee by resolution. In other words, the power of the Legislature and its committees terminated when it adjourned. These decisions were corrected in 1940 by a constitutional amendment, Section 37 of Article IV of the Constitution. And now interim committees may be created by concurrent or single house resolution or by statute. Under the Constitution, they may

be authorized to investigate facts and to report to the Legislature. An interim committee is one which is authorized to act between sessions of the Legislature or during a session of the Legislature. They are either single house or joint, a joint committee having members from both houses and being created by a resolution of both houses. There are also standing committees. These are created by single house resolutions and are the arms of the house for the purpose of investigating matters before it. Customarily all bills and resolutions are referred to a standing committee before they are considered by the Senate or Assembly as a whole. The Senate or Assembly may also, of course, act without referring the matter to a committee. Finally, there are special committees. These are committees created to act during a session of the Legislature on a specific problem. They are not commonly used, since it is the usual practice to continue interim committees during the session following that in which they were created, and matters which would normally be referred to a special committee are referred to interim committees which have already been created.

There is also a committee which is known as the Committee of the Whole. This merely means that the entire Assembly, for example, instead of sitting as the Assembly, sits as a committee of the Assembly. Its usual purpose is to permit the Assembly to hear from a person who is not a Member of the Assembly. Only members may speak during sessions of the Assembly and the same is true of the Senate.

I mention these committees because their activity is governed by the Rules, and you will find Rules which relate to them.

AMENDMENT OF THE ASSEMBLY RULES AND SENATE RULES

Turning to the Rules of the Assembly you will find that they are divided into sections. The first section deals with legislative organization. The most important provision contained in that section is that which specifies that the Rules may be suspended only by a two-thirds vote of the members present, and that such suspension applies only to the matter under consideration and in no case extends beyond an adjournment. They also provide that the Standing Rules may be amended only by a resolution adopted by affirmative vote of 41, and that the resolution to amend the Rules shall not be considered until it has been referred to the Committee on Rules.

The Senate Standing Rules on this point are slightly different. They provide that any Rule which does not require more than a majority vote may be temporarily suspended by a majority of the Members of the Senate. Any Rule requiring a two-thirds vote on any question may be amended or temporarily suspended only by a two-thirds vote. One days' notice of intention to amend the Rules is required for any amendment in the Senate and the proposed amendment must be referred to the Committee on Rules without debate.

THE RULES COMMITTEES

Assembly Rule 10 provides for the creation and election of a Committee on Rules whose powers are specified in Rule 11. Since this committee is one of the most important from the standpoint of organization, a word about its powers is pertinent. It has the power to recommend the appointment of all attaches and employees of the Assembly

and it has the power to suspend them with or without pay. It has the power to propose a schedule of meetings of standing committees, and to make any studies necessary for the improvement of legislative procedure. It is the committee that takes care of the housekeeping, that is, maintains the rooms, furniture, and equipment, purchases stamps, stationery, etc., and assigns the offices. It also, under Rule 12, has the power to approve claims for expenses of interim investigating committees and to specify the salary of interim committee employees where the salary proposed is over $300 per month. It adopts rules and regulations governing the letting of contracts by interim committees and the expenses and allowances of the employees of such committees. It also, under the Standing Rules, is an interim committee, and as such has quite broad powers with reference to the conduct of the business of the Legislature during any recess.

The powers of the Senate Committee on Rules are covered mainly in Rules 12 to 14, inclusive, of the Standing Rules of the Senate. Its duties cover much the same ground as those of the Assembly Committee on Rules, although there are some differences. It possesses a significant power with respect to committee memberships which the Assembly Rules Committee does not possess. The Senate Rules Committee appoints the members and chairmen of all other Senate committees and the vice chairmen of all standing committees.

STANDING COMMITTEES

The first section of the Standing Rules of the Assembly also provides for the powers of the Committee on Engrossment and Enrollment, which is the committee which is charged with the duty of seeing to it that the bills are correct and reflect the action of the Assembly. Twenty-six standing committees of the Assembly are specified in the Rules. The Speaker fixes the number of members on each committee at the time he makes his appointment and he is required to publish in the Journal the number of members of each standing committee. Once it is published, 41 votes are required to change the number of members of a standing committee.

In the Senate the Committee on Rules is in charge of engrossment and enrollment of bills. Unlike the Assembly, the Senate specifies in its Standing Rules the number of members of each standing committee The Senate has 21 such committees, five less than the Assembly. In the Senate the members of these committees are appointed by the Committee on Rules, whereas in the Assembly the Speaker makes such appointments.

PRESIDING OFFICER

The second section of the Standing Rules of the Assembly specifies the duties of the Speaker of the Assembly. They are found in Rule 21. He is authorized to preserve order and decorum, and to decide questions of order which are raised. He has general direction over the Assembly Chamber and rooms. He is authorized to name any member to perform his duties in his absence, to appoint the members of standing committees, to fix the schedule of meetings for the standing committees, to control and direct the Journals and other papers of the Assembly, to act as Chairman of the Committee of the Whole, to

order the lobby and gallery cleared whenever he deems it necessary, to assign desks to the newspaper representatives, to authenticate all actions of the Assembly, and to act as an ex officio member of all committees of the Assembly.

In the Senate the Lieutenant Governor, both under the Constitution and the Senate Rules, is the President of the Senate and in that capacity has a casting vote when the vote is equally divided and his vote will decide the issue. The Senate Rules provide that the President shall maintain order in the Senate Chamber and that in the case of disturbance in the lobbies he has power to order them cleared. In his absence the President pro Tempore is required to call the Senate to order and is given the same powers as the President. The President pro Tempore is also given the responsibility of securing the prompt and businesslike disposition of bills and other business before the Senate. The President pro Tempore is, ex officio, Chairman of the Committee on Rules which handles many of the matters which, in the Assembly, are the responsibility of the Speaker.

SPEAKER PRO TEMPORE, MAJORITY AND MINORITY FLOOR LEADERS

The Assembly Rules specify the duties of the Speaker pro Tempore, and provide for a Majority and Minority Floor Leader, specifying the duties of each. They enumerate the duties of the Chief Clerk and of the Sergeant-at-Arms and of the Assistant Sergeants-at-Arms. They provide for all of the printing of the Assembly and for its ordering.

The Senate Rules make no provision for a majority or minority floor leader.

PARLIAMENTARY PROCEDURE

You will discuss with another speaker the Daily File and the order of business each day in the Assembly. He will also discuss with you the manner in which bills are considered on the floor and given their various readings. These matters are covered by Assembly Standing Rules 67 to 83 and by Senate Standing Rules 22 to 33. One of the most important sections of the Standing Rules of both houses from your personal standpoint is that which governs the parliamentary procedure of the Senate and of the Assembly. If there is a specific Standing Rule, it governs. If there is none, then Mason's Manual of Legislative Procedure governs.

Incidentally, I should mention at this time that you must read the Rules carefully. A "majority vote" means a majority of those present, assuming a quorum. Since a quorum of the Assembly is 41 and of the Senate 21, a majority vote of the quorum is 21 in the Assembly and 11 in the Senate. A "majority of the elected membership" means 41 votes in all cases in the Assembly and 21 in the Senate. This difference can be quite material to you, and you ought to examine the Rule closely to be sure what vote is required.

DECORUM

Finally, a number of personal matters relating to members' decorum and privileges are covered. Thus in the Assembly the method of addressing the Speaker is stated, and the rule is, that upon being recognized, the member may speak, confining himself to questions under considera-

tion. It further provides that no member shall speak more than once during the consideration of any one question on the same day and at the same stage of proceedings, except that the author of a bill or resolution shall have the right to open and close the debate. The author has 10 minutes to open and five minutes to close. Other members have five minutes. Leaves of absence and personal privileges are also covered.

An important rule to remember is that once a roll call has been commenced the vote is not to be interrupted under any circumstances except for the purpose of moving a call of the Assembly or changing a vote.

The Senate Rules on these matters are very similar. One notable difference is that whereas the Assembly prohibits a member from speaking more than once during the consideration of a question on the same day and at the same stage of the proceedings the Senate Rule prohibits a member from speaking more than twice under such circumstances, with the proviso that a Senator who has spoken once shall not again be entitled to the floor so long as a Senator who has not spoken desires to speak. Another difference is that the Senate Rules contain no time limit on speaking.

In closing, I have attempted to cover a very broad subject in a relatively short period of time. I hope that I have given you an idea as to the content of the Rules and of the other documents governing the procedures of the Senate and Assembly, for it will make your work much easier if you know where the Rules are, and what they cover, rather than attempting to know in detail their specific content. What you, as a legislator, need to do is to acquire a working knowledge of the Standing Rules of your house, of the Joint Rules, of Section 9000 and following of the Government Code, and of Article IV of the State Constitution. If you are familiar with the general content of these provisions, you will have little difficulty in becoming familiar with the details of each.

ORGANIZATION OF THE SENATE

By J. A. BEEK
Secretary of the Senate

(JOSEPH ALLAN BEEK—A native of Maine; attended California Institute of Technology; with Senate since 1913; first elected Secretary of the Senate 1919; President, American Association of Legislative Officers; Convoy Commodore World War II; interested in afforestation, improvement of undeveloped land, and construction of small craft harbors.)

ORGANIZATION OF THE SENATE

By J. A. BEEK
Secretary of the Senate

Mr. Beek spoke extemporaneously, outlining the ceremony by which the Senate is organized on the first day of each general session.

He said that the officers of the previous session, the President, Secretary, Sergeant-at-Arms, and Minute Clerk, officiate until their successors are installed, and that the first order of business, after a prayer and pledge of allegiance, is to swear in new members, elect officers, and adopt rules for the session.

ORGANIZATION AND PROCEDURE OF THE ASSEMBLY

By ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

(ARTHUR A. OHNIMUS—A native of California; educated in San Francisco and admitted to practice law in 1923; Deputy District Attorney of San Francisco, 1923 to 1944, and Deputy Attorney General, 1944 to date; Chief Clerk of the Assembly, 1923-1936 and 1941 to date.)

ORGANIZATION AND PROCEDURE OF THE ASSEMBLY

By ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

Mr. Chairman, Members of the California Legislature, Ladies and Gentlemen:

I am indebted to the Committee on Rules for the opportunity of addressing you, at this, the third Legislators' Orientation Conference. I was extended the privilege of addressing the first and second Conferences and appreciate the honor of being asked to present a brief outline of legislative procedure to the members of the 1959 Legislature.

The first Legislators' Orientation Conference was held in Room 4168 of the State Capitol on March 2d and 3d, 1956. The conference was arranged and held under the auspices of the Assembly Rules Committee, and was, I believe, one of the first of its kind in the United States. The second conference was held in Room 2170 of the State Capitol on January 4th and 5th, 1957.

It is with pleasure that I mention that Mr. Henderson, a member of the 1957 and 1958 Rules Committee, has been elected a councilman for the City of Fresno.

Much of an interesting and important nature has happened in the political life of this Nation and State since the last session of the Legislature. Proposition No. 9, adopted at the November 4th general election, is particularly pertinent to our discussion today. The effects of this proposition upon legislative procedure will be mentioned specifically in the course of this outline of the legislative process.

SESSIONS OF THE LEGISLATURE

Article IV, Section 2, subdivision (a), of the California Constitution provides that the sessions of the California Legislature shall be held annually.

All regular sessions, held in the odd numbered years, are called general sessions and convene at 12 o'clock noon on the first Monday after the first day in January. Ballot Proposition No. 9, which amended Article IV, Section 2, subdivision (a) of the Constitution permits a general session of not more than 120 calendar days in duration, not including Saturdays or Sundays.

Prior to the adoption of this proposition, the Constitution provided that no general session should exceed 120 calendar days in duration, exclusive of the recess of not less than 30 calendar days which was required to be taken.

The 1959 Regular (General) Session will convene at 12 o'clock noon on January 5th, and shall be adjourned, sine die, no later than 12 o'clock midnight June 19th, the 166th calendar day of the session, there being 46 Saturdays and Sundays. Now that the constitutional recess

is no longer required, the 1959 Session may run continuously from January 5th until the Legislature adjourns.

The annual sessions of the California Legislature held during the even-numbered years are called budget sessions.

From 1948 to 1956, the budget session convened on the first Monday in March and was limited to 30 calendar days. At the general election of November 6, 1956, however, the people adopted Ballot Proposition No. 8 which provides that all budget sessions shall commence at 12 o'clock noon on the first Monday in February, and that no budget session shall exceed 30 calendar days in duration, exclusive of a recess of both houses which may be taken after the introduction of the Budget Bill. The budget session recess may not exceed 30 calendar days.

Members of the committees to which the Budget Bill is assigned for consideration during such recess shall be reimbursed for their expenses incurred for days while serving as members of such committees during the recess, in addition to the days allowed by subdivision (b) of Article IV, Section 2, of the Constitution.

The Constitution provides that the Legislature during the budget session "* * * shall consider only the Budget Bill for the succeeding fiscal year, revenue acts necessary therefor, the approval or rejection of charters and charter amendments of cities, counties, and cities and counties, and acts necessary to provide for the expenses of the session."

The calling of an extraordinary session is entirely within the discretion of the Governor. The Governor may at any time convene the Legislature by proclamation in extraordinary or special session, stating the purposes for which he has convened it, and when so convened the Legislature shall have no power to legislate on subjects other than those specified in the proclamation. During an extraordinary session the Governor, by proclamation, may include additional subjects to be considered by the Legislature.

It may be of interest to mention that Article II, Section 3, of the United States Constitution permits the President to call either or both houses of Congress to convene in extraordinary session. In California, both houses of the Legislature are convened at the same time by the Governor's proclamation.

ORGANIZATION

The first order of business on Monday, January 5th, the opening day of the 1959 Legislature, will be the organization of the Senate and the Assembly.

The organization of the Senate is somewhat different from that of the Assembly, because there are holdover Senators, usually 20 in number, at each session of the odd-numbered year.

The Constitution provides that the Lieutenant Governor is the presiding officer of the Senate, and he calls that house to order. In his absence or disability, the senior member present performs this duty. The prayer is offered, and the certificate from the Secretary of State certifying as to the newly elected Senators is read, after which the Senators-elect take their oaths of office. The nomination and election of officers is the next order of business. The President pro Tempore, Secretary, Minute Clerk, Chaplain, and Sergeant-at-Arms are the elected officers of the Senate.

The Secretary, Minute Clerk, and Sergeant-at-Arms of the last regular session are required by law to be present at the opening of the session, and they receive their mileage.

In the Assembly, because there are no holdover members, the Chief Clerk of the last regular session calls the House to order. The Government Code provides that the Chief Clerk, Minute Clerk, and Sergeant-at-Arms of the last preceding regular session shall be present, and mileage is provided for these three officers.

The Chaplain of the last session is usually invited to offer the opening prayer. After the prayer, the Clerk reads the certificate of duly elected members as certified by the Secretary of State. This completed, the 80 Members of the Assembly take the constitutional oath of office.

OATH OF OFFICE

The oath of office is administered by the Secretary of State or by one of the justices of the upper courts. The taking of the oath is the last prerequisite to membership. In the Assembly, the members take the oath in three different groups in order to prevent crowding in front of the rostrum when the oath is administered. The roll of the 58 counties is called alphabetically from Alpine to Yuba Counties. The first group of members to take the oath are from the Counties of Alpine to and including Lassen; the second group is from Los Angeles County, and the third group from Madera to Yuba Counties. Each member is given a printed copy of the oath he has taken which he signs and delivers to the Chief Clerk who files it in the Office of the Secretary of State. The members then return to their seats.

ELECTION OF OFFICERS

The Members of the Assembly having been qualified and seated, the nomination and election of the Speaker is next in order. There is usually a nominating speech and two or three speeches seconding the nomination of a candidate, after which a motion is made to close the nominations. After the nominations are ordered closed, the Clerk calls the roll, and each member, as his name is called, gives the name of the candidate for Speaker for whom he desires to vote.

After the roll has been called, the Chief Clerk announces the vote, and, if one of the candidates for Speaker has received a majority vote of the members elected and qualified, he is then pronounced elected.

A committee is appointed to escort the Speaker-elect to the rostrum, where he takes and subscribes to the oath that he will perform the duties of Speaker to the best of his ability. The committee on escort usually consists of the member who nominated the Speaker and those members who seconded the nomination.

A similar procedure is followed for the election of the Speaker pro Tempore.

The Chief Clerk, Minute Clerk, Sergeant-at-Arms, and Chaplain are also nominated and elected by a like procedure, but there is no committee on escort for these officers.

The budget session is similar to the general session in its organization, except that the oath of office is not again taken by the members. Where a vacancy existed, and an election has been held subsequent to the *sine*

die adjournment of the last session, the member elected at the special election may take the constitutional oath of office at any time prior to the convening of the budget or special session and before any person qualified to administer the oath. The oath, subscribed and sworn to by the member, and the certificate of election from the Secretary of State are read on the opening day of the session, and printed in the Assembly Journal.

The officers elected at the regular session in the odd-numbered year are usually retained for the budget and extraordinary sessions. They are re-elected by house resolution, which, if adopted, retains all of the officers who were theretofore elected. The officers again take the oath that they will faithfully perform the duties of their offices.

The special session organization is similar to that of the budget session except that the proclamation issued by the Governor is read and printed in the Journal.

Immediately after the election of the Speaker on the opening day of each session, and on each Monday morning thereafter, the Speaker of the Assembly leads the members, attaches, and visitors in the Assembly Chamber and Gallery in the pledge of allegiance to the American Flag.

The election of officers concludes the organization, and the next procedure is the introduction of resolutions to notify the Governor and the Senate that the Assembly is organized and ready to transact the business of the State.

A resolution providing for the mileage of each of the members is introduced and printed in the Journal, and usually lays over one day so each member may see if he has been provided with the proper mileage allowance. The Rules of the last regular session are generally adopted as the Temporary Rules of the Session. There are other resolutions offered, routine in nature.

There is no material deviation from this proecdure in the Senate.

SEATING OF MEMBERS

The Committee on Rules assigns to each Member of the Assembly his office and his seat in the Assembly Chamber. The Senate Committee on Rules performs a like service for the Senators.

It is advisable for a new Member of the Assembly desiring a particular seat, and a member who desires to change his seat, to communicate with the Rules Committee as soon after the general election as is convenient.

In the Assembly, the seating, as nearly as possible, is arranged geographically, with Districts 1 to 40, inclusive, on the north side, and Districts 41 to 80 on the south side of the Chamber. There is no such geographical arrangement in the Senate Chamber, seats being assigned according to seniority, with new members usually having seats at the sides or in the rear of the Chamber.

ASSEMBLY DISTRICTS

The geographical arrangement of seats in the Assembly Chamber follows the pattern of the numbering of the Assembly districts, the first district starting in the northwestern part of the State with Del Norte County and following down the coast through Humboldt and

Mendocino Counties. The districts continue to run from north to south, with the Fortieth to the Seventieth Districts located in Los Angeles County, and the Seventy-seventh to Eightieth Districts in San Diego County.

The Constitution requires that Assembly districts be as nearly equal in population as is possible, but no county may be divided to form an Assembly district unless it contains within itself sufficient population to form two or more Assembly districts.

The Constitution also provides that the federal decennial census shall be used as the basis for reapportionment. As a result of the 1951 Reapportionment Act, 47 Assembly districts are located in the four most populous counties, Los Angeles has 31, San Francisco and Alameda have six each and San Diego has four.

The Sixth Assembly District is composed of 10 counties: Nevada, Placer, El Dorado, Amador, Alpine, Calaveras, Tuolumne, Mariposa, Mono, and Inyo. It covers approximately 23,330 square miles, and extends across the backbone of the Sierras, taking in the historical Bret Harte country, Lake Tahoe, and the Yosemite Valley. Paul J. Lunardi represents this district.

Mrs Pauline L Davis represents the Second Assembly District, which covers an area of approximately 25,520 square miles, and consists of seven counties: Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, and Sierra. It extends from the Oregon line to meet with the Sixth District where Sierra County joins Nevada County. It crosses the Sacramento Valley to include Shasta and Trinity Counties. The combined area of the Second and the Sixth Assembly Districts takes in more than two-thirds of the length of the eastern part of the State.

These two districts are probably the largest Assembly districts in the Nation.

In the formation of senatorial districts, the Constitution provides that no county may be divided; and no county, or city and county, may contain more than one district Counties of small population are grouped in districts of not to exceed three counties in any one senatorial district. There are five senatorial districts composed of three counties each, eight of two counties each, with the balance of the 27 districts having one county each.

ELECTRICAL ROLL CALL

After taking his seat, each assemblyman will find on the right-hand side of his desk a small toggle switch which is part of the electrical voting system.

On the front wall of the Assembly Chamber, facing the members, are two large panels framed in bronze—one to the right, and the other to the left of the Speaker's rostrum. Each panel displays the names of the Members of the Assembly in alphabetical order. Opposite each name are two small light bulbs, one green and the other red.

When the machine is open for voting, the toggle switch on the member's desk, if thrown to the left, lights up the green bulb opposite that member's name on the large panel, showing an affirmative vote. When the switch is flicked to the right, a negative vote registers red on the panel. The switch is provided with a lock and key so that only the member may use the voting unit. A similar unit is installed on the Speaker's desk at the rostrum.

The panels on the wall are not easily visible to the Speaker, who faces the members, so, on his desk there is a plat of the seating arrangement in the Chamber. When voting on a measure, a small bulb opposite each name lights up green or red on the Speaker's plat, remaining dark if a member is not voting. Below the plat, the total ayes and noes are electrically displayed.

