

VOLUME TWO

Appendix to the Journal of the Assembly

LEGISLATURE OF THE STATE OF CALIFORNIA
1963 REGULAR SESSION

REPORTS

January 7, 1963—June 21, 1963



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Speaker

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ASSEMBLY INTERIM COMMITTEE REPORTS
CALIFORNIA LEGISLATURE

VOLUME 14

NUMBER 5

ASSEMBLY INTERIM COMMITTEE ON
MANUFACTURING, OIL, AND
MINING INDUSTRY

FINAL REPORT

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Published by the

ASSEMBLY
OF THE STATE OF CALIFORNIA

December 1962

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Chief Clerk

LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER
CALIFORNIA LEGISLATURE
December 1962

HONORABLE JESSE M. UNRUTH
Speaker of the Assembly
California Legislature

MR. SPEAKER:

Your Interim Committee on Manufacturing, Oil, and Mining Industry submits herewith its final report of activities.

Respectfully submitted,

JOSEPH M. KENNICK, *Chairman*
JACK T. CASEY (with reservation)
ROBERT W. CROWN
CHARLES B. GARRIGUS (with reservation)
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JAMES L. HOLMES
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PART I

MARKETING OF GASOLINE IN CALIFORNIA WITH
PARTICULAR EMPHASIS ON RETAIL
PRICING PRACTICES

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**MARKETING OF GASOLINE IN CALIFORNIA WITH
PARTICULAR EMPHASIS ON RETAIL
PRICING PRACTICES**

AUTHORIZING RESOLUTION

1961 Regular Session

House Resolution No. 391

Relating to marketing of petroleum products

WHEREAS, The retail gasoline industry has been engaged in a state-wide price war for many months, and

WHEREAS, Such chaotic conditions have existed in one degree or another in this industry for many years, and

WHEREAS, Many independent dealers and distributors are affected adversely to the point that many have had to go out of business after sustaining tragic financial losses, and

WHEREAS, Such conditions do not bring a compensating long-range benefit to the consumer, now, therefore, be it

Resolved by the Assembly of the State of California, That the subject matter of this resolution and any other matter pertaining to the marketing of petroleum products, including the pricing thereof to wholesale and retail customers and conditions of rental and leasing of service station properties, be referred by the Committee on Rules to the proper Assembly interim committee for study and report thereon to the Assembly not later than the fifth legislative day of