On the wall above each of the large panels is a glass-faced plaque, one section of which contains an electrically controlled tabulator which flashes the total ayes and noes within a few seconds after the members have voted. This plaque also displays and illuminates the file number of the measure under consideration, and, when desired, the words "2d RDG" (second reading), "3d RDG" (third reading), "Urgency" (Urgency Clause), "Susp. Const." (Suspend constitutional provision regarding the 30-day waiting period for a committee to hear or the house to act upon a bill or the reading of bills on the three several days), "ASSEMBLY" or "SENATE", "BILL" or "RESOLUTION" and number. This word display is manually controlled by electrical switches at the clerk's desk. If a member desires to have the vote re-displayed after the oral calling of the roll of absentees, there is another plaque on the wall above and behind the Speaker's desk where the revised totals of the negative and affirmative votes are illuminated and displayed.

The electrical voting system is operated from the Assembly desk by one of the clerks. To set the machine in motion, the Speaker presses a button which causes chimes to sound, notifying the members that the system is open for voting. The members vote from their desk units. The Speaker then presses another button which closes the voting system, and the vote is recorded and tabulated; after which the machine is "cleared", and the printed roll call removed.

On this printed roll call, opposite the name of each member, there is now a perforation which shows how he voted, or registering him as not voting if he did not vote. The machine automatically perforates the tabulated total of "ayes", "nays", and "not Voting" on the roll call paper.

Prior to the announcement of the vote, the Speaker inquires if all members have voted. When once begun, voting shall not be interrupted, except that before the vote is announced any member may change his vote, or request that the Speaker direct the clerk to call the absentees, or move a call of the Assembly. No member is allowed to change his vote or have his vote recorded after the Speaker has announced the vote.

The Senate does not have an electrical roll call system.

PUBLIC ADDRESS SYSTEM

The Assembly and the Senate each has a public address system.

In the Assembly, there is a stationary microphone on the rostrum for the use of the Speaker, one on the desk for the use of the Reading Clerk, and one at the desk of each member. The system is operated from the station in the front of the Chamber.

On the rostrum to the right of the Speaker is a large console resembling a small organ. On the keyboard of the console are more than 80 switches, so arranged as to form a diagram of the seating arrangement

in the Chamber. The name and seat number of each Member of the Assembly appears below the particular switch which controls the microphone installed at his desk. At the Speaker's desk, the members' names are arrange in six vertical columns with a push button opposite each name. When the Speaker orally recognizes a member who wishes to address the House, he presses the button opposite that member's name, notifying the operator of the console that the member is to have the floor. The operator then flicks the switch above that member's name, thereby lighting a small red electric light globe on the tip of the member's microphone, signifying that the system is open and ready for use.

This system precludes the possibility of two members having the use of different microphones at the same time. When one member poses a question to another, both microphones may be opened to permit the answering of the question. The volume of sound transmitted is regulated by the operator of the console.

THE STANDING COMMITTEES

At this point, it may be well to say a few words regarding the standing committees.

The Speaker appoints the members of the 24 Assembly standing committees, while the Senate Committee on Rules performs the duty of naming the 21 standing committees of the Senate. The method of selecting the members of the Rules Committees will be discussed later.

It is not unusual for the Speaker to refer bills to the different committees before the committees have been appointed, in which case the bills are held at the desk and delivered to the chairmen of the committees when they are appointed.

Members are appointed to serve on committees by reason of their knowledge regarding the subject to be studied by the committee. Thus, most of the lawyer Members of the Assembly are appointed to the Judiciary Committee, and those members familiar with livestock and dairies or agricultural problems are usually named to serve on those committees.

Assembly Rule 26(h) provides that before the commencement of any regular session of the Legislature, the Chief Clerk shall mail to each member a blank form on which the member may indicate his committee preferences. Accompanying the blank form is a stamped envelope, addressed to the Chief Clerk, for returning the form. You have all received these forms.

Upon their return to the Chief Clerk, the forms are delivered to the Interim Committee on Legislative Organization, if such a committee has been created, who shall deliver them to the Speaker immediately upon the organization of the Assembly. There being no such interim committee created, the Chief Clerk delivers the preferences to the Speaker when he is elected. These forms are still in my possession, and will be given to the Speaker immediately after his election.

To each of these committees there is assigned a secretary. Most of the secretaries have been employed by the Legislature for a considerable length of time.

The Members of the Assembly charged with the employment of legislative help have for many years past selected persons to perform legislative duties strictly on a basis of merit and efficiency, which has resulted in the long legislative service of many of the attaches, this being particularly true of the Assembly desk force.

THE RULES COMMITTEE

Perhaps a short digression with a few words regarding the Rules Committee may not be amiss at this point.

The Committee on Rules acts as the executive committee of the House, and consists of seven members—a chairman who is appointed by the Speaker, and six members who are elected by the Assembly in the following manner:

The majority and minority parties caucus, and each party caucus selects by secret ballot three members whose names are filed with the Chief Clerk who transmits them to the Speaker, who, in turn, presents the name of each nominee to the Assembly. It requires a majority vote of the elected membership of the Assembly to elect a member of the Rules Committee.

Vacancies on the committee, occurring during any session, are filled by election, while vacancies occurring after final adjournment are filled, until the convening of the next session, by the remaining committee members who are of the same party as that of the member causing the vacancy. A vacancy in the chairmanship is filled by the Speaker.

No member of the Committee on Rules is eligible to serve as chairman of a standing committee.

The Speaker, Speaker pro Tempore, Majority Floor Leader, and Minority Floor Leader are ex officio members of the committee.

The Senate Committee on Rules consists of five members, four of whom are elected by the Senate whose rules provide that the President pro Tempore shall be the chairman of the committee.

MAJORITY AND MINORITY FLOOR LEADERS

The rules provide that the Speaker, after consultation with the members of his supporting majority, appoint one member to be his personal representative on the floor of the Assembly who is known as the Majority Floor Leader.

A Minority Floor Leader is elected by his party caucus.

LAWS ENACTED THROUGH BILLS

In California, all laws are enacted through the medium of bills. Generally speaking, a bill may be defined as a draft of a proposed law. It either proposes new legislation or amends or repeals existing law.

The Constitution provides that every act shall embrace but one subject, which shall be expressed in its title. If the text of the bill goes beyond what is embraced in the title, that portion of the bill may be declared void.

The courts have been very liberal in their construction of what must be in the title of a bill.

Every bill must contain the enacting clause "The people of the State of California do enact as follows." Without this enacting clause no bill is valid.

INTRODUCTION OF BILLS

Bills, concurrent and joint resolutions, and constitutional amendments are not offered on the first day unless there is an urgency for their introduction and adoption.

They are usually introduced after the second or third day of a session, and are presented in typewritten form, although this is not mandatory.

Within the meaning of the Rules, "bill" includes concurrent and joint resolutions and constitutional amendments.

Before a bill may be accepted for introduction, the text and a digest of the bill must be placed within a printed cover, and on this cover the title of the bill must be typed or written. The Rules provide that the bill must be signed by its author or authors. With the adoption of Ballot Proposition No. 9, the provisions of Joint Rule 8.5 of the Senate and Assembly, if adopted, will become effective. This Rule presently provides that each bill introduced shall be accompanied by a digest "showing the changes in the existing law which are proposed by the bill." The digest should be prepared by the Legislative Counsel; however, if the digest is prepared by someone other than the Legislative Counsel, the bill and the digest shall be delivered to the Legislative Counsel by the Chief Clerk of the Assembly or the Secretary of the Senate. The Legislative Counsel shall review the digest submitted with the bill, "modify it where necessary in his opinion" and return both the bill and the digest to the officer from whom they were received.

There has been considerable discussion relative to the present Joint Rules, and numerous conferences between the Assembly and Senate Committees on Rules, the Legislative Counsel, the State Printer, the Chief Clerk of the Assembly, and the Secretary of the Senate have been held.

As a result of these conferences, the following procedure will be recommended to the 1959 Legislature by the Joint Committee on Legislative Procedure:

> "*Recommendation:* The Joint Rules should provide that no bill, constitutional amendment or joint or concurrent resolution may be accepted for introduction unless accompanied by a Legislative Counsel's digest summarizing its effect. To facilitate this system, all such measures should be 'backed' (or placed in their jackets) in the Office of the Legislative Counsel, at which time copies of the digest can be attached for the use of the author, the desk and the press. The digest should be printed on each measure as introduced, in distinctive type at the botton of the first page. The digests should also be printed in sequence from time to time in separate pamphlets, one for the Senate and one for the Assembly."

The bill and the digest are sent to the Assembly Desk where they are given a number, the bill is then read the first time, and referred to a committee. The bill's number and the date of its introduction and first reading, the committee to which it was referred, and the

dates it is sent to and received from the printer are shown on the bill cover, as well as any other clerical notations made necessary by a deviation from the ordinary routine. Bills introduced during the 1959 General Session will also show on their bill covers the earliest date that the committee may hear or the house may take action upon the bill.

Assembly bill covers are white, while those used by the Senate are orange. Covers for Assembly bills introduced at the request of a state department are distinguished from the regular Assembly bill covers by being printed in red ink. Covers for concurrent and joint resolutions and constitutional amendments are of different and distinctive coloring.

For convenience, bills are referred to or designated as AB for Assembly bills and SB for Senate bills. Concurrent resolutions are indicated by ACR or SCR, joint resolutions carry the letters AJR or SJR, and constitutional amendments are known as ACA or SCA. House resolutions are referred to as HR or SR (Senate resolution).

Upon introduction, the bill becomes the property of the house wherein it was introduced, and is known as either Assembly Bill No. 1 or Senate Bill No. 1, all legislative measures being numbered consecutively in the order of presentation. This designating mark remains on the bill until it has been enacted into law, when it ceases to be known as a bill and is called a chapter.

Immediately after introduction in the Assembly, and before actually going to the committee, the bills are sent to the chief stenographer. The stenographic department types seven copies of the title of each bill, its number, its author or authors, and the committee to which it was referred. One copy is used for printing in the Journal, one copy for printing in the History, and one for the desk record, the four remaining copies going to the press correspondents. When the original bills are returned from the stenographers' room they then go directly to the State Printing Plant where 1,900 copies of each new bill are printed. After printing, the original bill is returned to the house of origin and then delivered by the Clerk to the chairman of the committee to which it has been referred.

Proposition No. 9 has further affected the legislative process during the general session by abolishing the constitutional recess and the provision that not more than two bills per member be introduced after the constitutional recess. Under Proposition No. 9, no constitutional limitation exists on the introduction of bills; however, the Joint Committee on Legislative Procedure makes the following recommendation:

> "*Recommendation:* The Joint Rules should prohibit the introduction of bills and constitutional amendments after 120 calendar days of the 1959 Session have elapsed, except in cases of emergency and then upon five days' notice, recommendation of the Rules Committee of the house involved, and a roll call vote of two-thirds of the elected members. (This permits 120 calendar days of "free" introduction and 46 calendar days of restricted introduction.)"

Charter amendments are taken care of through the medium of concurrent resolutions. The expenses of the session are provided for by bill.

The Governor, as has been said, controls the type of legislation to be considered during an extraordinary session, as the Legislature is precluded from legislating upon subjects other than those set forth in the proclamation.

PRINTING OF BILLS

All bills, constitutional amendments, joint and concurrent resolutions must be printed, and made available to the members and the public as soon after their introduction as is possible. During the early days of the first half of the previous general sessions, when the number of measures introduced was small, the bills were printed and ready for distribution the morning after their introduction. This was, however, a physical impossibility toward the end of the first half of the session because of the volume of bills introduced each day. In 1957, for example, there were 2,868 Assembly bills and 1,961 Senate bills, or a total of 4,829 bills introduced during the last seven legislative days of the January session. This is an average of 690 bills per day. When you consider these figures the problems which confronted the printing plant are more readily understood.

The argument in favor of Proposition No. 9 maintained that this flood of legislation was caused by the constitutional recess and that by eliminating the recess and by providing a longer period for unlimited bill introduction the pressure on the printing plant would be alleviated by a "* * * more even flow of bill introduction * * *."

After printing, the individual bills are arranged in numerical sequence and filed in the Legislative Bill Room, where they are available for distribution.

Individual sets of Assembly and Senate bills are gathered and laced into hard covered looseleaf binders of distinguishing colors Each binder contains 500 bills, and is lettered Assembly (or Senate) Bills 1-500, 501-1000, et seq., as the case may be. A complete set of Assembly and Senate bill books is compiled for each member, and kept up to date during the session by insertion of new bills as they are introduced and the amended bills as they are printed. At the close of the session, the member may have his set of bill books either placed in his office or mailed to his home.

Legislative bills and publications are available to the general public for free distribution provided that not more than two copies of any bill or other legislative publication, nor more than a total of 100 bills or other legislative publications during a session, shall be distributed free to any person, office, or organization. A legislative bill service is provided for those desiring a complete set of bills, amended bills, and daily publications. The cost for this service is set by the Joint Rules, and is $150 for the general session.

BILLS IN COMMITTEES

As previously stated, after printing, the original typewritten bill goes to the chairman of the committee to which the bill has been referred, and the chairman receipts to the Chief Clerk, or to the Secretary of the Senate, as the case may be, for the bill.

The bill is now in committee. "At the general session, no bill, other than the Budget Bill shall be heard by any committee or acted upon by

either house until 30 calendar days have elapsed following the date the bill was first introduced; provided, that this provision may be dispensed with by the consent of three-fourths of the members of the house." This waiting period during the general session is another change in the legislative process wrought by the passage of Proposition No. 9.

The Joint Committee on Legislative Procedure recommends the following procedure:

> "*Recommendation:* The Joint Rules should subject constitutional amendments to a 30-day delay in hearing, just as bills are restricted by Proposition No. 9. Authors desiring to dispense with the 30-day delay should be required to give a five-day notice of intention to request such dispensation, and this request should be referred to the Rules Committee of the house involved for its recommendation. Only upon the favorable recommendation of the Rules Committee and a three-fourths roll call vote of the elected members, should the 30-day delay provision of the Constitution and the Joint Rules be dispensed with."

Each committee makes a list or calendar of the bills which may be set for hearing after the 30-day waiting period has elapsed or upon which the 30-day period has been waived by a three-fourths vote of the house. These lists must be printed in the Daily File for three days preceding the hearing date, so that interested parties may have sufficient notice of when to appear before the committee to offer arguments for or against the measure. Occasionally, when a bill is of statewide importance or of a highly controversial nature, the date for its hearing is set a week or more in advance, to allow ample time for the attendance of those who live a considerable distance from the Capitol.

Each bill is considered by the committee to which it was referred, and if the bill is found to have merit, it is reported out of committee with a "Do pass" recommendation.

If an author desires to amend his bill in committee, in order to overcome opposition, or if the committee is of the opinion that the bill has merit but needs clarification, modification, or correction in some form, amendments are proposed, and, if accepted, are adopted by the committee, which then reports the bill out with a "Do pass, as amended" recommendation.

There are other recommendations which the committee may care to make with reference to the disposition of the bill.

Bills reported from committee must be accompanied by a standard form report which the chairman or secretary may obtain from the Assembly desk or from the chief stenographer's office. The chairman of the committee is required to sign the report, which must accompany the bill or bills when they are reported out of committee.

The report and bill, together with four sets of any amendments which may be proposed by the committee, are then brought to the Assembly desk where they are receipted for by the clerk. The bill then goes on the second reading file, and the report is printed in the Journal.

COMMITTEE AMENDMENTS

It is most important to remember that the amendments adopted by the committee are not printed into the bill by the action of the committee. The committee submits and recommends to the Assembly, but it requires the vote of the Assembly to write the amendments into the bill.

Authors' amendments and amendments proposed by the committees are seldom opposed by the House for the reason that these amendments are offered to cure some defect in the bill or to remove opposition. Authors' amendments are usually unopposed on the theory that the author has a right to perfect his bill before final consideration.

When the bill has been read the second time without amendment, it goes immediately to the Committee on Engrossment and Enrollment where the printed bill is compared with the original bill. When the bill has been amended on second reading, it goes to the Amending Clerk who prepares the copy for reprinting the bill in its amended form by inserting the amendments in their proper places in the last printed copy of the bill.

When it has been reprinted, the bill goes to the Committee on Engrossment and Enrollment for a proofreading job, and a comparison of the amended bill with the printed bill, as amended. This comparison of the printed bill with the original bill, and the printed bill, as amended, with the amended bill is called engrossment.

Each house engrosses its own bills. Generally speaking, each time a bill is amended it must be reprinted and re-engrossed.

Each time that the bill is amended, the date of such amendment is printed above the heading on the first page of the bill. It is essential that the proposed amendments be addressed to the last printed amended bill.

PREPARATION OF AMENDMENTS

In the 1957 General Session, there were 4,515 measures introduced in the Assembly and 2,911 in the Senate, making a total of 7,426 measures for the both houses.

Roughly, about 4,000 of these 7,400 measures were amended at one time or another during the session, with most of the amending being done during the latter part of the second half of the session. This piling up of amendments created a problem, not only for the Assembly Desk, but also for the Legislative Counsel and the Printing Office.

Each of these amendments must be drafted and submitted in writing and, in many instances, speed in preparing them is essential in order to meet the scheduled meetings of the different committees.

When amendments are adopted by the house, each amendment must be physically written into the bill by the Amending Clerk before the bill may be sent to the printer.

As the session nears its closing day, there are hundreds of amendments to be placed in the bills each day. Many of the proposed amendments reported from committees do not fit the bill. Some of the amendments are incorrectly prepared by striking out or adding text to the wrong line in the bill, or by being addressed to an earlier instead of the latest printing of an amended bill.

These errors are not too difficult to correct if consultation may be had with the person who prepared them. That is why it is so important to have your amendments prepared by the Legislative Counsel, for his office is across the hall from the Assembly Chamber, and consultation with the deputy who drafted the amendments usually results in clearing up the error without the necessity of disturbing either the author of the amendments or the chairman of the committee reporting them out.

If it is found necessary to consult with the author of the amendments and the chairman of the committee, this may be quickly accomplished, and the amendments corrected with their approval without serious delay.

When the proposed amendments are prepared by a person other than the Legislative Counsel, and they are found to be incorrect, it is necessary to first consult the author of the amendments, and, if he is unable to cure the defects in the proposed amendments, it is then necessary to consult the person who proposed the amendments. If he is not available or is not in Sacramento, which often happens, it may be necessary for the author to withdraw the amendments and have a new set prepared. This causes a considerable delay and, as the session nears its close, may result in the loss of a bill.

Therefore, may I again suggest that all amendments to bills be prepared by the Legislative Counsel.

It is hoped that the new procedure set forth by Proposition No. 9 will eliminate much of this problem.

When an Assembly bill is amended on second or third reading, the bill is reprinted, showing the amendments by the use of strike-out type for matter omitted, and italic type for the new matter.

Assembly Standing Rule 71 reads in part as follows: "Assembly and Senate bills amended on second reading, whether by committee amendment or amendment from the floor, shall be ordered reprinted and returned to the second reading file. Assembly bills so amended shall be engrossed after printing."

PASSAGE OF THE BILL

The next step in the progress of the bill is its third reading. The argument for and against the measure takes place at this reading. If the bill is amended from the floor, it then goes through the same procedure as it did when amended on second reading, except that Rule 71 has no application to bills amended on third reading. After debate has been concluded, a roll call vote is taken, and the bill is either passed or refused passage. It requires 41 votes in the Assembly to pass a bill other than one containing an urgency clause, or which by Constitution or law requires a greater vote; and 54 votes to adopt an urgency measure or a constitutional amendment. It requires an affirmative vote of 21 Senators to pass most bills, and 27 Senators must vote in favor of a constitutional amendment or an urgency measure in order that it may be adopted.

MEMBERS REQUIRED TO VOTE

Whenever a roll call is required by the Constitution or Rules, demanded by three members, or ordered by the Speaker, every member actually in the Assembly Chamber must record his vote openly and

without debate, unless the Assembly shall, by a majority vote of the members present, excuse him.

Both the Senate and the Assembly, by rule, have provided penalties for a member refusing to vote.

ABSENCE OF QUORUM

A majority of each house constitutes a quorum to do business, but a smaller number may compel the attendance of absent members in such manner, and under such penalties, as each house may provide.

A quorum of the Assembly is 41 members, and of the Senate, 21 members.

If at any time during the session of either house an absence of a quorum is suggested, and it is doubtful that a quorum is present, it becomes the duty of the presiding officer to have the roll called to ascertain whether or not a quorum is present.

CALL OF THE HOUSE

If it develops that a majority of the members are not present, then a motion is in order for a call of the house. "The purpose of a call of the house is to compel the attendance of absent members."

TRANSMISSION OF BILL TO OTHER HOUSE

When a bill has been passed by either house it shall be transmitted promptly to the other house by a message signed by the Secretary of the Senate or by the Chief Clerk of the Assembly, as the case may be, unless a notice of motion to reconsider has been made or it is held pursuant to some rule or order of the house.

AMENDMENTS BY OTHER HOUSE

Whenever a bill or resolution which has passed in one house is amended in the other, it shall immediately be reprinted by the house making such amendments. Two copies of such amendments shall be attached to the bill or resolution and transmitted to the other house upon its passage. If the amendments are concurred in by the house in which such bill or resolution originated, the bill is ordered to enrollment.

CONFERENCE COMMITTEES

If the Senate or the Assembly refuse to concur in the amendments, the Committee on Rules (if it be a Senate bill) or the Speaker of the Assembly (if it be an Assembly bill) shall appoint a Committee of Three (3) on Conference and the Secretary or the Chief Clerk shall immediately notify the other house of the action taken and request the appointment of a like committee. The committee on conference shall report to both the Senate and the Assembly. Joint Rule 29 provides that the conference committee's report shall be in writing, and a copy of the report shall be placed on the desk of each member before it is acted upon by the house.

The Joint Rules provide that it requires the affirmative vote of not less than two of the Senate members and two of the Assembly members constituting the committee to agree upon a report, and no member who

has served on a committee on conference shall be appointed a member of another committee on conference on the same bill.

The report of the committee on conference is not subject to amendment, and "if either house refuse to adopt such report, the conferees may be discharged and other conferees appointed." No more than three different conference committees shall be appointed on any one bill.

If the third conference committee fails to agree or if either house fails to adopt the report of the third conference committee, the bill is dead.

ENROLLMENT OF BILLS

After a bill has passed both houses, it is returned to the house of origin and immediately sent to the Committee on Engrossment and Enrollment in the Assembly (if it be an Assembly bill), or to the Committee on Rules in the Senate (if it be a Senate bill). The bill is printed in enrolled form and is compared by the Engrossing and Enrolling Clerk of the house where it originated to determine that it is a correct copy of the last printed bill. The enrolled bill is thereupon signed by the presiding officers of both houses and the Secretary of the Senate and the Chief Clerk of the Assembly, and presented without delay to the Governor.

Enrollment is the final legislative action taken on a bill before it is presented to the Governor.

The committee must report to the house of origin the time of presentation of the bill to the Governor and the record must be entered in the Journal.

Enrolled constitutional amendments, joint and concurrent resolutions are filed in the Office of the Secretary of State, and do not go to the Governor.

APPROVAL OR VETO OF BILLS BY GOVERNOR

Every bill passed by the Legislature shall be presented to the Governor, who has 10 days in which to act upon the bill (Sundays excepted), if the Legislature is in session. During this 10-day period, he must either sign the bill, or return it with his objections to the house of origin, or the bill becomes a law without his signature.

If the Governor vetoes the bill, his objections are entered upon the Journal in the house of origin, which house proceeds to reconsider the bill, and, if two-thirds of the members elected to the house vote to override the Governor's veto, the bill then goes to the other house, where a similar procedure is followed. If both houses by a two-thirds vote pass the bill over the Governor's veto, it becomes a law notwithstanding the Governor's objections.

Where a bill containing several items of appropriation of money is presented to the Governor, he may object to one or more items while approving other portions of the bill. In such case, he shall append to the bill at the time of signing it, a statement of the items to which he has objected, and the reasons therefor, and the appropriations so objected to shall not take effect unless they have been separately reconsidered and passed over the Governor's veto by the same procedure as is followed in overriding his veto of a bill.

When the Legislature passes a bill over the Governor's veto by the required two-thirds vote in each house, a certificate reading "This bill having been returned by the Governor with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, has become a law this _____ day of _____."

Such certificate, signed by the President of the Senate and the Speaker of the Assembly, is a sufficient authentication, and shall then be delivered to the Governor, and by him deposited in the Office of the Secretary of State.

If the Legislature by final adjournment prevents the return of a bill to the house of origin within the 10-day period, the Governor has 30 days (Sundays excepted) in which to sign the bill. Bills remaining in his possession after this 30-day bill-signing period are pocket vetoed.

WHEN LAWS GO INTO EFFECT

No act passed by the Legislature shall go into effect until 90 days after the final adjournment of the session, except acts calling elections, acts providing for tax levies or appropriations for the usual current expenses of the State, and urgency measures necessary for the immediate preservation of the public peace, health, or safety, passed by a two-thirds vote of all the members elected to each house.

Every statute, unless a different time is prescribed therein, takes effect on the ninety-first day after the final adjournment of the session of the Legislature which passed such statute. This provision insures time for the filing of referendum petitions by the people.

Any amendment to the Constitution proposed by the Legislature must be submitted to the people for ratification; and takes effect immediately upon its adoption by a majority vote of the people at the election.

Every concurrent resolution takes effect upon the filing of it with the Secretary of State.

Every joint resolution, unless a different time is prescribed therein, takes effect from its adoption.

Any act, law, or amendment to the Constitution submitted to the people by either initiative or referendum petition, and approved by a majority of the votes cast at any election, takes effect five days after the date of the official declaration of the vote by the Secretary of State.

"The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it also is excluded." This provision is not applicable to the time allowed the Governor to sign or veto bills.

EXPENSES OF THE LEGISLATURE

The Constitution, Article IV, Section 23a, reads:

"The Legislature shall provide for the selection of all officers, employees and attaches of both houses."

Under this provision the Legislature is allowed to employ the assistance necessary to conduct an efficient and business-like operation.

LEGISLATIVE PUBLICATIONS

There are three daily publications printed for each house of the Legislature during each session. They are: The Journal, the File, and the History.

The Daily Journal

Article IV, Section 10, of the State Constitution provides that each house shall keep and publish a Journal of its proceedings, and the ayes and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the Journal.

The Daily Journal contains a true and correct account of the proceedings of each house, the titles of all measures introduced, considered, or acted upon by the house; the full text of all amendments to any such measures, the text of all house resolutions, roll calls upon all actions requiring a recorded vote, messages from the Governor and the other house, committee reports, motions, acknowledgment of the receipt of all communications, and such other matters as properly come before the respective houses.

It may be said that something happens to every motion that is made on the floor. The motion either dies for lack of support, or is amended, postponed, laid on the table, carried, or defeated. Whatever happens to a motion is duly recorded in the Journal.

Every action accelerating, amending, retarding, or defeating any legislative measure is shown in the Journal.

The copy of the Daily Journal is prepared by the Minute Clerk, who sits at the desk to the immediate left of the Reading Clerk's stand.

It is not unusual for the Daily Journal of either house to contain more than 100 pages of printed matter. Speeches of the members are not taken down in shorthand, nor do they appear in the Journals.. However, occasionally, a motion is made that a certain speech be printed in the Journal, and the member making the speech is then requested to reduce it to writing for printing.

There is a deadline for the publication of the Journal. It must be printed in time for distribution before the session convenes on the next day.

"Keeping up" on Journal copy is often a very difficult task for the house may, and frequently does (by adopting lengthy amendments to a number of bills, or by ordering the printing of a voluminous document in the Journal), submit several hundreds of pages of copy in a few minutes—many times in the final moments before adjournment.

That the Assembly Journal is printed and ready for distribution before the opening of the session each morning, is due to the fine cooperation existing with the State Printing Office.

The Daily File

Each house prints a Daily File which contains the titles of all measures on file for consideration on that day.

Rule 67 provides that the order of listing in the Assembly Daily File shall be:

1. Special Orders of the Day;
2. Second Reading, Assembly Bills;

3. Second Reading, Senate Bills;
4. Unfinished Business;
5. Third Reading, Assembly Bills;
6. Third Reading, Senate Bills;
7. Adoption of Resolutions.

All measures reported out of committee shall be placed on the second reading file, unless otherwise ordered. Bills ready for final passage appear on the third reading file. Bills passed twice on the third reading file go to the inactive listing. When, for any reason, it is desired to delay the consideration of a measure, it may, by unanimous consent, be placed on the inactive file.

Any measure made a special order is placed in the File under the heading: "Special Orders."

Notices of reconsideration; notices of motions to withdraw bills from committees; pending concurrences in Senate amendments; and Conference Reports are printed under "Unfinished Business."

The items on the File are grouped according to order of business, numbered consecutively, and considered in this order.

The File also contains the schedule of committee meetings and lists all of the bills set for hearings by the various committees.

Copy for the Daily File is prepared by the Assembly File Clerk.

It is of the utmost importance that the File be ready for distribution at least an hour before the convening of the session in order that the work at the desk may be properly arranged, and that the members may know what bills are to be considered during the day.

Getting the File to press in time to be printed before the morning session sometimes presents a problem, especially when the Assembly holds a late night session. This becomes apparent when it is mentioned that during the middle and closing weeks of the 1957 Session it was not unusual for the File to contain more than 400 items to be considered.

The History

The third daily publication printed by each house of the Legislature is the History. As the title implies, it is a history of the legislative action on all measures introduced and considered during the session.

The Daily History shows the action on all measures considered each day, with cumulative action for each succeeding day until the end of the week.

On Monday nights, a Weekly History is published. It contains the titles of all measures introduced during the session, the actions taken on each measure, and the dates upon which such actions were taken. The members of each house, their committee assignments, the time for committee meetings, and much other pertinent information is contained in this publication. In 1957, the Weekly History of the Senate averaged more than 500 pages, while that of the Assembly averaged more than 1,000 printed pages.

The copy for both the Assembly Daily and the Assembly Weekly History is prepared by the Assembly History Clerk.

Other Publications

A brief mention of other legislative publications may be of interest.

The Final History is published about 10 days after the expiration of the 30-day bill signing period allowed the Governor after final adjournment. This book gives the complete action on all measures introduced during the session; all the bills approved, vetoed, and pocket vetoed by the Governor; and all the information contained in the Weekly Histories is brought up to date.

The Legislative Handbook or Manual is prepared by the Secretary of the Senate and the Chief Clerk of the Assembly. The Handbook contains in compact form much of the information found in other legislative publications. The vote for state officers, Members of the Legislature, and measures appearing on the general election ballot are included in the book.

The elimination of the constitutional recess makes the printing of a Semifinal History unnecessary.

The Joint Committee on Legislative Procedure recommends that the Digests of the bills be printed in sequence as a separate document from time to time; and that a cumulative Legislative Index of bills introduced with cumulative tables of sections affected also be periodically published. Copy for these publications will be prepared by the Legislative Counsel, and the Secretary of the Senate and the Chief Clerk of the Assembly will arrange for their periodical publication in separate pamphlets for each house.

The Analysis of the Budget Bill by the Legislative Analyst and the pamphlet showing the changes in the Budget Bill, prepared by the Department of Finance, are other publications of interest.

LEGISLATIVE REFERENCE LIBRARY

Through the efforts of Assemblyman Hawkins, the Assembly Rules Committee and the Joint Rules Committee, the offices formerly occupied by the Chief Clerk and his staff have been assigned to the State Library, for a branch to provide reference and research facilities for the members of both houses of the Legislature.

CAPITOL CORRESPONDENTS ASSOCIATION

The Legislature would not be complete without the representatives of the press.

The Capitol Correspondents Association, composed of the newspapermen assigned to cover the Capitol, was organized in 1941. The right to submit to the Legislature the names of bona fide newspapermen acting as legislative correspondents for their publications, has been recognized by the Legislature and has been made a part of the Rules.

Desks have been provided in the Assembly and Senate Chambers for these accredited representatives of the press. You will soon become acquainted with these correspondents, many of whom have been covering the Capitol for a great many years.

Earl "Squire" Behrens, Political Editor of the San Francisco Chronicle, probably has reported more legislative sessions than any other Capitol correspondent.

Herbert L. "Pete" Phillips, Political Editor of the Bee, does not fall very short of the Squire's record. Richard Rodda, Alfred Lyons, and Tom Arden are some of the other representatives of the Bee, very well known to the members.

Morrie Landsberg of the Associated Press; James Anderson of United Press International head these two great news services. Henry MacArthur is in charge of the Capitol News Service.

Carl Greenberg, Political Editor of the Los Angeles Examiner; Robert M. Blanchard of the Los Angeles Times; Don Thomas, Political Editor of the Oakland Tribune; Sydney Kossen of the San Francisco News; A. J. "Jack" Welter and Clint Mosher, representing the San Francisco Examiner; and Richard Bergholz, formerly of the San Diego Union, and now representing the Los Angeles Mirror, all are veteran Capitol correspondents.

In concluding, may I say that every legislative attache and every department of the State, is not only willing but anxious to be of service to the Members of the Legislature.

This session of the Legislature will see a marked change in legislative procedure, brought about by the adoption of Proposition No. 9; and for the first time since 1911, the session will be without the constitutional recess. Also, for the first time, a digest of each bill will be available at the time of its introduction.

Many procedural problems will arise with the new procedure and the Members of this Assembly will pioneer without any beacon light to guide them in solving the problems which will inevitably arise.

The phenomenal increase in California's population will continue to present new and varied problems, but the Members of the California Legislature will devote all necessary time and study to their proper solution, and, we may rely with confidence upon their ability to successfully solve these problems.

LEGAL ASPECTS OF REPRESENTATION

By FRANK C. NEWMAN
Professor of Law, University of California

(FRANK C. NEWMAN—A native of California; A.B. from Dartmouth College and LL.B. from University of California at Berkeley, 1941; J.S.D. from Columbia, 1953; United States Navy, 1943-1946; member of faculty at University of California, 1947 to date; co-author, Cases and Materials on Legislation, 1955.)

LEGAL ASPECTS OF REPRESENTATION

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CALIFORNIA LAWS ON LOBBYING

The basic California law on lobbying appears in the State Constitution, where it has been included as Section 35 of Article IV since 1879. But an inquiry into "California Laws on Lobbying" should, in 1959, begin with the provisions of the California Lobbying Act. This act appears in 16 sections of the Government Code. It became law in 1949 and was amended in 1950, 1955, and 1957. Observers generally agree that the Legislature took action on the control of lobbying primarily because of the indignation that followed the nationwide publicity regarding the activities of Arthur H. Samish, Chief Justice Earl Warren, who was then Governor of California, actively supported lobbying legislation, and worked closely with leaders of the Legislature in helping to assure its final enactment.*

The most troublesome question since the enactment of the California Lobbying Act has been, "Exactly what does the act mean?" Many of its provisions are ambiguous, and many citizens and lawyers have been troubled in their efforts conscientiously to discover what the statute requires of them. Unfortunately, no court in California has interpreted any provision of the act. But most of the act's provisions are identical with provisions in the Federal Regulation of Lobbying Act (1946), and there is no doubt whatever that the California Legislature intended essentially to adopt the congressionally approved wording.

To the extent that the state and federal language is the same, we have, since 1954, been aided in our interpretation of the act by the opinion of Chief Justice Warren in the case of *United States* v. *Harriss* (347 U. S 612), which gives immense help on many of the introductory questions.

In this discussion we shall consider these questions:

(1) To whom does the Lobbying Act apply?
(2) What does the Lobbying Act require?
(3) How has the Lobbying Act been administered?
(4) What other laws relate to lobbying?
(5) What revisions of lobbying laws have been proposed?

I. *To Whom Does the Lobbying Act Apply?*

The Lobbying Act applies first, to all persons whom the act labels "legislative advocates"; and second, to certain other persons. The two classifications can best be considered separately.

* For discussion, see the comment in 38 Calif. L Rev 478 (1950), and also the Legislative Counsel's analysis of the act on pages 149-157 of the Senate Journal for Jan 12, 1951, cf 15 Op Calif Atty Gen 160 (1950), 1957 A J 6011

A. "Legislative Advocates"

Section 9911 of the Government Code provides that the term "legislative advocate" includes every person who has registered or is required to be registered under Section 9906. Section 9906, therefore, is the basic coverage provision; and it applies to "Any person who shall engage himself for pay * * * for the purpose of attempting to influence the passage or defeat of any legislation by the Legislature * * * or the approval or veto of any legislation by the Governor." Such a person is required to "register."

Section 9906 does *not* apply, however:

1. "To any person who merely appears before a committee of the Legislature * * * in support of or opposition to legislation."

2. "To any public official acting in his official capacity."

3. "To a person when representing a bona fide church solely for the purpose of protecting the public right to practice the doctrines of such church."

4. "In the case of any radio and television station, newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such radio and television station, newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such radio and television station, newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Legislature * * * in support of or in opposition to such legislation."

Only those lobbyists who are employed for the purpose of attempting to influence legislation are to be labeled "legislative advocates." There has been much confusion as to exactly what is meant by the phrase, "attempting to influence * * * legislation" Fortunately, we receive considerable guidance from Chief Justice Warren's opinion in the *Harriss* case on this point. The Chief Justice concluded that "seeking to propagandize the general public" should *not* be regarded as an attempt to influence legislation within the meaning of the statute, and that the legislative intent was to cover only "lobbying in its commonly accepted sense" He explained further that "lobbying in its commonly accepted sense" means "direct communication" with Members of the Legislature or the Governor or, more specifically, "direct pressures, exerted by the lobbyists themselves or through their hirelings or through an artificially stimulated letter campaign" (347 U. S. at 620). To emphasize again the distinction he had in mind: He believed that seeking to propagandize the general public is not lobbying, except to the extent that it involves "direct communication" by legislative advocates or by an artificially stimulated letter campaign. That would seem to be the test in California.

We noted above that there are exceptions to the general provision regarding legislative advocates; and some questions will arise, obviously, regarding the problem of just who are and who are not within the words creating those exceptions. For example, the statute does not apply to a legislative advocate who "merely appears before a committee" Judge Holtzoff of the U. S. District Court for the District of

Columbia has held that this language "is not limited to the witness who actually and physically appears before a committee * * * and gives testimony, but includes also any person who helps to prepare the witness for his appearance before the committee, either in gathering material, preparing a statement to be given by him, or in any other way" (89 F. Supp 876). We are not certain that this interpretation would be upheld in California, but it is at least some indication that the exemption for witnesses may be broadly construed.

The exemptions of public officials and religious representatives would not appear to be troublesome; but the newspaper subsection is a complicated one, and contains words that could easily give rise to borderline difficulties. We shall not here discuss these difficulties, but shall instead next consider the problem of applying the Lobbying Act to persons who are *not* legislative advocates.

B. Other Persons

Many lobbyists and lawyers do not know that the Lobbying Act applies to "any person * * * who * * * solicits, collects or receives money" when the purpose of the money is to influence legislation. And "person" is defined to include individual, partnership, committee, association, corporation, and any other organization or group. [Sec. 9900(c).] There is a special exception, however, for political committees—which are regulated not by the Lobbying Act but by the Elections Code.*

One added test when a person solicits, collects, or receives money to influence legislation is the so-called "principal purpose" test, which relates to technical language in Section 9905 of the statute. Until the United States Supreme Court decided the *Harriss* case there was great confusion as to what "principal purpose" meant. Now, though, it seems clear from Chief Justice Warren's opinion that the act covers a person who solicits, collects, or receives contributions for the purpose of influencing legislation if "one of the main purposes of such 'person,' or one of the main purposes of such contributions, * * * [is] to influence the passage or defeat of legislation." In other words, if a solicitor or a contributor has a main purpose of influencing legislation, and not merely an incidental purpose, he is covered. The Chief Justice emphasized that the word "main" does *not* mean more-than-50-percent. A person can have several main purposes.

We should also note that the influencing of legislation is to be defined here as it was above for legislative advocates. Thus, for example, people who collect money for pamphleteering—even when their main purpose is to affect legislation—are not covered by the act unless they also engage in "direct pressures." That is to say, "direct communication" with Members of the Legislature or the Governor, or something like an artificially stimulated letter campaign, is needed.

II. *What Does the Lobbying Act Require?*

The basic requirements of the Lobbying Act are easily understood:

1. Each legislative advocate must register with the Legislative Analyst (*see* Sec. 9906(a), as modified by Sec. 37.5 of the Joint Rules of

* See Sec. 4502 of the Elections Code Cf. Note, "Campaign Contributions and Expenditures in California," 41 Calif Law Review 300 (1953), Ford, "Regulation of Campaign Finance" (U C Bur. of Pub Admin, 1955 Legis Problems—No. 6).

the Assembly and Senate); and he must also file monthly reports that (a) list the bills he has been employed to support or oppose, and (b) show all money he has received, each expenditure of $25 or more, and "the names of any * * * publications in which he has caused to be published any articles or editorials" [Sec. 9906(b)].

2. Every other person subject to the act must keep accounts (Secs. 9901-2) and file statements regarding contributions and expenditures (Secs. 9903-4).

Unhappily, there are many difficult questions that come up as to exactly what figures must be reported. To illustrate, if a San Francisco lawyer representing clients on legislative and other matters makes a trip to Los Angeles to consult with some of his clients, should he report all the expenses of the trip when, in part, he wishes to discuss non-legislative matters with the clients? Several questions of this kind are answered in Rule 36 of the Assembly Committee on Legislative Representation (*see* p 1409 of the Assembly Journal for March 15, 1955), but there are still many doubts and ambiguities.

III. *How Has the Lobbying Act Been Administered?*

The basic responsibility for administering the Lobbying Act has been assigned by Section 9909 of the act to the Committees on Legislative Representation of the Assembly (*see* Assembly Rule 20) and the Senate (*see* Senate Rule 57, and also the Legislative Counsel's analysis of committee powers and duties on pp. 138-142 of the Senate Journal for January 12, 1951). The main responsibility of these committees is to review the registration and report statements that have been filed with the Legislative Analyst, and to issue "Certificates of Registration" to all persons who have registered as legislative advocates and have complied with the code of ethics that appears in Section 9910 of the act. These certificates have no legal effect and are granted with only a minimum of inquiry, but the rules provide for hearings in case of controversy.

The registration and report statements that have been filed are available to the public in the Legislative Analyst's Office, and lists of all the legislative advocates and the organizations they represent are published at regular intervals. (*See,* for example, the list published by the Assembly on October 1, 1955; p. 733 of the Senate Journal for February 28, 1955; and the Assembly Journal for June 8, 1955 (Part Two), where the lobbyists' reports were reprinted.) The Legislative Analyst's Office also distributes the appropriate forms, on request. There are three forms: one for those who solicit or receive funds; one for registration of legislative advocates; and one for the monthly reports of legislative advocates.

IV. *What Other Laws Relate to Lobbying?* *

As we noted at the outset, the most important of the California laws on lobbying is the Lobbying Act itself. A discussion of the lobbying problem is not complete, however, until reference is made to certain provisions in the Constitution and in the California Codes. By way of

* For information regarding the federal act and the lobbying laws of other states, *see* Newman and Surrey, *Legislation* (1955), Chap 2, *cf.* Newman, "Lobbyists' Letters," 44 A B A.J. 988 (1958).

background, for instance, one must always keep in mind the following provision of Section 10 of Article I of the Constitution, which guarantees the right to petition:

> "The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances."

In addition, there are specific proscriptions of certain kinds of lobbying activities. Most of these can be classified under the general heading, "Lobbying as a Crime"; but there are also a few miscellaneous provisions dealing with such subjects as cinch bills (Gov. Code, Sec. 9056) and free passes (Calif. Const., Art. XII, Sec. 19). The most important of these provisions are quoted below. They have had only a limited application; there are relatively few judicial opinions concerning them; and in most cases their meaning has to be determined solely by a careful study of the statutory terms:

A. Lobbying as a Crime

"Any person who seeks to influence the vote of a Member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any Member of the Legislature, who shall be influenced in his vote or action upon any matter pending before the Legislature by any reward, or promise of future reward, shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office or public trust."—California Constitution, Art. IV, Sec. 35.

> "Every person who gives or offers to give a bribe to any Member of the Legislature, or to another person for him, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his vote, or in not attending the house or any committee of which he is a member, is punishable by imprisonment in the state prison not less than one nor more than 10 years."—Penal Code, Sec. 85.

> "Every member of either of the houses composing the Legislature of this State who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or gives, or offers, or promises to give any official vote in consideration that another Member of the Legislature shall give any such vote, either upon the same or another question is punishable by imprisonment in the state prison not less than one nor more than 14 years, and upon conviction thereof shall, in addition to said punishment, forfeit his office, be disfranchised, and forever disqualified from holding any office of public trust."—Penal Code, Sec. 86.

"Every person who obtains, or seeks to obtain, money or other things of value from another person upon a pretense, claim, or representation that he can or will improperly influence in any manner the action of any member of a legislative body in regard to any vote or legislative matter, is guilty of a felony."—Government Code, Sec. 9054.

B. Cinch Bills

"Any person who shall secure through his influence, knowingly exerted for that purpose, the introduction of any bill, resolution or amendment into the State Legislature and shall thereafter solicit or accept from any person other than a person upon whose request he secured such introduction, any pay or other valuable consideration for preventing or attempting to prevent, the enactment or adoption of such measure, while it retains its original purpose, shall be guilty of a crime and upon conviction thereof shall be punishable by a fine of not exceeding five thousand dollars ($5,000) or by imprisonment in the county jail for not more than one year or in the state prison for not more than five years, or by both such fine and imprisonment."—Government Code, Sec. 9056.

C. Free Passes

"No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket, by a Member of the Legislature or any public officer, other than Railroad Commissioner, shall work a forfeiture of his office."—California Constitution, Art. XII, Sec. 19.

V. *Proposals for Revision of the Lobbying Law*

Since its enactment, there have been many proposals for change in the California Lobbying Act. One of the most complete critiques of the statute appears in the 1953 report of the Special Senate Committee on Legislative Representation. The Legislature in 1953 passed certain bills that would have effected changes, but these were vetoed by Governor Warren. At the present time the Assembly Committee on Legislative Representation is conducting hearings with a view toward improving the act. It is interesting to note that similar interest in improving lobbying controls exists in the United States Congress, and Senator McClellan and others have recently been active in promoting further consideration of the Federal Act. (*See*, e.g., pp. 559-611 of the Hearings before the Special Committee to Investigate Lobbying, United States Senate, Oct. 9, 1956; Lyon and Stanhagen, "Lobbying Liberty, and the Legislative Process," 26 Geo. Wash. Law Review 391 (1958).

THE UNIVERSITY OF CALIFORNIA

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DWIGHT WALDO
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THE UNIVERSITY OF CALIFORNIA

By RUSSELL BARTHELL
Assistant to the Chancellor, UCLA

UNIVERSITY ASSISTANCE TO THE LEGISLATURE

The complex problems of modern government presented to the Legislature for solution emphasize the need for legislative staff and informational services, and the university has been privileged to assist and to complement the excellent services and programs already described. In keeping with its resources and with its primary functions of teaching, research, and related public service, the university has over the years offered direct informational services to the Legislature and interim committees through its Bureaus of Public Administration and Governmental Research, and through occasional specialized assistance from members of its teaching and research staff in various disciplines. Also, from time to time the university has undertaken special or expanded programs of professional, technical and scientific research in fields of expressed legislative interest including co-operative surveys and continuing studies of the needs of the State in higher education; but first, let us consider the more direct services.

BUREAU OF PUBLIC ADMINISTRATION

For regular sessions of the California Legislature, the Bureau of Public Administration prepares and publishes survey reports on problems of current importance—its so-called Legislative Problems series. The aim of these reports is to present in concise form facts, issues, and opinions which will aid in making possible informed consideration of the problems. The bureau seeks to be nonpartisan and objective and makes no recommendations on proposed legislation.

A legislative problems series contains 8 to 10 reports Members of the Legislature are circularized as each report is published, and each member who indicates interest receives a copy. In selecting topics for study, many legislators — especially committee chairmen — are interviewed, and a check-list of suggested topics is circulated to all legislators so that preferences can be registered. In general, the subjects on which the bureau does legislative research tend to deal with "governmental" problems rather than economic problems or problems falling within the field of competence of technical research agencies of the university.

Among the titles in the 1957 Legislative Problems series, for example, were: *Medical Care for Welfare Recipients—Basic Problems; Recreational Use of Water Supply Reservoirs; Federal Highway Legislation of 1956 and Its Impact on California;* and *State Construction Projects and Local Government Services.*

In addition to the legislative problems series, the bureau—at the request of individual legislators, prepares shorter, typewritten reports. The number of such typed special reports which can be done is

naturally limited by the bureau's resources, in terms of staff time and specialization, but requests for such informational service are always proper and welcome.

Interim committees make use of the research facilities of the Bureau of Public Administration on those occasions in which their needs and the resources of the bureau are in accord. Typically, a committee requests a study of a particular problem, and the report which is presented by the bureau to the committee is published as a legislative document. A recent example is: California Legislature, Assembly Interim Committee on Conservation, Planning, and Public Works, *Adapting Government to Metropolitan Needs: A Review of Organizational Devices*, by Stanley Scott Assembly Interim Committee Reports, 1955-1957, v. 13, no. 11, March, 1957.

A bureau publication of special interest to legislators is *California Public Survey*, a monthly digest of public affairs—national, state, and local, with emphasis, of course, on California affairs. The aim is brevity, relevance, promptness. Opinions as well as "facts" are reported but the *Survey* contains no editorial material of its own. *California Public Survey* is available on request, and a sample copy and reply card are sent to each new member of the Legislature.

To carry on its research activities, the bureau has a small staff of professional researchers, supplemented by part-time research service by faculty members and advanced graduate students. In addition to its program of legislative assistance, the bureau has, of course, other research and informational service activities.

The Bureau of Public Administration library is widely recognized as one of the best public-affairs libraries in the United States. The collection consists mainly of public documents, pamphlets, and periodicals dealing with public affairs, ready access to which is assured by a highly efficient subject-matter index maintained in card files. Legislators as well as their research assistants are invited to make use of this valuable collection.

BUREAU OF GOVERNMENTAL RESEARCH

The Bureau of Governmental Research, established on the Los Angeles campus by the Board of Regents in 1938, serves purposes that are similar in several aspects to those of the Bureau of Public Administration at Berkeley, and activities of the two bureaus are, of course, coordinated by their respective directors. The Bureau of Governmental Research makes studies of present-day governmental problems, chiefly those relating to state and local government, and publishes reports.

In 1958, a public policies program was established in the Bureau of Governmental Research to conduct research relative to selected subjects that are basic to the development of public policies at state, national, or local levels. The program staff has played a large part in the revision of the State Education Code, serving as the co-ordinating agent and bringing into the work experts from several institutions. Other subjects of public policy studied include: education and training of planners, encroachment of urban development on agriculture, problems involved in transfer of water resources between jurisdictions. The public policies program plans to bring the services of various specialists within the university to bear upon the subjects that are selected for study.

A second unit of the bureau is the urban studies program. It has made studies of the borough plan of metropolitan government and of state administrative organization for legislative interim committees, prepared material on intergovernmental contracts for the interim committee hearings, and has contributed to the legislative reference series. The bureau has published studies concerning government of metropolitan areas, municipal incorporations, county government, planning administration, personnel administration, intergovernmental relations, co-operative governmental purchasing, budgeting and governmental finance, council procedures, and election administration. Among the recent subjects published are: "Tax Exemption in Municipalities," "Metropolitan Growth in Orange and San Diego Counties," "Chambers of Commerce in a Metropolis." The bureau has made several studies of intergovernmental relations in the metropolitan regions. It maintains a special reference library of government documents, special reports, and other basic material. This library, together with the university library's holdings, makes a strong resource for ready information and research on a broad range of topics. Most of the bureau's research reports have been based upon field inquiries, questionnaires, interviews, and study of official records, as well as library resources. Inquiries may be directed through university channels to: Bureau of Governmental Research, 46 Library Building, University of California, Los Angeles.

LEGISLATIVE INTERN PROGRAM

The purpose of the California Legislative Internship Program, inaugurated in 1957, is to supplement the staff assistance of the Legislature and to provide training in the process of legislation and policy formulation for advanced graduate students of California institutions. Interns serve on a full-time basis from September through June, rendering research and administrative assistance to committees or legislative officers. The program is jointly sponsored by the Claremont Graduate School, Stanford University, University of Southern California and the University of California at Berkeley and Los Angeles. It is administered by the University of California in co-operation with the Assembly. Interns receive a stipend, one-half of which is paid by the Assembly, one-half from a Ford Foundation grant to the university. During the current year nine interns are serving the Assembly.

SPECIALIZED ASSISTANCE

On occasion, members of the university's teaching and research agencies in agriculture, economics, education, engineering, government, law, medicine, public health, social welfare, and other professional fields have furnished information to the Legislature and its committees upon request. This has usually been in the form of assistance to established interim committees such as the Joint Interim Committee on Agriculture and Livestock Problems, the Subcommittee on Mass Rapid Transit of the Joint Interim Committee on Transportation Problems, and the Interim Committee on Salt Water Conversion; and staff members have participated by attending committee meetings or otherwise furnishing information on technical problems based upon the results of studies completed or under way and where applicable in co-operation with the state department concerned. From time to time, as an extension

of such liaison, funds have been provided for the university to undertake special studies in its field of competence or to expand its research on matters of immediate concern. For example, among such studies in agriculture have been research on vesicular exanthema and expanded research on specific insect pests threatening the State's agricultural industry. Also a study is under way on eradication of Scotch Broom and a report on the reaction of certain sensitive crops to the use of 2,4-D was made to the Legislature in January of 1958. These developments would fall, however, under the next category of special or expanded programs.

SPECIAL OR EXPANDED PROGRAMS IN PROFESSIONAL, TECHNICAL AND SCIENTIFIC FIELDS

Also, among the special or expanded activities that the university has undertaken since World War II and in which there has been an expressed legislative interest are programs of particular concern to other important segments of the State's economy such as the real estate program, research in public accounting, and the statewide institutes of marine resources, industrial relations, and traffic and transportation engineering.

Responding to resolutions of the Legislature requesting reports of the university's and the State's role in certain professional, technical and scientific fields relating to the health and general welfare of the population, the university has undertaken surveys for determining needs for teaching, research, service programs and support. An illustration is the study requested by Senate Concurrent Resolution No. 84 of 1957 asking the university and the State Department of Natural Resources to prepare a program and recommendations jointly on needed research and field studies regarding minerals and mineral industries, including exploration, mining and utilization of ores. A progress report was made in 1958 and a final report is expected to be submitted to the 1959 Session.

In addition, expanded and co-ordinated universitywide programs of technical and basic research are being developed in the fields of water problems and of air pollution.

In water problems for example the university has recently established a statewide Water Resources Center which is co-ordinating and supporting research on these problems at the Berkeley, Davis, La Jolla, Los Angeles, and Riverside campuses. It has produced some 16 reports and recently met with the State Senate's Committee on Water Projects. Among the research projects in progress are studies of water law, engineering studies of ground water, hydraulics, water reclamation, and optimization of complete water resources; studies of water economics; studies of isotopic variations in natural waters to identify waters moving from one basin to another; and agricultural studies of leaching requirements of irrigation water, water requirements of various plants, plantings to improve watershed yields and responses of plants to salinity.

STUDIES OF THE NEEDS OF THE STATE IN HIGHER EDUCATION

With the great expansion of the State's population the increasing demands for trained scientific and specialized manpower and the ever-increasing number of Californians in the college-age group who seek a college or university education, the Legislature has, by resolution and provision of funds, endorsed the undertaking of periodic surveys of the present and future needs of the State in higher education. These surveys have taken into consideration not only the University of California and the state college systems but also the junior colleges and the private institutions as well. In the postwar period two such comprehensive surveys have been conducted and published under the auspices of the Liaison Committee of the State Board of Education and the Regents of the University of California. The first was issued in 1948 under the title "A Report of Survey of the Needs of California in Higher Education," and more recently an extensive reappraisal was undertaken and published in 1955 with the title "A Restudy of the Needs of California in Higher Education." These surveys reports have been distributed to all Members of the Legislature. The Liaison Committee is a continuing body concerned with the consideration of plans for the co-ordination of higher education in California and is assisted by a joint staff. Between major surveys the committee conducts interim studies of proposals affecting the State's System of Higher Education, which arise as a result of interest expressed in various ways including resolutions of the Legislature. More recently in 1957 a special study was submitted on "The Need for Additional Centers of Public Higher Education in California." In response to such resolutions three area studies of needs in higher education are being submitted to the 1959 Session; the north San Francisco Bay counties, the four counties south of San Francisco, and Los Angeles County.

CHANNELS FOR ASSISTANCE

As a matter of established policy, the regents of the university in their standing orders have designated the president of the university as the officer responsible for institutional relations with state authorities. President Kerr has in turn designated the university's Vice President—Governmental Relations and Projects, James H. Corley, to assist him generally in maintaining these contacts. Thus, as a general rule, proposals for assistance should be addressed to the President of the University of California, at Berkeley or at Los Angeles, or presented to Vice President Corley. This procedure permits a co-ordinated approach by the university to its staff and resources which are located on some eight campuses and numerous minor centers in the State and span the fields of learning alphabetically from agriculture to zoology. As related to the activities presented in this paper this procedure is especially commended in establishing university contacts with respect to specialized assistance, special or expanded programs and studies of higher education. With respect to the general and continuing programs of assistance, such as that offered by the Bureau of Public Administration, requests for information may be sent directly and as indicated in earlier paragraphs.

APPENDIX

ORIENTATION CONFERENCE

SENATE AND ASSEMBLY OF THE STATE OF CALIFORNIA

Sponsored by the Rules Committees of the Senate and Assembly

January 3 and 4, 1959
Room 2170, State Capitol

SATURDAY, JANUARY 3, 1959

9.00 a m.	Opening Remarks Ralph N. Kleps, Legislative Counsel, Chairman of Conference
9.10 a.m.	Relationship with the Press Richard Rodda, Sacramento Bee
9.30 a.m.	Discussion
9.40 a.m.	The Function of the Auditor General William H. Merrifield, Auditor General
10 20 a.m.	Discussion
10.30 a.m.	Recess
10.45 a.m.	The Legislative Bill Room Paul E. Gallagher, State Printer
11.05 a.m.	Discussion
11.15 a.m.	The Function of the Legislative Analyst A. Alan Post, Legislative Analyst
11.45 a.m.	Discussion
12 00 m.	Adjournment
2.00 p.m.	The Function of the Legislative Counsel Ralph N. Kleps, Legislative Counsel
2 30 p.m.	Discussion
2.45 p.m.	The Sergeant at Arms Tony Beard, Sergeant at Arms of the Assembly
3.05 p.m.	Discussion
3.20 p.m.	Recess
3.30 p.m.	The State Archives Dr. William Davis, Historian
3 50 p.m.	Discussion
4 00 p.m.	The State Library Carma L. Zimmerman, State Librarian
4.20 p.m.	Discussion
4.30 p.m	Adjournment to the Governor's Office

SUNDAY, JANUARY 4, 1959

9 00 a.m.	Legal Basis for the Organization of the Senate and Assembly A. C. Morrison, Chief Deputy Legislative Counsel
9.45 a.m.	Discussion
9.55 a.m.	Organization and Procedure of the Senate Joseph A. Beek, Secretary of the Senate
10.05 a.m.	Discussion
10.15 a.m.	Recess
10.30 a.m.	Organization and Procedure of the Assembly Arthur A. Ohnimus, Chief Clerk of the Assembly

11.30 a.m.	Discussion
12.00 m.	Adjournment
2.00 p.m.	Legal Aspects of Legislative Representation Frank C. Newman, Professor of Law, University of California
3.00 p.m.	Discussion
3.15 p.m.	Recess
3.30 p.m.	The University of California Russell Barthell, Assistant to the Chancellor, U. C. L. A. Dwight Waldo Douglas Jay Doubleday
4.30 p.m.	Discussion
4.45 p.m.	Adjournment

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JOINT INTERIM COMMITTEE REPORTS—1959-1961

REPORT OF THE

JOINT LEGISLATIVE COMMITTEE FOR THE REVISION OF THE EDUCATION CODE

MEMBERS OF COMMITTEE

ASSEMBLYMEN

SHERIDAN N. HEGLAND,
Chairman

WILLIAM S. GRANT

GORDON H. WINTON, JR.

SENATORS

NELSON S. DILWORTH,
Vice Chairman

HUGH P. DONNELLY

DONALD L. GRUNSKY

Published by the

ASSEMBLY

OF THE STATE OF CALIFORNIA

HON. RALPH M. BROWN
Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON. WILLIAM A. MUNNELL
Majority Floor Leader

HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk

May, 1959

LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
May 12, 1959

To: The President of the Senate
The Speaker of the Assembly
And Other Members of the Senate and Assembly

Transmitted herewith is the Report of the Joint Legislative Committee for the Revision of the Education Code. This report presents a summary of the work of the committee to date, together with appendices, including an analysis of all trailer legislation prepared by the committee for submission after the completion of the structural reorganization of the Education Code. Also transmitted is a statement and analysis of initial endeavors concerning revision of major substantive areas and specific divisions of the code.

Respectfully submitted,

Senate
NELSON S. DILWORTH,
Vice Chairman
HUGH P. DONNELLY
DONALD L. GRUNSKY

Assembly
SHERIDAN N. HEGLAND, Chairman
WILLIAM S. GRANT
GORDON H. WINTON, JR.

ACKNOWLEDGEMENT

On behalf of the Committee, I should like to express appreciation for the work of former Assemblyman Wallace Henderson of Fresno.

Mr. Henderson steered through both Houses the legislation establishing this Committee.

During the first two years of its existence, he acted as its Chairman. His service was dedicated and effective.

Sincerely,

SHERIDAN HEGLAND, Chairman
Joint Committee on Revision of
Education Code

ACKNOWLEDGMENT

This report was prepared by Dr. Ernest A. Engelbert and Mr. Harold Fishman of the staff of the Bureau of Governmental Research at the University of California, Los Angeles, for the Joint Legislative Committee for the Revision of the Education Code.

TABLE OF CONTENTS

	Page
I. Major Objective of Code Revision	7
II. Legislative Committee Activities and the Stage I Bill	9
III. The Second Stage of the Education Code Revision	16
IV. The Third Stage of the Education Code Revision	17
Appendix A—Representatives and Organizations of the Citizens Advisory Committee to the Joint Legislative Committee for the Revision of the Education Code	23
Appendix B—Roster of Professional Staff Members	23
Appendix C—Summary of Stage I Assignments	23
Appendix D—Assignments of Divisions to Working Groups	25
Appendix E—Analysis of the Stage II Reports	25

I

MAJOR OBJECTIVE OF CODE REVISION

For a number of years there has been a growing opinion among both professional people and lay citizens that the State Education Code was in need of a major revision. The last reorganization of this code took place in 1941, and since that time an enormous amount of school legislation has been enacted, not all of which was effectively integrated into the existing code.

Among major criticisms increasingly heard were that the divisions and sections of the Education Code were not in orderly sequence, subject matter was not integrated, that the code contained many obsolete, ambiguous, and conflicting provisions, and that the general format of the code, including titles, annotations, and index, could be improved to make it more comprehensible and usable.

In response to this public sentiment, the Joint Legislative Committee for the Revision of the Education Code was created by the Legislature (1957 Regular Session, Chapter 2419) based upon Assembly Bill No 4118 introduced by Assemblyman Wallace Henderson. This committee was instructed to prepare a complete revision of the Code and to submit a report with recommendations. The committee was given the status of an interim committee, authorized to appoint whatever staff it needed, and was granted $65,000 for the Fiscal Year 1957-58, part of which sum was carried over to the Fiscal Year 1958-1959.

In September of 1957 the Joint Committee (which included Senators Dilworth, Donnelly, and Grunsky, and Assemblymen Hegland, Henderson, and Grant) met and elected Assemblyman Henderson chairman, and Senator Dilworth vice chairman. After public hearings and consultations with numerous educational authorities, the committee concluded that a thoroughgoing revision of the Education Code would be a difficult and time-consuming task and the work would have to be undertaken in orderly stages if the project was to be successfully concluded. At that time, the committee asked Dr. Ernest A. Engelbert and the Bureau of Governmental Research of the University of California, Los Angeles, in co-operation with the Legislative Counsel's Office and the Legislative Analysts' Office, to aid and assist it in the development of the research program preparatory to the revision. The initial work resulted in the committee adopting these objectives and work program:

1. The reorganization of the Education Code should be done in stages; each stage to represent a completed product which could be submitted to the Legislature.

2. The committee directed that insofar as possible work should begin on the structural and organizational aspects of the code, postponing substantive or controversial issues until the final stages of revision in order to minimize the chances of political disputes in the early periods of activity.

3. The committee approved a program of Education Code revision in three stages:

Stage I: Designed to produce a reorganized code with more logical arrangement and better integration of subject matter but without substantive change. The basic philosophy in this stage of the work was to perfect a document through rational sequencing, clear and precise titles, extensive cross-references, and a complete overhaul of a most inadequate index.

Stage II: Directed toward the preparation of specific pieces of legislation designed to remove glaring ambiguities, inconsistencies, omissions, obsolescences, and similar changes. This phase of the work was similarly to exclude controversial issues, since its objective was to "clean-up" the code rather than substantively revise it

Stage III: To result in an intensive study and extensive rewriting of specific divisions and subject-areas of the code.

It can be seen that this threefold approach possesses certain basic advantages Each stage represents a complete unit, designed to improve and revise the code upon the basis of specific objectives enumerated for that phase of the work. Furthermore, each stage is closely related to the succeeding one, with the work achieved in one sector providing the foundation upon which the next phase of the project is undertaken. Thus the endeavors of the staff in preparing Stages I and II were also directed toward providing the groundwork and points of departure for Stage III. This procedure was implemented by directing staff workers throughout the State to submit proposals and plans for Stages II and III while they were analyzing divisions, articles and sections of the code for the structural reorganization in Stage I. The result of the adoption and employment of this specific research design has provided continuity of research and methodology through successive stages, independent as well as interrelated work-projects by research teams, and an overall rationale directed toward a substantive revision of code areas considered most in need of reform by professional and lay citizenry.

II

LEGISLATIVE COMMITTEE ACTIVITIES AND THE STAGE I BILL

The joint committee embarked upon a number of activities to enlist public aid and support, and to secure considerable expert opinion for the revision of the Education Code The following statement is a summary of the actions taken by the committee, and of the suggestions that have been received in response to requests concerning recommendations for the code's improvement and revision It should be noted that this is not necessarily the view of the joint committee or its staff, but merely an objective review of what other organizations and individuals think should be done, and which provided a sample of opinion that could be employed as a general guide.

1. POLLING OF INDIVIDUALS AND ORGANIZATIONS

The committee sent out approximately 360 letters to various organizations and individuals, and by December, 1957, 120 replies were received. Many of the replies were quite extensive and included several pages of statement [1]

In terms of representation, the replies may be categorized as follows: local school administrators, 49; legal counsels and attorneys, 17; representatives of major educational groups, 12, college presidents and administrators, 12; professors and other academic personnel, 12; representatives from state departments including the Department of Education, 5; representatives of noneducational organizations, 6; miscellaneous, 7.

In general, the replies received from individuals were somewhat more extensive than those from the major educational organizations. The latter indicated great interest in the problem of code revision, but were somewhat hesitant to give specific recommendations until a later date, and were anxious to offer their services in a more general sense.

2. GENERAL REMARKS CONCERNING THE PROPOSED REVISION

A. The overwhelming majority of the replies expressed firm support for revision of the code and were in general agreement that much needed to be done. A few letters expressed the view that only parts of the code were in special need of change. Only two replies expressed some skepticism concerning revision, since it was feared that the improvements might be too inconsequential, and that vast revision was sorely needed.

B. The general sentiment appeared to favor revision of the code as a whole. Great concern was expressed regarding any attempt to revise the code by using "cut and paste" methods. Many of the statements

[1] A number of additional statements have been received since 1957 but have not been included in this analysis In general, the additions support the earlier replies

indicated the code could only be revised after the basic principles of the revision had been decided upon and a general program laid out. Many of the replies stated that to revise the code and change specific sections on an ad hoc basis would oversimplify the problem and create serious shortcomings.

C. Most of the respondents believed that legal and procedural changes in the code should go hand in hand with substantive revision. They did not feel that an extensive structural revision in which divisions and paragraphs of the code would be realtered could be easily accomplished without getting into some substantive matters. However, many of the statements indicated that a number of ambiguities, obsolete provisions, etc., could be dealt with without requiring any substantive changes.

3. LEGAL AND PROCEDURAL CHANGES

Following are the legal and procedural changes which were most frequently suggested in the statements:

A. Changes in format.
   1. Some of the divisions of the code should be reorganized and reintegrated.
   2. Section headings might be made a part of each chapter and included in the code in bold face type.
   3. Greater use should be made of charts, graphs, and other helpful methods of presentation. Formulas and equations might be more effectively presented for local school administrators and laymen.

B. The code should be thoroughly checked and reworked with respect to:
   1. Ambiguous provisions.
   2. Conflicting provisions.
   3. Obsolete provisions.

C. The index should be improved to make it more usable than it is at present.

D. Insofar as possible, the code should be rewritten to make it as understandable as possible to the large number of laymen who deal with it.

4. PROPOSED SUBSTANTIVE CHANGES

A. General substantive changes.
   1. A large number of the respondents felt that the entire code should be changed from a mandatory code to a permissive one. This held particularly true for school administrators at the local levels. It was generally felt that mandatory or prohibitive provisions should be spelled out and, unless otherwise explicitly stated, school officials should have discretion to take action. There was considerable agreement that if this were done the size of the code would be substantially reduced.
   2. Considerable sentiment was expressed for developing more uniform interpretation of provisions of the code. At present there appears to be great variance of interpretations on the part of

counsels and school officials Some believe that one interpretation should be binding on all jurisdictions. A few respondents suggested that the Attorney General's office might be the repository of the uniform interpretation power.

3. A number of communicants indicated that substantive revisions of the code and the translating of certain provisions of the code into administrative regulations would reduce substantially the overall size of the code.

B. By far, the most important specific substantive area for code revision was deemed to be in the field of local district organization, district powers, and operations. The statements pointed out the pressing need that California has, in view of the great expansion of education, to have a more rational school district organization. In this connection, the selection and appointment of local officials and school personnel came in for considerable attention.

C. The second most important area for code revision, as reflected in the statements of the respondents, was that of financial arrangements. This included the taxing powers, the bonding process, earmarking of funds, and related provisions.

D. Replies from representatives of the state colleges or persons concerned with higher education placed great emphasis on the need for re-evaluating the role of the state colleges especially with respect to emphasis on curriculum and teacher training. Among these letters there was considerable sentiment for liberalizing the provisions under which state colleges operate, and for making working arrangements more closely approximate to those of the University of California.

E. Many other substantive areas were mentioned by those interested in the Education Code revision, depending in large part upon the background of the particular individual or organization. All of the specific changes suggested were noted by the staff in the appropriate division or section of the code for study and analysis in the relevant stage of the work.

5. SUPPORTING STUDIES

In connection with the statements that were furnished to the joint legislative committee on the need for revision of the Education Code, the staff of the Bureau of Governmental Research assembled and analyzed other studies and reports which could serve as background for this project. As a result, the staff had: (1) the benefits of the work done previously by the California Law Revision Commission in 1954; (2) the findings of the Co-operative Clinic on the Education Code of California; and (3) the work done by the Code Revision Committee of the California Association of School Administrators. To these should be added a number of excellent research studies by the State Department of Education, the University of California, and professional educators, as well as reports of specific professional groups. The Bureau of Governmental Research staff was also in touch with representatives of some of the educational organizations which addressed statements to the legislative committee. The representatives of these organizations have

amplified their statements and made additional suggestions which they hoped might be translated into the formulation of the research undertaking.

6. RESULTS OF THE PRELIMINARY SURVEYS

In general, the findings of the Bureau of Governmental Research Staff derived from published studies and reports, supported the majority of the statements from organizations and individuals that were furnished to the legislative committee. The conclusions suggested an extensive task for revision with a requisite need for careful planning. Close co-operation was necessary, and was maintained, between the legal, educational, and research personnel in the formulation and throughout the entire conduct of this project to the present date.

In addition to correspondence by mail, the committee held five public hearings during the program of revision for the purpose of receiving testimony and acquainting the public with what was being done. The hearings were held in Monterey on November 30, 1957, in Los Angeles on December 27, 1957, in Sacramento on May 27, 1958, in Sacramento on September 30, 1958, and in Berkeley on December 29, 1958. Also, in early 1958, a citizens' advisory committee was appointed to review the technical work of the staff and to serve as an advisory body to the Joint Legislative Committee. (A list of individuals and organizations serving on this committee is given in Appendix I.) The advisory committee was kept constantly appraised of the work in progress, and in addition to its advisory capacities served as a liaison and co-ordinating body between the joint committee and staff and the many interested organizations.

At its meeting of December 27, 1957, in Los Angeles, the Joint Legislative Committee adopted the following resolution:

"1. The committee staff be instructed to proceed with the structural revision of the code including a reassembly of paragraphs and sections involving only minor change; this to include the preparation of a new table of contents; and
2. That the committee staff also be instructed to proceed with the preparation of individual bills for resolving any procedural conflicts such as removing obsolescences, ambiguities, duplication or technical conflicts, at the same time clarifying the meaning of the rearrangement of those paragraphs in need of such revision; and
3. That the committee staff be instructed to identify substantive and policy conflicts in the code which may, at a later date, be given committee consideration."

On the basis of this directive, the replies received to correspondence, and the hearings held in Monterey and Los Angeles in November and December, 1957, the Joint Legislative Committee decided that the first order of business was the preparation of the Stage I bill, the structural reorganization of the code based upon a new and revised outline.

The Process of Formulating the Stage I Bill

As a basis for organizational studies or taking any other significant steps relating to the revision of the California Education Code, it was essential that the plan of organization or outline be generally agreed upon. Participating in the development of the outline was a group

which included Dr. George Hogan and Mr. Lawrence Kearney of the State Department of Education, Mr. Angus Morrison of the Legislative Counsel's office, Professors William Briscoe and Edgar Morphet of the University of California, and the staff for the Joint Legislative Committee under the direction of Dr. Ernest Engelbert and composed of a team of political scientists and lawyers from the Bureau of Governmental Research at the University of California, Los Angeles.

The synthesis of views among these individuals, the Joint Legislative Committee, and the Citizens Advisory Committee resulted in the production of a new outline to provide the framework for the preparation of the Stage I bill.

The actual research and work on the code revision was accomplished by teams of educators, lawyers, and social scientists located at seven major institutions, namely, the University of California, Los Angeles and Berkeley, Stanford University, Fresno State College, Fresno Junior College, San Diego State College, and San Francisco State College.[2]

Insofar as possible, the work was assigned to teams upon the basis of special fields of knowledge, experience, and competence which personnel in the teams represented. The Bureau of Governmental Research at the University of California, Los Angeles, acted as co-ordinator and headquarters office for the work and integration of the various groups.

Machine Data Processing

For the first time, so far as is known, machine data processing has played a major role in code revision in California. Early in the project it was decided that I.B.M. methods could be used to facilitate and systematize the work. As a result, each section of the code was placed upon an I.B.M. card with the salient information necessary for the development of a new code. Many of the staff, at first skeptical of using machine data processing for legal revision, quickly became convinced of the utility of the system in dealing with innumerable items in sorting, content analysis, cross-referencing, and other procedures.

An analysis of the mechanics employed in the machine data process demonstrates the advantages of using this system as well as the process resulting in the final product The facilities of the Western Data Processing installation at the University of California, Los Angeles, were made available to the staff of the committee for the entire Stage 1 revision at a cost of approximately $50, to cover tabulating cards and necessary paper. Members of Western Data Processing, and several members of the faculty donated their assistance in explaining the operation of the I.B.M. machines for obtaining the optimum technical advantage.

The following basic steps were performed in the use of the machine-records process:

1. The preparation of a coding classification which included 50 major headings together with sub-headings.
2. The identification and punching of items on machine cards including section numbers, subject matter and new code assignments.
3. The machine preparation of sheets by subject-matter.

[2] The rosters of individuals and institutions that participated in the work of code revision are listed in Appendices B, C, and D.

4. Machine rearrangement of punch cards to conform with new code outline.
5. The machine-preparation of sheets listing sections in their final order, and showing the division, chapter, and article to which they were assigned.
6. Assignment of new section numbers to all sections and punching these numbers into the cards, including the information concerning precisely what has happened to the section.
7. Printing of I.B M. sheets showing the following information:
   a. The division, chapter, article, and section number of each section in the order in which it now appears.
   b. The old section number.
   c. The indication of what has transpired regarding the section during the process of revision.
8. Analysis and post-audit of the revision.
   By use of the I.B.M cards, a complete analysis of the revision was made for purposes of inspection and review.

The implications of machine data processing in this type of legal revision, and the great success with which it was employed by the staff of the committee might be noted and considered for further application where feasible by the Legislature. There is no doubt that the use of I.B.M. methods saved much time and money in this particular project. It is interesting to note that in a memorandum to the Law Revision Commission on March 2, 1955, George Brunn, Legislative Analyst, stated that in considering continuation of the Education Code project the length of time needed to accomplish the revision using standard procedures and methodologies, "and assuming the project can get underway again early in the fall of 1955, as a very rough guess the last of the revisions might be completed in time for the 1961 Session of the Legislature." Through the use of I.B.M. methods, the joint committee will conclude the current revision in approximately one-third of the time estimated by the Law Revision Commission.

Further Changes in the New Code

One of the major criticisms of the old code was that its index was inadequate for use by both professionals and laymen. Consequently, the staff of the Joint Committee was instructed to prepare a new, comprehensive, and usuable index for inclusion with the structural reorganization when the new state code was published. This index was prepared by using the old code index as a base, and supplementing the data through analysis of other code editions and the complete subject-matter classification available through the use of the I.B.M. record cards employed in the original coding process. It was thus possible, through the use of these sources, to compile a new index for the reorganized code that would be more complete and simplified in structure, and of increased value for those who would be using it. This index will be printed as part of the new Education Code.

Another improvement that will be found in the new code is the addition of cross-references following relevant sections within the code. Certain provisions of the code are only complete when analyzed in reference to related matters found in other codes. Modifications and limits

upon matters dealt with in one code should be readily available to the individual confronted with specific code provisions. Administrative procedures are improved when cross-references and footnotes supplement the basic provisions. Similarly the cross-references will help identify the ramifications of particular provisions or subject matter. Thus, the new code will contain a complete set of cross-references to relevant provisions found in the other California codes, as well as to internal references of value within the Education Code itself. In this instance also, machine records processing can insure a fairly complete and accurate tabulation of internal cross-references for inclusion after each separate section.

In addition, new and more complete titles have been added for each section of the revised code. These will appear in bold face type at the beginning of each section and will aid the user in more effective identification of subject-matter within the code.

Adoption of the Stage I Bill

On February 3, 1959, Governor Brown signed Senate Bill No. 2. The Joint Committee directed the Senate members, Senator Dilworth, Senator Donnelly and Senator Grunsky to introduce the bill. On their request, it was preprinted. This bill passed both the Senate and Assembly by unanimous vote. Each house of the Legislature provided a meeting of the entire membership in a Committee of the Whole for discussion of the bill. The Hon. Wallace Henderson, retired Chairman of the Committee, and Dr. Ernest Engelbert, Director of Research, were permitted to speak on the measure in addition to the members of the Legislature

This bill represented the conclusion of the first phase of the committee's work, and consisted of an entire structural reorganization without substantive change of the Education Code. Since this new code, with crossreferences, index, table of contents, and new titles, will not be available before the end of 1959, an interim code will be published in the same form as Senate Bill No. 2, and provided with conversion tables showing the disposition of old sections within the new code, and also new code sections in reference to the old code The publication of this interim code should prevent any difficulties from arising during the transitional period prior to the publication of the complete new code.

III

THE SECOND STAGE OF THE EDUCATION CODE REVISION

Stage II of the code reorganization was undertaken simultaneously with Stage I. As mentioned above, this phase of the work was directed toward the preparation of specific pieces of legislation which were designed to remove glaring ambiguities, inconsistencies, omissions, obsolescences, and effect similar changes. Sections which would require major redrafting for purposes of better comprehension were noted, and recommendations were to be formulated concerning areas of the code which warrant further substantive study. The basic rationale underlying this part of the project was to not embark upon issues that would involve controversy or questions of policy, but merely to effect nonsubstantive revisions which would result in an up-to-date, logical, and totally comprehensible document.

Each team prepared its own Stage II report and submitted it to the central office shortly after completion of Stage I materials The staff analyzed and compiled these suggestions along with other recommendations distilled from major interest groups and prior endeavors of the Law Revision Commission. These proposals were then forwarded by the staff to the Legislative Counsel and the Joint Committee for a review of their merits and noncontroversial character.

Stage II work was completed in January, 1959, and resulted in the preparation of approximately 250 specific recommendations for legislation, the great majority involving no substantive change whatsoever, in the opinion of the Legislative Counsel. To insure the noncontroversial nature of these bills, the Committee sent a random selection of the proposals to individuals directly interested in the code revision in order to obtain their opinions and reactions. These parties agreed that the vast majority of the recommendations were noncontroversial, and could probably be expected to pass without debate A complete analysis of these Stage II proposals is appended to this report.

IV

THE THIRD STAGE OF THE EDUCATION CODE REVISION

The third point contained in the resolution adopted by the Joint Legislative Committee at its meeting of December 27, 1957, in Los Angeles directed, "that the committee staff be instructed to identify substantive and policy conflicts in the code which may, at a later date, be given committee consideration."

Stage III work commenced in January, 1959, and is still in its formative period. To date, the following steps have been undertaken:

1. Collation of all the proposals which have been made since the committee's inception for intensive rewriting and substantive changes in the code.
2. Work on the establishment of a general research procedure including the establishment of a common format for analysis of problems, and the provision of specific examples to point up the need for further study in each case. This work is currently in progress.

As a result of the committee meeting of February 3, 1959, the staff was requested to present to the Committee on February 17, specific examples in areas considered for study in Stage III. Determination of the areas to be undertaken for revision in Stage III is based upon the following factors:

1. The results of the correspondence with hundreds of educators, academicians, and other experts and interested parties in the field of education.
2. Prior endeavors by the Law Revision Commission in 1954.
3. Analysis of proposals deemed necessary for further study by the field teams of the committee's staff which worked on Stages I and II.
4. Conclusions synthesized as a result of the staff's continuing work with the code.

On the basis of the foregoing analysis, the staff recommended that the following considerations should govern the work on Stage III:

1. The primary emphasis should be placed upon organizational and procedural matters and clarity of presentation Insofar as possible, major philosophical and ideological matters, e.g , the validity of credentials or the quality of textbooks, should not be dealt with by this Committee.
2. Work should be undertaken in specified divisions or areas rather than upon the whole code at once, so that definite portions of the code will be completed and consistency maintained in subsequent revisions.
3. Work should be undertaken by experts for specific areas in which close collaboration should ensue between lawyers and educators.

It would also be advisable to employ staff personnel who have worked on corresponding divisions in Stages I and II of the revision.

4. Co-ordination between experts should be continued as before, to establish overall standards for drafting and presentation and to provide consistency and integration between divisions
5. The counsel of the Citizens Advisory Commission should be drawn upon for evaluation and assistance as the work progresses.

Subject Areas Recommended for Further Study

On the basis of the above analysis, the following subject areas are considered most important for revision in Stage III. These areas are listed by priority in two categories.

Category I represents subject matter confined primarily to specific divisions of the code. Category II involves subject matter which cuts across a number of divisions of the code. Specific examples have been drawn for each of the categories.

Category I

1. **School District Organization, Reorganization, and Annexation.** The great majority of respondents recognized that priority attention be given to district organization. Emphasis should be on clarification of powers, types of districts, and methods of organization and reorganization Consideration could be given to the development of a legal framework that would lead to the desirable forms of school district organization.

2. **School Property and Construction.** Most respondents felt that this area was much in need of review. For example, the use of school property for public purposes may possess financial benefits to the district not yet exploited. Furthermore, the procedures employed in the process of construction are very vague and probably costly due to such imprecision. In addition, certain opinions of the Attorney General have ruled that practices under specific leases are not valid in accordance with the Education Code, the result being that a considerable area of confusion has arisen.

3. **Finance and Bonding.** These provisions were considered in the vast majority of correspondence as worthy of study by the committee. Procedurally, the bonded indebtedness provisions omit important processes in the very determination of such liability. Attention might be directed toward an overall evaluation of existing procedures and their consequent difficulties, in the hope of establishing a clearer and more uniform financial presentation.

4 **Private and Public Relationships.** Code provisions pertaining to private schools leave considerable room for improvement. Under the present arrangement, most of our respondents believe that too much ambiguity is prevalent in defining standards for private schools. For example, there are no provisions for at least a minimum school day, nor for a minimum school year, nor does any reference exist as to who are "persons capable of teaching."

Category II

1. **Powers of Governing Boards.** Since it is the governing board that is basically responsible for the administration and efficiency of school districts, most experts have felt that much improvement is needed in specification of duties, their liabilities in legal suit, and the many inconsistencies existing in the relation between their powers and responsibilities.
2. **Elections.** Throughout the code many inconsistent procedures exist for similar kinds of elections, and consequently have provided a source of annoyance and confusion for school boards and administrators. Areas for study should include a clear specification of the electorate, some uniformity in procedures for notice and publication, an overall consistency in the call and conduct of elections, and a greater uniformity between election provisions in the Education, Government, and Election Codes.
3. **Standardization of Terminology.** Throughout the entire code there are many inconsistencies in titles and designations. For example, the word "employee" appears to be subject to different meanings in different parts of the code without any supplemental clarification. References to different responsibilities placed upon the same officer or agency often carry different designations in separate parts of the code.
4. **Simplification of Complex Provisions.** The entire problem of simplification of complex provisions should be considered, particularly in view of the fact that the code is used by laymen and administrators as well as lawyers. Some recommendations specify that complex formulae and computations be written in more graphic terminology which the layman can more easily understand. Other examples are evident in annexation procedures, intercounty eminent domain authority, and the bonding provisions.
5. **Uniformity of Interpretation.** Great variation exists in the operations and practices of school districts under specific provisions of the code. This has resulted from different interpretations by county counsels concerning the implications of specific code sections. Consideration could be given to establishment of a practice to provide a uniform interpretation of various code provisions to be followed by all school districts.

Current Status of the Revision

As described above, Stages I and II of the Education Code revision have been completed by the Joint Legislative Committee. The new Education Code, as enacted by the Legislature at its 1959 Regular Session, and the supplemental Stage II bills, provides the foundation for the revision already begun in Stage III, which will include more intensive study and extensive rewriting of specific divisions and areas of the code. Work will continue on this stage of the code revision for the duration of the committee's existence.

Throughout the entire project an immense amount of consultation has been undertaken with school administrators, practicing attorneys,

and specialists in various fields Though accurate count has not been kept in this respect, it is estimated that over 500 persons have had some association with this project. It is the intent of the Committee that citizen contact and public interest be perpetuated during Stage III for the purpose of assisting and supporting the continued development of an improved Education Code.

APPENDICES

Appendix A

Representatives and Organizations of the Citizens Advisory Committee to the Joint Legislative Committee for the Revision of the Education Code

Representative	*Organization*
Richard C. Bartlett, Downey	California School Employees' Association
Dr. E. Maxwell Benton, Los Angeles 14	California Taxpayers' Association
Hal D. Caywood, Santa Barbara	California Education Co-ordinating Commission
Frank J. Coakley, Oakland	California District Attorneys' Association
John Cotton, San Diego	California Real Estate Association
Dr. Thomas S. Dabagh (Deceased), Berkeley	University of California, Berkeley Campus
Francis Dunn, Hayward	County Supervisors' Association
Dr. Von T. Ellsworth, Berkeley 4	California Farm Bureau Federation
Sam Eubanks, San Francisco	California Industrial Union Council
Claude W. Fawcett, Palo Alto	California Education Study Council
Mrs. Patterson Goodrich, Los Angeles 46	California State Division of American Association of University Women
H. W. Heyl, Alhambra	California Association of Adult Education Administrators
George E. Hogan, Sacramento	Department of Education
Russell J. Kent, Burlingame	California Elementary School, Administrators Association
Robert E. McKay, San Francisco	California Teachers Association
Mrs. Llewellyn McMahon, San Francisco	California State Chamber of Commerce
William H. Neal, Los Angeles	League of California Cities
Mrs. G. J. Nelson, Calipatria	California Federation of Women's Clubs
Frank Armstrong, San Diego	California School Boards Association
Dr. Bill Priest, Sacramento	California Junior College Association
Charles L. Reilly, Los Angeles	Christian Science Committee on Publication
Miss Dorothy Sinclair, Sacramento	California State Library
Alton E. Scott, South Pasadena	California Association of Public School Business Officials
Thomas A. Small, San Mateo	California State Federation of Labor
Mrs. Donald Sutcliffe, San Francisco	League of Women Voters of California
Dr. James R. Tormey, Redwood City	California Association of School Administrators
Harold J. Whitlock, Berkeley 4	California Association of Secondary School Administrators
Mrs. W. W. Wood, Marysville	California Congress of Parents and Teachers, Inc.
J. Warren Wright, Bakersfield	California Council of American Institute of Architects

Appendix B

ROSTER OF PROFESSIONAL STAFF MEMBERS

Dr. Ernest A. Engelbert—Ph.D. (Director of Code Revision), Bureau of Governmental Research, University of California, Los Angeles

Charles E. Young—M.A. (Assistant Director of Code Revision 1957-1958), Bureau of Governmental Research, University of California, Los Angeles

Lorraine S. Baker—M.A., San Francisco State

William C. Beatty—Ph.D., Professor of Anthropology, Fresno State College

Stanton P. Belland—B.A., University of California, Los Angeles, Law Student

William R. Bigger—Ph.D., Associate Professor of Political Science, San Diego State College

Paul R. Bowers—M.S., Ed.D., Principal of Eureka High School

William S. Briscoe—Ed.D., Professor of Education, University of California, Los Angeles

Leon D. Cathey—B A , San Francisco State
Verne D. Close—B A., law student, UCB
Francis J. Ebert—M A., Stanford University
Norman L. Epstein—LLB. Practicing Attorney, Los Angeles
Mark F. Ferber—M.A University of California, Los Angeles
Harold C Fishman—M A , University of California, Los Angeles
Michael Harris—B A , law student, University of California, Los Angeles
Roderick D. Hayes—LLB. University of Michigan
Russell Kent—Ed D , Professor, School of Education, Stanford University
James D. Kitchen—Ph D , Associate Professor of Political Science, San Diego State College
Ephraim Kranitz—LLB, University of California, Los Angeles
Ralph V. Matthews—M A , teacher, Montebello High School
Edgar L. Morphet—Ph D , Professor of Education, University of California, Berkeley
Henry B. Niles—LLB. Practicing Attorney, Los Angeles
Rolf W. Ordal—Ph.D , Professor of History, Fresno City College
John G. Ross—Ed.D , Superintendent Kern County Schools, Lecturer, Fresno State College
Jerome H. Rothstein—Ed D., Associate Professor of Education, San Francisco State College
Frederic T. Shipp—Ed.D , Professor of Education, San Francisco State College
Louis H. Silverberg—LL.B., University of California, Los Angeles
Bryant M. Smith—LL.B , Stanford University
Hamilton A. Tyler—Graduate, Fresno High School
Arvo Van Alstyne—Professor, School of Law University of California, Los Angeles
Frank A Yett—Ed D , teacher, Pasadena City School System
William H. Young—B.A , teacher, Fresno City School System

Appendix C

SUMMARY OF STAGE I ASSIGNMENTS
(Based on Revised Code)

Division	*Group*
1	University of California at Los Angeles
2	University of California at Los Angeles
3	University of California at Berkeley
4	University of California at Berkeley
5	University of California at Berkeley
6	San Francisco State College
7	Fresno Junior College
8	San Diego State College
9	Stanford University
10	University of California at Los Angeles
11	University of California at Los Angeles
12	Tyler
13	Stanford University
14	Briscoe and Staff
15	Briscoe and Staff
16	Briscoe and Staff
17	University of California at Los Angeles
18	University of California at Los Angeles
19	San Diego State College
20	Fresno State College
21	University of California at Los Angeles
22	University of California at Los Angeles

Appendix D

ASSIGNMENTS OF DIVISIONS TO WORKING GROUPS
(Based on Revised Code)

Working Group	*Division Assignment*
Dr. Briscoe and Staff	
Division 14	State Financial Support and Management
Division 15	County Financial Support and Management
Division 16	Local Financial Support and Management
Fresno Junior College	
Division 7	Educational Program
Fresno State College	
Division 20	Libraries
San Diego State College	
Division 8	Instructional Materials
Division 19	Special Schools Under the Jurisdiction of the Department of Education
San Francisco State College	
Division 6	System of Public Instruction
Stanford University	
Division 9	Pupils
Division 13	Supplementary Services
Mr. Tyler	
Division 12	Management and Control of School Property
University of California (Berkeley)	
Division 3	County Organization
Division 4	Local Educational Agencies
Division 5	Organization and Reorganization of Districts
University of California (Los Angeles)	
Division 1	General Provisions
Division 2	State Educational Agencies
Division 10	Employees
Division 11	School Sites and Construction
Division 17	University of California
Division 18	State Colleges
Division 21	Private Educational Institutions
Division 22	Miscellaneous Provisions Relating to Education

Appendix E

ANALYSIS OF THE STAGE II REPORTS

Section numbers refer to sections of the Education Code as adopted by the Legislature at its 1959 Regular Session. The proposed changes represent staff recommendations for consideration by the committee.

New section number	*Nature of proposed change*
102	Deletion of obsolescence
152	Improvement in readability
259	Resolution of ambiguity
260	Rewriting for clarity
403	Deletion of obsolescence
457	Improvement in readability
605	Resolution of ambiguities
943	Resolution of conflict
960	Resolution of conflict
1063	Rewriting for clarity

New section number	*Nature of proposed change*
1069	Rewriting for clarity
1435	Rewriting for clarity
1484	Resolution of conflict
1741	Resolution of ambiguities
1972	Rewriting for clarity
5151	Deletion of redundancy
5152	Rewriting for clarity
5201	Rewriting for clarity
5203	Resolution of conflict
5204	Rewriting for clarity
5403	Combination of sections
5404	Repeal due to combination with 5403
5504	Rewriting for clarity
5555	Rewriting for clarity
5606	Rewriting for clarity
5609	Deletion of duplication (see 5612)
5611	Rewriting for clarity
5612	Rewriting for clarity
5662	Deletion of redundancy
5902	Rewriting for clarity
5952	Rewriting for clarity
6101	Deletion of obsolescence (repeal)
6102	Deletion of obsolescence (repeal)
6103	Deletion of obsolescence (repeal)
6104	Rewriting for clarity
6203	Rewriting for clarity
6368	Rewriting for clarity
6369	Rewriting for clarity
6370	Rewriting for clarity
6372	Rewriting for clarity
6373	Rewriting for clarity
6668	Rewriting for clarity
6707	Rewriting for clarity
6807	Deletion of obsolescence (repeal)
6904	Deletion of obsolescence
6911	Deletion of obsolete reference
7001	Rewriting for clarity
7854	Rewriting for clarity
8053	Rewriting for clarity
8151	Deletion of obsolescence (repeal)
8162	Rewriting for clarity
8451	Rewriting for clarity
8452	Rewriting for clarity
9251	Rewriting for clarity
9253	Rewriting for clarity
9254	Deletion of obsolescence
9256	Division of section
9604	Rewriting for clarity
10008	Rewriting for clarity
10553	Resolution of uncertainty
10601	Deletion of obsolescence
10608	Rewriting for clarity
10801–10814	Rewriting and renumbering for clearer presentation
10953–10956	Regrouping of provisions for purposes of clarity
11403	Resolution of uncertainty
11453	Resolution of uncertainty
11755	Deletion of duplication (see 11902)
11802	Resolution of ambiguity
11901	Resolution of ambiguity
11903	Addition of new material
11905	Resolution of uncertainty
11907	Rewriting for clarity

New section number	*Nature of proposed change*
12159	Rewriting for clarity
12405	Division of section for improvement of readability
12413	Clarification of uncertainty
12901	Rewriting for clarity
13105	Deletion of obsolete section
13136	Rewriting for clarity
13275	Resolution of conflict
13276	Deletion of duplication (see 917)
13288	Deletion of obsolete terminology
13291	Rewriting for clarity
13302	Resolution of ambiguity
13303	Deletion of obsolete section
13304	Deletion of obsolescence
13308	Deletion of obsolete section
13330	Deletion of obsolete section
13514	Deletion of duplication (see 13515)
13555	Deletion of obsolescence and division section
13584	Resolution of conflict (see 917)
13585	Resolution of conflict (see 917)
15001	Integration of similar sections
15003	Resolution of uncertainty (amend)
15052	Combination of sections
15053	Combine with 15052 (repeal)
15053	Addition of new section
15054	Rewriting for clarity
15056	Rewriting for clarity
15062	Addition of new section
15101	Rewriting for clarity
15151	Rewriting for clarity
15202	Rewriting for clarity
15204	Rewriting for clarity
15209	Incorporated in 15202
15209	Addition of new section
15302	Incorporated in 15416
15355	Deletion of obsolete section
15401	Correction of reference
15408	Resolution of uncertainty
15416	Addition of new section
15464	Rewriting for clarity
15502.1	Addition of new section
15515	Addition of new material
15653	Division of section
15654	New section after division of 15653
15804	Combination of sections
15805	Incorporated in 15804
15807–15810	Renumber of sections for correct placement
15811	Rewriting for clarity
15952	Rewriting for clarity
16051	Rewriting for clarity and combination of sections
16052	Rewriting for clarity
16055	Incorporated in 16051
16056	Resolution of ambiguity
16057	Deletion of duplication
16058	Resolution of conflict
16059	Resolution of uncertainty
16061	Addition of new material
16152	Combination of sections
16153	Incorporated in 16152
16203	Rewriting for clarity
16205	Rewriting for clarity
16253	Rewriting for clarity
16401	Rewriting for clarity

New section number	*Nature of proposed change*
16404	Rewriting for clarity
16406	Rewriting for clarity
16408	Rewriting for clarity
16517	Resolution of conflict
16519	Deletion of obsolescence
16520	Deletion of obsolete section
16557	Deletion of duplication (see 16552)
16632	Rewriting for clarity
17205	Deletion of obsolete section
17405, 17406	Repeal and combine as new section 17405
17602	Division of section
17603	Deletion of obsolete section
17605	Correction of reference to new section
17605.1	Addition of new section (see 17602)
17606	Deletion of obsolescence
17609	Rewriting for clarity
17610	Rewriting for clarity
17611	Rewriting for clarity
17652	Deletion of obsolete section
17658	Deletion of redundancy (see 17655.1)
17663	Rewriting for clarity
17667	Deletion of obsolescence
17702	Rewriting for clarity
17801	Deletion of obsolescence
17851	Deletion of obsolescence
17903	Deletion of obsolescence
17905	Deletion of obsolescence
17951	Deletion of obsolescence and rewriting for clarity
17952	Deletion of obsolescence
18051	Rewriting for clarity
18056 (a)	Combination of sections
18058	Incorporated in 18056 (a)
18351	Division of section
18351 1	Addition of new section
19685	Correction of reference
20155	Deletion of redundancy (see 20160)
20504	Rewriting for clarity
21757	Rewriting for clarity
21852	Rewriting for clarity
21853	Deletion of redundancy (see 21852)
23052	Deletion of obsolescence
23053	Rewriting for clarity
23056	Rewriting for clarity
23057	Rewriting for clarity
23101–23107	Deletion of obsolete sections
23202–23204, 23350	Addition of new material
23401	Deletion of incorrect designation
23457	Resolution of ambiguity
23602	Deletion of redundancy
23751	Rewriting for clarity
23952	Rewriting for clarity
24582	Rewriting for clarity
25608	Rewriting for clarity
25852	Rewriting for clarity
26001	Rewriting for clarity
26004	Rewriting for clarity
26153	Resolution of uncertainty
26501	Division of section
27005	Deletion of obsolescence
27051	Rewriting for clarity
27052	Combine with 27051
27204	Deletion of obsolescence
27365	Resolution of ambiguity

New section number	*Nature of proposed change*
27451	Division of section
27561	Resolution of ambiguity
27567	Deletion of duplication (see 27651)
27570	Rewriting for clarity
27572	Division of section
27653	Rewriting for clarity
27657	Rewriting for clarity
27660	Division of section
27868	Rewriting for clarity
27870	Division of section
27958	Division of section
27963	Rewriting for clarity
28256	Resolution of ambiguity
29057	Deletion of obsolescence
29058	Deletion of obsolescence
29060	Division of section
31163	Addition of new material
31204	Deletion of obsolescence and division of section
31351–31353	Deletion of obsolete sections
31452	Correction of reference

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JOINT INTERIM COMMITTEE REPORTS—1959-1961

Reports of

JOINT COMMITTEE ON LEGISLATIVE PROCEDURE

Suggested Procedure for 1959 Session

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Chief Clerk

LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, February 2, 1959

Hon. Ralph M. Brown
Speaker of the Assembly

DEAR MR. SPEAKER: I am transmitting herewith a copy of the report of the Joint Committee on Legislative Procedure dated December 15, 1958, which sets forth suggested procedures for the 1959 General Session. Although some of the suggested procedures have already been adopted, printed copies of the document will assist the members and others in considering the remaining proposals.

Also transmitted is the earlier report of the committee, dated March 6, 1956. This is the report which recommended elimination of the bifurcated session, which has since been accomplished, and other changes. This report contains much background material concerning the objectives sought to be accomplished by the new kind of session, as well as material relating to proposed changes in legislative procedures. It should also be of assistance in considering suggested procedures at this session, even though many of the suggestions it makes have already been adopted by the Legislature and by the people.

In order that these reports may be readily available, it is requested that they be ordered printed as a single document in the appendix to the Assembly Journal, and that 500 extra copies be printed.

Very truly yours,

ALLEN MILLER

TABLE OF CONTENTS

Recommendations

1. The General Session 10
   Annual Sessions 10
   Length of Session 11
   Bifurcated Session 11
   Digest and Index of Bills 12
   Delay in Passage of Bills 13
   Introduction of Bills 13
   Spot Bills 14

2. The Budget Session 14

3. Departmental Bills 15

4. Interim Committees 15

5. Matters Recommended for Further Study 16
   a Consent Calendar 16
   b. Committee Reference of Bills 16

Appendix A: Proposed Constitutional Amendment 17
   B: Proposed Joint Rule—Departmental Bills 18
   C: Proposed Joint Rule—Interim Committees 18
   D: Proposed Joint Rule—Digest of Bills 19
   E: Problems Concerning the Organization and Procedure of the Legislature 19

REPORT ON SUGGESTED PROCEDURE FOR 1959 SESSION

December 15, 1958

LIEUTENANT GOVERNOR HAROLD J. POWERS
President of the Senate

and

HONORABLE LUTHER A. LINCOLN
Speaker of the Assembly

Your committee has given careful consideration to the problems which the Legislature will face on January 5, 1959, in view of the abolition of the mandatory constitutional recess at the general election last November. The action of the voters in adopting Proposition No. 9 was based upon recommendations of this committee dating back to 1954 and upon those of the Citizen's Advisory Committee on Legislative Procedure in 1957 As the Legislature moves into the first general session of its kind since 1911, a splendid opportunity is afforded to set a framework for the efficient conduct of the Legislature's business. It is our hope that the folowing recommendations will help to achieve this goal.

1. INTRODUCTION OF BILLS

Under Proposition No. 9 no constitutional limitation exists on the introduction of bills. Theoretically, at least, hundreds of bills could be introduced within the last few weeks of the session, thus contributing to the last-minute "logjam" and creating pressures to dispense with the 30-calendar-day delay in hearing bills which was intended as a substitute for the constitutional recess The Legislature has always had provisions in the Joint Rules designed to reduce the last-minute rush, and your committee believes that the Joint Rules should restrict the free introduction of bills during the last portion of the session upon the same basic principle.

> **Recommendation**: The Joint Rules should prohibit the introduction of bills and constitutional amendments after 120 calendar days of the 1959 session have elapsed, except in cases of emergency and then upon five calendar days' notice, recommendation of the Rules Committee or some other appropriate committee of the house involved and a roll call vote of two-thirds of the elected members (This permits 120 calendar days of "free" introduction and 46 calendar days of restricted introduction.)

2. DISPENSING WITH THE 30-DAY DELAY IN HEARING OR ACTING ON BILLS

Proposition No. 9 provides that no bill may be heard or acted upon in committee or by the House until 30 calendar days have elapsed following its introduction. The Constitution also provides, however, that

this delay may be dispensed with upon a three-fourths vote of the elected members. Your committee believes that such dispensation should be granted only in cases of real urgency. If the basic purposes of Proposition No. 9 are to be carried out, the Legislature's procedures must be drafted with this principle in mind. The committee also believes that constitutional amendments should be made subject to the same limitations which apply to bills, even though the constitutional limitations apply only to bills.

Recommendation: The Joint Rules should subject constitutional amendments to a 30-calendar-day delay in hearing, just as bills are restricted by Proposition No. 9. Authors desiring to dispense with the 30-calendar-day delay should be required to give a five-calendar-day notice of intention to request such dispensation, and this request should be referred to the Rules Committee or to some other appropriate committee of the house involved for its recommendation. Only upon the favorable recommendation of the committee to which referred and a three-fourths rollcall vote of the elected members, should the 30-calendar-day delay provision of the Constitution and the Joint Rules be dispensed with.

3. DIGESTS OF BILLS, CONSTITUTIONAL AMENDMENTS AND JOINT AND CONCURRENT RESOLUTIONS

The recommendations of this committee and the advisory committee, which led to Proposition No. 9, included the idea that adequate public notice must be given concerning bills introduced into the Legislature if the 30-calendar-day delay in acting on bills is to be meaningful. Thus, the ballot pamphlet assured the voters that an impartial digest of each bill by the Legislative Counsel would be made available when each bill is introduced; and, in fact, a joint rule was adopted at the 1958 session providing for such a digest. Your committee believes that this information should be furnished with respect to constitutional amendments and joint and concurrent resolutions as well as bills The Legislative Counsel has assured us that this office can perform this service provided the pace of introduction can be slowed down in comparison with past general sessions.

To implement this procedure, no measure requiring a digest should be accepted at the desk for introduction unless it is accompanied by a digest summarizing its effect, which was prepared by the Legislative Counsel's Office or approved by that office. The digest should be furnished with enough copies so that extra copies for the author, the desk and the press can be furnished upon introduction The digest should be printed on the face of the measure as introduced, and a separate pamphlet publication of the digests should be printed from time to time No attempt should be made, at least at the 1959 session, to amend the digests as the measures are amended and thus no digest would appear on the face of the amended measure.

Recommendation: The Joint Rules should provide that no bill, constitutional amendment or joint or concurrent resolution may be accepted for introduction unless accompanied by

a Legislative Counsel's digest summarizing its effect. To facilitate this system, all such measures should be "backed" (or placed in their jackets) in the Office of the Legislative Counsel, at which time copies of the digest can be attached for the use of the author, the desk and the press. The digest should be printed on each measure as introduced, in distinctive type at the bottom of the first page. The digests should also be printed in sequence on a two-week schedule in separate pamphlets, one for the Senate and one for the Assembly.

4. INDEX OF BILLS, CONSTITUTIONAL AMENDMENTS, JOINT AND CONCURRENT RESOLUTIONS AND HOUSE RESOLUTIONS

The abolition of the constitutional recess by the adoption of Proposition No. 9 will make it impossible to print the publications heretofore compiled during that period. This includes the Interim Legislative Digest, the Interim Subject-List (an index) and the Semifinal Histories. The publication described under 4 (above) will constitute a substitute for the Interim Legislative Digest and, in the opinion of this committee, will be a far more useful document.

The Legislative Counsel has always maintained a continuous subject index in his office of all matters pending before the Legislature. This is maintained on 3- by 5-inch cards, and as amendments are made new cards are added. A similar system has been maintained with respect to the sections of existing law which are affected by pending legislation. While these cards have been maintained in the Legislative Counsel's Office, however, no continuous publication has ever been attempted by the Legislature.

Your committee has been assured by the State Printer and the Legislative Counsel that a periodic publication of a compiled Legislative Index, with tables of sections affected, can be arranged.

Recommendation: A biweekly publication of a cumulative Legislative Index should be provided during the 1959 session, and cumulative tables of sections affected should be included.

5. COSTS OF PUBLICATION

The two new publications (the pamphlet 1959 Legislative Digest and the periodic 1959 Legislative Index) replace several publications previously prepared during legislative recess. It appears probable that the volume of printed material in the new publications will not exceed that in the publications which are being eliminated. Furthermore we are informed by the State Printer that the new publications can be handled at less cost because production will be handled with day crews at lower cost rather than by the night shift on an overtime basis. By reason of this fact, and because the type used to print the digest on the bill can also be used to print the compiled pamphlet digest, the printer estimates that substantial saving can be achieved under the proposed system.

6. MISCELLANEOUS

Some question has arisen as to the efficient use of the 30-day period immediately following the convening of the Legislature during which no bills or constitutional amendments can be heard before the standing committees.

Your committee recommends that this period be devoted to the completion of the work of all interim committees, and that such committees be permitted to hold hearings in Sacramento and complete their legislative programs during that period.

The Joint Rules now afford a 13-day period for the introduction of departmental bills at a general session. This period was set in contemplation of a 30-day bill introduction period under the bifurcated session. Your committee recommends that this limitation be retained, but that it be adjusted in proportion to the period of free introduction at the 1959 session. This would permit the introduction of departmental bills for 30 calendar days of the general session.

Your committee recommends no change in the provisions of Joint Rule 23 which now specifies that Senate bills cannot be passed in the Senate within the last 15 days of the session and Assembly bills cannot be passed in the Assembly within the last 10 days of the session.

Drafts of amendments to the Joint Rules which would carry out these recommendations have been prepared and will be placed before the 1959 Session for its action thereon.

Respectfully submitted,

ALLEN MILLER, *Chairman*
JACK A. BEAVER
ERNEST R. GEDDES
AUGUSTUS F HAWKINS
WALLACE D. HENDERSON
JOHN A. O'CONNELL
JACK SCHRADE
CHARLES BROWN
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DONALD L. GRUNSKY
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JOHN F. MCCARTHY
GEORGE MILLER, JR.
JOHN A. MURDY, JR.

REPORT OF MARCH 6, 1956

HON. HAROLD J. POWERS, *Lieutenant Governor*
HON. LUTHER H. LINCOLN, *Speaker of the Assembly*
MEMBERS OF THE LEGISLATURE

The Joint Committee on Legislature Procedure is pleased to submit herewith its report recommending the adoption of a constitutional amendment regarding the organization of the sessions of the Legislature The report also contains specific recommendations for certain changes in the Joint Rules of the Legislature.

THOMAS M. ERWIN, *Chairman*
ARTHUR H. BREED, JR.
CHARLES BROWN
HUGH M. BURNS
PAUL L. BYRNE
RICHARD J. DOLWIG
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REPORT OF THE JOINT COMMITTEE ON LEGISLATIVE PROCEDURE

The Joint Committee on Legislative Procedure submits herewith its report on the organization and procedure of the Legislature, with the following recommendations:

RECOMMENDATIONS

1. With respect to the general sessions of the Legislature, the committee recommends:

   a. That the length of the session be increased from 120 calendar days to 150 calendar days.

   b. That the constitutional recess now required to follow the bill introduction period be abolished, and that any recess taken by consent of both houses be included within the 150-calendar-day limit.

   c. That the free introduction of bills be permitted for the first 90 days of the general session, and that after such period has elapsed, each member be entitled to introduce only two bills, and then only with the consent of three-fourths of the members of the house in which it is introduced.

   d. That the Constitution prohibit the consideration in committee or by the house of any bill, other than the Budget Bill, introduced during the period for free bill introduction, until 20 days have elapsed after its introduction, unless such requirement is suspended by a two-thirds vote.

   e. That provision be made for each bill to be accompanied by a digest prepared by the Legislative Counsel at the time of its introduction, and that digests, on separate, looseleaf pages, and indexes of bills be maintained on a current basis during the session.

2. With reference to the budget session, the committee recommends:

   a. That the date of convening be changed from the first Monday of March to the first Monday of February to permit the earlier presentation of the Budget Bill, the budget and the budget message to the Legislature by the Governor

   b. That the Legislature be authorized to recess, after receiving the Budget Bill and the budget, for a period not to exceed 30 days, such recess to be excluded from the 30-calendar-day limit on the budget session.

   c. That the time spent during the recess by the Finance and Ways and Means Committees in considering the budget be excluded in computing the number of days of interim committee work for the members of such committees.

d. That no change be made in the present 30-calendar-day limitation on the length of the budget session.

3. With reference to departmental bills, the committee recommends the adoption of a joint rule which will require their introduction within the first 30 calendar days of a general session and which will require the identification of such bills The introduction in both houses of the same bills by departments should also be prohibited by rule.

4. The committee recommends the collection and periodic publication of information concerning the organization, current studies and meetings of legislative investivating committees, and recommends the adoption of a joint rule to that end.

5. Since no constitutional amendment must be submitted to a special session in March, 1956, to implement them, the committee recommends further study of the following subjects:

   a. Consent calendars.

   b. Re-reference of bills to the Senate Finance Committee and the Assembly Committee on Ways and Means.

There are attached as appendices to this report, a draft of a constitutional amendment and of proposed joint rules which will accomplish the specific recommendations of the committee.

1. THE GENERAL SESSION

The principal problem presented with reference to the general session is to obtain sufficient time for the Members of the Legislature to consider adequately the bills presented to it. The experience of recent sessions has indicated that the limitation upon the length of the general session to 120 calendar days, imposed in 1949, has been too stringent to permit adequate consideration of all bills presented.

Annual Sessions

In approaching this problem, the committee has considered the effect of the constitutional recess, which is now required, and the desirability of creating annual sessions of the Legislature. It has rejected the idea expressed by some of an annual session of the Legislature unlimited in length. While recognizing that the Legislature should be given the widest practicable control over its own procedure and organization, the committee believes that annual sessions of unlimted length would introduce into the government of California an entirely different concept of the role of the Legislature. The Legislature of California has met in biennial sessions since 1862 and our experience with that type of session has indicated that men of ability will be attracted to the Legislature and that the needs of the people can be met adequately in a biennial general session. A return to annual sessions of unlimited length would tend to promote the development of a professional legislator, who devotes his entire time to his office. Under the present system, legislators are drawn from private life and are required to devote only a part of their time to their official duties. This system of citizen legislators, in the opinion of the committee, keeps the Members of the Legislature

in touch with the affairs of the citizens of the State and insures a Legislature more responsive to the needs of the people. It also embodies the fundamental principle that such legislative service is an opportunity which as a matter of right should be afforded to citizens who also desire to continue their active economic pursuits.

Length of Sessions

The 1949 Session of the Legislature, which proposed the present limitation of 120 calendar days, was in session for a total of 145 calendar days. During that time it considered a total of 5,233 measures and undoubtedly considered 120 calendar days adequate for the deliberations of the Legislature. However, since that time the number of bills introduced has increased until in 1955 there was a total of 6.277 measures. In the opinion of the committee, the increase in the number of measures introduced at a session of the Legislature is a necessary concomitant of the growth and development of the State. Few states of the Union present an economic situation comparable to that of California. In none has there been a population increase equal to that of California, accompanied by a growth in industrial and agricultural production. The very nature of the industry and agriculture of California leads inevitably to demands for legislation. There is little likelihood that the total number of bills introduced at a given session of the Legislature will decrease. On the contrary, there is every likelihood that the steady increase in the number of bills, started in 1943, will continue. Recognizing the extreme difficulty the Legislature has found in dealing with the bills now introduced and the probability that the number of bills introduced will increase at each succeeding session of the Legislature, your committee has concluded that a session of 150 calendar days is desirable.

The committee further believes that the people of the State have indicated clearly that they desire the length of the session to be fixed by the Constitution. The people are entitled to know when the Legislature will convene and when it will adjourn. There is little enough certainty in the law at the present time and an unlimited session would only increase the difficulty of the people in ascertaining what the law is on a given subject. Likewise it appears to the best interests of the people of the State that the Legislature should conduct its affairs expeditiously and should not extend its deliberations over too great a period of time in any given year. Therefore your committee has recommended that the general session be limited in length of time and restricted to approximately the same number of months as are now consumed by the general session, but without a mandatory recess.

Bifurcated Session

These considerations have led to the committee's recommendation that the bifurcated session be abolished. The bifurcated or split session was adopted in California in 1911. It has not been changed since that time. Under it the Legislature is required to convene for a period of not more than 30 days, to be followed by a recess of not less than 30 days. Bill introduction is limited to the initial period of 30 days, since the members are limited to two bills each after the 30-day constitutional recess.

The principal argument in favor of the bifurcated session was that the constitutional recess following the introduction of bills would permit members of the Legislature and the public to study pending legislation and express an opinion on the measure. It was believed that this recess would result in a better informed Legislature and in legislative action more responsive to the desires of the public. Your committee has given careful consideration to the objectives of the bifurcated session and sincerely believes that the right of the people of the State to know what legislation is pending must be fully protected This principle has governed all of the committee's deliberations upon the problem presented.

At the same time your committee is of the opinion that the original purpose of the bifurcated session is being defeated and that the public is in fact given little opportunity to acquaint itself with measures introduced in the Legislature. The bills themselves are not fully printed for several days after the recess commences. Indexes and digests are not available until shortly before the Legislature reconvenes. Thus, while the people are led to believe that the constitutional recess is for their benefit in making available to them information concerning measures pending before the Legislature, they are not in fact in a position at the present time to secure that information.

The bifurcated session has led to the mass introduction of bills in a short period of time. Necessarily when so many bills are prepared and introduced in so short a time there is little chance to work out the details of any proposal. The result is that many bills are in skeletal form and convey to the people no more than that the author has in mind some unidentified change in the law on a given subject. Bills so prepared must be amended before final enactment and this has resulted in further delay in the deliberations of the Legislature. If a bill is properly prepared and is ready for passage, it appears in printed form and may be carefully considered by the standing committees of the Legislature. If amendments are necessary the standing committee has no recourse but to order the bill printed in order that its members and the public generally may know what the final proposal is. Your committee believes that by abolishing the constitutional recess and providing for a continuous session of 150 days other means can be devised which will insure adequate notice to the public.

Digest and Index of Bills

Accordingly, your committee has consulted with the Legislative Counsel, whose office now digests all of the measures introduced, to ascertain whether it would be possible to prepare a digest of each measure at the time it is introduced. The Legislative Counsel has stated that, if the rate of bill introduction is slowed down and if the membership of both houses will recognize that there may be some delay in the preparation of their bills, his office can prepare a digest of each measure introduced in the Legislature so that that digest may be printed at the time the measure is introduced. He has further assured your committee that it would be possible to prepare an index of the measures introduced on a weekly basis and to cumulate that index at several times during the session. Accordingly, the committee recommends that the joint rules be amended to require that each bill be accompanied by

a digest at the time of its introduction, and that these digests be published in the Journal and on separate loose-leaf pages. The loose-leaf digests can be published, one digest to the page, for convenience in their use if the two rules committees determine that the expense of such publication is warranted.

Your committee believes that a current digest and index would afford to the people much greater notice of the bills presented to the Legislature than they are now receiving by means of a bifurcated session.

Delay in Passage of Bills

Even a current digest and index will not assure notice to the people if the Legislature acts in haste upon a bill after its introduction. To insure a delay in the legislative process which will enable the people to acquaint themselves with pending bills, your committee believes that there should be a constitutional prohibition against legislative consideration of a bill for a fixed period of time following its introduction. Therefore, its recommends that the Constitution be so amended as to prohibit action during a general session by the house or its committees upon any bill, except the Budget Bill, within the first 20 days following its introduction. Delay in committee hearings on the Budget Bill is unnecessary, since the hearings on that bill are continued over so long a period of time that there is ample opportunity for any interested parties to be heard. It will be at once suggested that there are matters of great urgency which cannot be deferred for 20 days. To meet this situation, the committee recommends that power be conferred to suspend the Constitution in order to permit a bill to be acted upon within the 20-day period upon a two-thirds vote of the house of its origin. This requirement will match the vote necessary to secure passage of the measure since the bill will normally be an urgency measure. There can be no necessity for immediate action upon a bill which will not take effect until 91 days after final adjournment of the Legislature In the opinion of your committee it is only urgency measures which should be considered immediately upon their introduction in the Legislature.

Introduction of Bills

There must be some limitation upon the length of time during which bills may be freely introduced in the Legislature However, the present limitation promotes hastily drafted legislation and necessitates the excessive amendment of bills. The present system led to the "skeleton" bill, which was abolished only after great difficulty, and it has also led to the present practice of introducing technically complete bills which give little or no information as to their purpose (the so-called "spot" or "spot-saver" bills). Your committee therefore recommends that, of the 150 calendar days, free introduction of bills be permitted during the first 90 days This will allow three months in which to prepare legislation, and this, in the opinion of the committee, should be ample to permit the proper preparation of all ordinary measures to be considered by the Legislature. Since there will arise, late in a session, matters upon which legislation must be enacted, it is recommended that after the first 90 days, each member be allowed to introduce two bills, but only after having first obtained the consent of three-fourths of

the members of the house of origin. This system is now known to all and its continuance should cause no confusion.

Spot Bills

Your committee has considered carefully what should be done to abolish spot bills. The conclusion it has reached is that by eliminating the necessity for them and by strong action by the leadership of both houses, they can be eliminated. With 90 days for the introduction of bills, it is hoped that there will be no necessity for the introduction of a spot bill since there should be ample time to work out the details of even the most complex legislation.

2. THE BUDGET SESSION

Several proposals have been made to return to the system of a biennial budget. It is the consensus of the committee that steps should be taken to realize the expected advantages of the budget session rather than to return to the biennial sessions. The system of annual budgets now in vogue has kept the Members of the Legislature closer in touch with the financial condition of the State and with the needs of State Government. It is true that not all of the desires of those who proposed an annual budget have been realized.

The Joint Legislative Budget Committee, working with the Governor and with the Department of Finance, has worked out a voluntary system by which the Governor's Budget is submitted to the Senate Finance and Assembly Ways and Means Committees in advance of the budget session. However, only a part of the budget has been so submitted and it is the belief of the committee that the Constitution should be amended to require the submission of the budget bill and the budget to the Legislature at an earlier date The budget bill and the budget should be submitted to the Legislature as a unit, and not to any committee or any group of the members thereof. Therefore, your committee recommends that each budget session convene on the first Monday of February and that the Legislature be empowered to recess that session for a period not in excess of 30 calendar days so that the Legislature as a body may receive the budget and then recess while its committees are hearing the budget. Your committee recommends that the overall limit of 30 calendar days on the budget session be retained and therefore that the period of this recess be not counted in computing the 30 calendar days for the budget session. Such a system will allow the Members of the Legislature to receive the budget, to hear the Governor's budget message and to return to their districts while the Finance and Ways and Means Committees of the Legislature are conducting their hearings on the budget

Such a system will necessitate hearings by the Finance and Ways and Means Committees during the recess, and, because of the present 40-day limitation on the reimbursement of expenses incurred by a legislator in single-house, interim committee work, will require the members of those committees to curtail or forego participation in the work of other single-house, interim committees. This situation now prevails under the current practice, and, if the recommended changes are adopted, cannot be avoided by the Legislature. Your committee believes

that, in view of the large number of members on those committees, it is detrimental to the public and unfair to the legislator to discourage the participation of so large a group of members in interim committee work. Therefore, it is recommended that the time spent by these committees in hearing the budget bill be excluded in computing the limitation upon the expenses of the members.

3. DEPARTMENTAL BILLS

One of the problems which has concerned your committee has been the early introduction and identification of departmental bills, that is, those bills which are proposed by departments of the State Government. Since the state agencies are continuously dealing with the statutes which they enforce, proper administration should permit the preparation of legislation which they desire well in advance of each general session This matter should be covered by a change in the joint rules rather than frozen into the Constitution by an amendment thereof. Your committee believes that the departments should introduce their bills promptly, should avoid the duplicate introduction of bills in both houses of the Legislature, and should set their bills for early hearing in committee At the same time the committee recognizes the right of any individual member of the Legislature to approve of a proposal of a department, to make it his own and to sponsor it as his own legislation.

In keeping with these views, your committee recommends the adoption of a joint rule which will require all departments to introduce their bills within the first 30 days of the general session and which will require their identification. The rule should require that the bill specify on the face thereof that it was introduced at the request of a named state department. If the member does not indicate department sponsorship on the face of the bill it will then be concluded that the measure is one for which he has assumed personal responsibility and which will not be considered as a departmental bill. Such a system will result in the early introduction and identification of departmental bills. The rule should also prohibit the introduction of such bills in both houses of the Legislature so that needless duplication will be avoided. At the present time the Assembly has a rule requiring the early introduction of departmental bills but the Senate has none. It is believed that this should be made a matter of the joint rules so that the violation thereof may be raised in either house of the Legislature.

4. INTERIM COMMITTEES

At the present time the public has great difficulty in ascertaining what subjects are being considered by interim committees, which committees are studying them, and when and where the committees are meeting. This problem arises from the very general powers granted to interim committees by the resolutions by which they are created. It is aggravated by the assignment of specific measures to the interim committees by the rules committees of each house, and by the increasing use of subcommittees by interim committees.

The crux of the problem lies in the inadequacy of the information now furnished to the public. A list of the interim committees and their membership is now published and available to the public. Releases to

the press are made listing those interim committee meetings of which the rules committees have knowledge. But these releases are not complete, and do not disclose the subject the committee or subcommittee will consider. What is needed is some method by which committee chairmen are required to notify a central agency of the appointment of subcommittees, of the subjects referred to them, and of the time and place of their meetings. Then arrangements should be made for the publication of this information and its distribution to the public.

Your committee recommends the adoption of a joint rule which will direct the rules committee of each house to assume responsibility for the collection and publication of this necessary information during the interim periods between legislative sessions. The actual duty of preparing material for publication can be placed in the charge of some permanent legislative officer, such as the Legislative Counsel or the Legislative Auditor.

5. MATTERS RECOMMENDED FOR FURTHER STUDY

a. Consent Calendar

Your committee has been advised by the Legislative Counsel that a constitutional amendment is not essential to institute in the California Legislature a system of consent calendars. This matter is one which has been considered on several occasions by committees of the Legislature and much of the spadework has been done towards the preparation of a final report. However, your committee has not yet had time enough to consider fully whether a consent calendar should be established in the California Legislature, and, since no constitutional amendment is involved, your committee therefore will give this matter further study.

b. Committee Reference of Bills

For a number of years the standing rules of each house have required the rereference to the Finance and Ways and Means Committees of not only express appropriation bills, but also of what has been termed implied appropriation bills, such bills being those which would require the expenditure of additional state money in any manner including any bills which create any additional state agencies or offices or add any function, duties or responsibilities to an existing agency or office. It has been argued that the operation of this rule has resulted in the rereferral to the Senate Finance Committee and the Assembly Committee on Ways and Means of many bills which do not properly require consideration by those committees and that the number of references so required have tended to delay the work of the house and to interfere with the adequate consideration by those committees of the bills with which they are properly concerned.

Here again no constitutional amendment is required to meet the situation. If any remedy is desired it can be readily accomplished by an amendment of the standing rules. Your committee has not had the time to consider the desirability of amending either rule or the desirability of the various alternatives which have been suggested. Therefore, since there is no immediate urgency in the situation, your committee will give this matter further study.

APPENDIX A

PROPOSED CONSTITUTIONAL AMENDMENT

---- Constitutional Amendment No. ----—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 2 (a) and Section 14 of Article IV thereof, relating to legislative sessions.

Resolved by the --- ----, the -------- concurring, That the Legislature of the State of California at its 1956 First Extraordinary Session commencing on the fifth day of March, 1956, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First, That Section 2 (a) of Article IV be amended to read:

SEC. 2. (a) The sessions of the Legislature shall be annual, but the Governor may, at any time, convene the Legislature, by proclamation, in extraordinary session.

All regular sessions in odd-numbered years shall be known as general session and no general session shall exceed ~~120~~ *150* calendar days~~; exclusive of the recess required to be taken in pursuance of this section,~~ in duration

All regular sessions in even-numbered years shall be known as budget sessions, at which the Legislature shall consider only the Budget Bill for the succeeding fiscal year, revenue acts necessary therefor, the approval or rejection of charters and charter amendments of cities, counties, and cities and counties, and acts necessary to provide for the expenses of the session.

All general sessions shall commence at 12 o'clock m., on the first Monday after the first day of January~~; and shall continue for a period not exceeding 30 calendar days thereafter; whereupon a recess of both houses must be taken for not less than 30 calendar days~~. ~~On the reassembling of the Legislature,~~ *After the 90 calendar day,* no bill shall be introduced in either house without the consent of three-fourths of the members thereof, nor shall more than two bills be introduced by any one member after such ~~reassembling~~ *day. No bill, other than the Budget Bill or a bill introduced after the 90th calendar day shall be heard by any committee or acted upon by either house until 20 calendar days have elapsed following the date the bill was first introduced; provided, that in cases of urgency, this provision may be dispensed with by the affirmative recorded vote of two-thirds of the members of the house where such bill may be pending.*

All budget sessions shall commence on 12 m. on the first Monday in ~~March~~ *February* and no budget session shall exceed 30 calendar days in duration *exclusive of the recess authorized to be taken by this section. After the introduction of the Budget Bill at a budget session*

a recess of both houses may be taken for a period not to exceed 30 calendar days. Members of the committees to which the Budget Bill is assigned for consideration during such recess shall be reimbursed for their expenses incurred for days while serving as members of such committees during the recess, in addition to the days allowed by subdivision (b) of this section.

Second, That Section 14 of Article IV be amended to read:

SEC. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which they may be sitting. ~~Nor shall the members of either house draw pay for any recess or adjournment for a longer time than three days.~~

APPENDIX B

PROPOSED JOINT RULE REGARDING DEPARTMENTAL BILLS

10.5. No departmental bill shall be introduced at the request of or on behalf of any state officer or agency after the thirtieth calendar day of any general session, nor shall any departmental bill be introduced in duplicate in both houses of the Legislature at any session.

The Secretary of the Senate and the Chief Clerk of the Assembly shall have distinctive covers or backs prepared for departmental bills that are introduced at the request of or on behalf of any state officer or agency, which shall show at whose request the bill is introduced Any such bill when printed shall include in its heading a statement that the introduction of the bill was requested by a state officer or agency and setting forth the title of the officer or agency that made the request. Only those bills which are so identified shall be construed to be departmental bills within the provisions of this rule.

APPENDIX C

PROPOSED JOINT RULE REGARDING INTERIM COMMITTEES

42. The Rules Committee of each house shall provide for a continuous cumulation during interim periods between sessions of the Legislature of information concerning the membership, organization, meetings and studies of legislative investigating committees. Each Rules Committee shall be responsible for information concerning the investigating committees of its own house and concerning joint investigating committees under the chairmanship of a member of that house. To the extent possible, each Rules Committee shall seek to insure that the investigating committees for which it has responsibility under this rule have organized, including the organization of any subcommittees, and have had all topics for study assigned to them within 30 days after the adjournment of each regular session of the Legislature.

The information thus cumulated shall be made available to the public by the Rules Committee of each house and shall be published periodically under their joint direction.

APPENDIX D

PROPOSED JOINT RULE REGARDING DIGESTS FOR BILLS

Introduction and Digest of Bills

8.5. No bill shall be introduced in either house, unless it is accompanied by a digest showing the changes in the existing law which are proposed by the bill If any bill is presented to either the Secretary of the Senate or Chief Clerk of the Assembly for introduction and is not accompanied by a digest prepared by the Legislative Counsel the Secretary of the Senate or the Chief Clerk of the Assembly shall deliver the bill to the Legislative Counsel after its introduction. The Legislative Counsel shall review the digest submitted with the bill, modify it where necessary in his opinion and return both to the officer from whom he received them, for printing.

The digest of each bill shall be printed in the journal of the house in which it was introduced immediately following the title of the bill. The digests shall also be printed, in loose-leaf form [one digest to the page], and distributed in the same manner as other legislative publications.

APPENDIX E

PROBLEMS CONCERNING THE ORGANIZATION AND PROCEDURE OF THE LEGISLATURE

This memorandum is an outline of the principal problems now before the Joint Committee on Legislative Procedure, and referred by it to a subcommittee. In its preparation, each problem has been broken down into its basic issues and each issue stated in question form. The arguments generally made in support of, or opposition to each proposal have been outlined.

No attempt has been made to evaluate the merits of any proposal. And no attempt has been made to give credit for any suggestions stated, because in many instances the same suggestion has been made by more than one Member of the Legislature. Where the ideas have been included in a measure introduced in the Legislature, reference is made to the measure.

I. INTRODUCTORY

At the present time the Constitution restricts the power of the Legislature to control its own organization and procedure. The following are examples of the various restrictions:

1. The length of the session. (Art. IV, Sec. 2.)
2. The type of bills which may be considered at the budget session. (Art. IV, Sec. 2.)
3. The introduction of bills. (Art IV, Sec. 2.)
4. The number of members required to constitute a quorum. (Art. IV, Sec. 8.)
5. Public sessions. (Art. IV, Sec. 13.)
6. Adjournment. (Art. IV, Sec. 14.)
7. Printing and reading of bills. (Art. IV, Sec. 15.)
8. Method and recording of vote on bills. (Art. IV, Sec. 15.)

9. Vote required to pass a bill. (Art. IV, Sec. 15. After veto, Art. IV, Sec. 16.)
10. Vote required to change the State Employees' Retirement Act. (Art. IV, Sec. 22a.)
11. Single subject, expressed in title. (Art. IV, Sec. 24.)
12. Amendment by reference to title (Art. IV, Sec. 24.)
13. Method of voting in elections. (Obsolete? Art IV, Sec. 28.)
14. Passage of appropriation bills ahead of the Budget Bill. (Art. IV, Sec. 34.)
15. Content of appropriation bills. (Art IV, Sec 34.)
16. Vote required on appropriations from the General Fund. (Art IV, Sec. 34a.)
17. Purpose for which interim committees may be created. (Art. IV, Sec. 35.)
18. Vote required on constitutional amendments. (Art. XVIII, Sec. 1.)
19. Vote required on urgency measures. (Art. IV, Sec. 1.)
20. Vote required to expel a member. (Art. IV, Sec. 9.)
21. Vote required to increase or diminish the number of superior court judges. (Art. VI, Sec. 9.)

It has been suggested that, in drafting any constitutional amendment concerning legislative organization or procedure, consideration should be given to eliminating some of these restrictions so that the Legislature will have greater control over its organization and procedure. It is argued that such an amendment will enable the Legislature to work out the best possible procedure, and to correct any defects which may develop in a procedure once it has been adopted. To the contrary, it may be argued, that the limitations contained in the Constitution were placed there for the protection of the public generally by insuring an orderly process, and that only essential changes should be made.

1. Should any proposed constitutional amendment eliminate restrictions on the power of the Legislature to provide by rule for its own procedure and organization?

2. Should the proposed amendment be limited only to specific changes [of known defects] in the legislative process?

II. SESSIONS OF THE LEGISLATURE, GENERALLY
(Constitutional Amendment Required)

The present constitutional plan for sessions of the Legislature provides for annual sessions consisting of a general session of limited length but of unlimited scope, and a budget session limited both in scope and length (Art. IV, Sec. 2). Some suggestions have been made which would affect this general plan. Their objective is to increase the time available to the Legislature to consider proposed bills and to eliminate the present control exercised by the Governor through his power to limit the subjects considered at a special session. The general objection made to these suggestions is that they will place the Legislature on a full-time basis and that they will interfere with the free introduction of bills by the members by necessitating the use of screening committees.

1. Should the sessions of the Legislature be annual, unlimited in time and in subject matter that may be considered (1953 A. C. A. 19; 1955 A. C. A. 64)?

2. If so, should there be a time limitation imposed on the annual sessions (1955 A. C. A. 5)?

3. Should the limitation on the subjects which may be considered at a budget session be removed and a screening committee established to determine what bills may be considered?

4. Should the Legislature return to biennial sessions held in the even-numbered years?

III. THE BUDGET AND THE BUDGET SESSION
(Constitutional Amendment Required)

The basic argument in favor of the present annual budget session was that it would increase economy in governmental expenditures by permitting a more frequent review of such expenditures and by eliminating much of the guesswork necessarily involved in budgeting 2½ to 3 years in advance. It is now argued that no increase in economy has in fact resulted, and the necessity of preparing an annual budget has actually increased the expense of preparing the budget and the work of legislators in considering it.

1. Should the State return to a biennial budget (1955 S.C.A. 37)?

2. If so, should the biennial budget be considered.

(a) In odd numbered years at the general session?

(b) In even numbered years at a budget session?

A secondary problem with reference to the budget involves the presentation of the Governor's budget message. At the budget session, which is limited in scope, this message is presented when the Legislature convenes, leaving the members little to do until the message has been considered. It has been suggested that the Governor be required to present his message in advance of the session, or that the Legislature should be empowered to recess after receiving the message. (Either alternative would require a constitutional amendment.)

In this connection, it has been pointed out that the necessity for such a change does not exist in the case of a general session, and to require submission of the message in advance of a general session would work a great hardship on a governor-elect, because it would greatly reduce his time for the preparation of the message.

3. Should the Legislature be empowered to recess after receiving the Governor's message at a budget session?

(a) If so should the length of the recess be limited?

4. Should the Governor be required to submit his message in advance of the budget session?

(a) To all of the members?

(b) To the Finance and Ways and Means Committees only?

(c) How many days in advance?

5. Should the Governor in presenting his budget to the Legislature in the budget session be required to identify all proposed cost increases which are not brought about solely by work load requirements of programs authorized prior to that session?

The present budget session is limited to 30 calendar days in length, and in subject matter to the budget bill, revenue acts necessary therefor, and city and county charters, and amendments thereto (Art IV, Sec. 2).

In addition to the suggestions contained under the heading "Budget," other suggestions have been made with reference to the budget session. Their objective and the argument for them is to give the Legislature more time to consider the budget bill. It is argued that the Legislature can not adequately review the budget in thirty calendar days.

It should be noted that any plan for increasing the scope of the legislation which can be considered at the budget session or of providing annual general sessions, considered under the heading "Sessions of the Legislature," must be related to this problem.

1. Should the length of the budget session be increased to:
(a) 30 legislative days (1953 A.C.A 34)?
(b) 90 calendar days (1955 A C.A. 5)?
(c) No limit (1953 S.C.A. 28)?
2. Should the budget session be held in odd numbered years (1955 S.C.A. 35)?
3. Should the budget session be eliminated?

IV. GENERAL SESSIONS
(Constitutional Amendment Required)

The Constitution now provides for a general session to be held in odd numbered years. Such a session is limited to 120 calendar days, exclusive of a required recess, which must commence not more than 30 days after the convening of the session and continue for not less than 30 days. Introduction of bills is unlimited prior to the recess, but is limited after the recess to two bills for each member who must obtain the consent of three-fourths of the house. (Art. IV, Sec. 2). The Constitution also requires a continuous session, except for the constitutional recess, by prohibiting adjournment of either house for more than three days without the consent of the other house, and by prohibiting the pay of members after the third day of a recess (Art. IV, Sec. 14). This latter prohibition is now inoperative in view of the provision for monthly compensation. Any change in the general sessions necessarily involves these constitutional limitations.

A. Length of the General Session
(Constitutional Amendment Required)

All proposals affecting the length of the session have been to increase, rather than decrease, its length. It is argued that the present limit of 120 calendar days exclusive of the constitutional recess, does not afford sufficient time to consider the number of bills introduced, either in committee, or on the floor. For example, at the 1955 session, a total of 6,277 measures requiring action by both houses were introduced, and 2,359 passed both houses These figures include bills, joint and concurrent resolutions, and constitutional amendments It may also be pointed out, that with the sole exception of the 1943 session, all general sessions between 1939 and 1949 exceeded 120 calendar days in length, the

shortest being 124 days and the longest 145 days. Moreover, each session, except the 1943 session, has seen an increase in the total number of measures introduced. This result appears inevitable in view of the growth and development of the State. To the contrary, it is argued that an increase in the length of the session will merely delay the last minute log jam of bills, and will not solve the problem. It is contended that a longer session merely means an even larger number of bills to be considered.

These considerations have prompted the following suggestions:

1. Should the general session be held in even numbered years (1955 S.C.A. 35)?

2. Should the general session be annual rather than biennial (1953 A.C.A. 19)?

3. Should the length of the general session be:
   (a) 120 calendar days plus one legislative day (1955 S.C.A. 9)?
   (b) 120 calendar days after the constitutional recess (1953 S.C.A 43; 1955 A.C.A. 64)?
   (c) 125 legislative days (1953 A.C.A. 34)?
   (d) 150 calendar days (1943 S C.A. 41; 1955 A.C.A. 34; 1955 A C.A. 69)?
   (e) 180 calendar days (1955 A.C.A. 5)?
   (f) No time limit (1953 S.C A. 7; 1953 S.C.A. 28; 1955 A.C.A. 61)?

4. If there is no limitation on the length of the general session, should the per diem received by the members for their expenses be limited to a fixed number of days per session?

B. Constitutional Recess

The Constitution requires a recess of not less than thirty days at each general session, and also limits the number of bills which may be introduced after the recess (Art. IV, Sec. 2). The original purpose of this provision was to give full publicity to bills introduced and to permit the members to discuss the bills with their constituents.

It has been suggested that this purpose is no longer served The volume of bills introduced is such that they are not available during the recess either to the public or to the members. Similarly, none of the histories, indexes, or digests are available during this period. Consequently, it is argued that by abolishing this requirement, the Legislature will have more time for its work, and can secure a longer period of time for the free introduction of bills without significantly affecting the ability of the public to review. Such proposals are usually coupled with a proposal to increase the length of the session, and to permit recesses of a week or more later in the session.

To the contrary, it is argued that the public is entitled to any opportunity to examine the bills and communicate with their legislators before bills are acted upon. This argument has led to suggestions that the constitutional recess be deferred to a later point in the session, or that a provision be incorporated requiring a delay in the passage of bills.

These suggestions lead to the following questions:

1. Should the constitutional recess be entirely eliminated (1953 S.C.A. 36; 1955 A.C.A. 34; 1955 A.C.A. 61, 1955 A.C.A. 69)?

2. Should the constitutional recess be continued but occur, instead of not more than 30 days after the convening of the session,
   (a) not more than 75 days after the convening of the session (1955 S.C.A. 37)?
   (b) not less than 90 days after the convening of the session (1953 A.C.A. 34)?
   (c) not less than 21 nor more than 30 days after the convening of the session (1953 S.C.A. 41; 1953 S.C.A. 43)?

3. If the constitutional recess is continued, should it be increased in length to permit the printing of bills, indexes, etc.?

4. Whether or not the constitutional recess is continued should the Legislature be given the power to recess for more than three days?

C. *Introduction of Bills*
(Constitutional Amendment Required)

Under the present constitutional provisions, free introduction of bills is permitted only prior to the constitutional recess. Thereafter each member is limited to two bills, and must obtain the consent of three-fourths of the house (Art. IV, Sec. 2).

This requirement is generally believed to be the principal cause of spot bills, and one of the major causes of duplicate bills. The tendency of recent sessions to reduce the period before the constitutional recess has compressed into a few days the introduction of an increasing number of bills with some effect upon the quality of the bills introduced.

Most of the proposals with reference to the introduction of bills are coupled with some change in the constitutional recess.

1. Should the limitation on the introduction of bills be fixed by rule instead of by the Constitution?

2. Should the time for the free introduction of bills be increased to:
   (a) March 31 (1955 A.C.A. 69)?
   (b) 75 calendar days (1955 S.C.A. 37)?
   (c) 90 calendar days (1955 A.C.A. 61)?

3. After the time for the free introduction of bills has elapsed, should introduction of bills be limited:
   (a) to a fixed number by each member?
   (b) to introduction by the standing committees (1955 S.C.A. 37)?
   (c) by requiring the consent of the house?

4. Should a requirement be made that departmental bills may be introduced in only one house?

5. Should some procedure be established to require clearance of all departmental bills by the Governor?

6. Should the Constitution contain some form of prohibition against spot bills?

D. Consideration of Bills by Standing Committees (No Constitutional Amendment Required)

During each session of the Legislature, a large number of bills are considered in the closing days of the session This condition results largely from the number of bills acted upon by the standing committees during the closing days of a session. The reasons for such delay are not clear. However, some suggestions have been made and some questions seem properly raised.

1. Should the present committee organization of the houses be altered to equalize the number of bills assigned to each committee?

2. Should there be a change in the rules requiring reference of bills to the Finance and Ways and Means Committees?
   - (a) If so, is the discretion to refer bills to be left to:
     - (1) The presiding officer of the house?
     - (2) The standing committee by which the bill is first heard?
     - (3) The Rules Committee of each house?
     - (4) The Chairman of Finance or Ways and Means?
   - (b) If so, should the reference be by motion, instead of automatic?

3. Should hearings of standing committees be prohibited after 8 p.m. (1955 A.C.A. 64)?

E. Consideration of Bills by the House

One of the basic problems facing the Legislature is to expedite the handling of bills by the house. The principal suggestion to meet this problem has been the use of a consent calendar, which is treated separately. However, the following suggestions, which are self-explanatory, have been made:

1. Should there be a time limit on the final enactment of the Budget Bill?
   - (a) By rule?
   - (b) By constitutional provision?

2. If the constitutional recess is abolished, should the enactment of bills be prohibited (constitutional amendment required):
   - (a) Except for urgency measures, for 30 days after introduction (1953 S.C.A. 36)?
   - (b) Except for urgency measures, during the first 30 calendar days of the session (1955 A.C.A. 64)?
   - (c) Except by unanimous consent, for 30 days after introduction (1955 S.C A. 37)?

3. Should the houses be prohibited from holding any sessions after midnight (1955 A.C.A. 64)?

V. CONSENT CALENDAR

If it is desired to eliminate separate roll calls on each bill, a constitutional amendment will be required. However, the general objective of a consent calendar can be achieved by using substituted roll calls If this is done, the consent calendar can be accomplished by amending the rules.

The purpose of a consent calendar is to gather at one place on the calendar of the house all uncontested bills, in order that they may be acted upon without explanation or debate. In 1954, the Joint Committee on Legislative Process made the following findings and recommendations:

"FINDINGS

"1. The total number of bills introduced each general session has increased in the last 10 years from 3,131 in 1943 to 5,522 in 1953, exclusive of concurrent and joint resolutions. From the 1949 General Session to the 1953 General Session, the total number of bills and resolutions introduced has increased by 700.

"2 In all of the three last regular sessions the largest number of uncontested roll calls were taken during the last two weeks of the session, ranging from 200 to over 400 roll calls in both houses of the Legislature for each week.

"3 A consent calendar, similar to those used in the House of Representatives and in the States of Florida, Minnesota, Pennsylvania, South Carolina and Texas, would save valuable time of legislators and considerable legislative printing with substantial resultant economies.

"4. Proposed Assembly and Senate Rules providing for a consent calendar present no constitutional problem.

"RECOMMENDATIONS

"It is recommended that:

"1. Each house of the Legislature amend its rules to provide for a consent calendar.

"2. No bill be placed on the proposed consent calendar until it has been considered and reported out by standing committees of the respective houses."

Objections to the use of consent calendar have been summarized by the Legislative Council of Illinois, as follows:

"Some of the objections to the use of an uncontested bills calendar might be as follows:

"(1) It would tend to stimulate the introduction and consideration of legislation which is essentially unnecessary and should not occupy the time of the legislative body.

"(2) It might be used to slip through bills containing jokers.

"(3) Some members would prefer to take their chances on the main calendar and would not want to place their bills on this calendar.

"(4) Since one of the safeguards would presumably be a provision for moving a bill off this calendar onto the main calendar by written notice from two or more members, a few could use this tactic to bring pressure to bear on other members.

"(5) It would further complicate legislative procedure. Much the same objective can be attained informally when the Speaker sets aside special periods for calling noncontroversial bills."

The first problem is to insure that only uncontested bills will be placed on the consent calendar It is usually believed that the author of the bill should have some control, but that some safeguard should be established to prevent any possible abuse.

1. Should bills be placed upon the consent calendar by:
   (a) The author only?
   (b) The standing committee which heard the bill?
   (c) Joint action of the author and the standing committee?
   (d) The Rules Commitee?
   (e) A special committee?

2 Should appropriations and review bills be eligible for the consent calendar?

Once a bill is placed on the consent calendar, two problems arise. The first is whether any member should be given the duty of notifying the members of any contested bills which appear on the calendar. In Congress the rules place this duty on the party whips The second is how a bill may be removed from the consent calendar Some states, apparently believing that an individual member may be reluctant to take such action, also place this responsibility upon party leaders

3. Should bills be removed from the consent calendar by:
   (a) Any member of the house?
   (b) Any two members of the house?
   (c) Any three members of the house?
   (d) The presiding officer of the house?
   (e) The majority and minority party leaders?
   (f) A committee specially selected for that purpose by the party caucus?

Another problem is when the calendar should be called.

4. Should the consent calendar be called:
   (a) Once each week?
   (b) Daily?
   (c) Twice each week?

5. Should the consent calendar be called at the discretion of the presiding officer of the house?

6. If at a fixed time, should the consent calendar be called:
   (a) After second reading but before third reading?
   (b) After third reading?

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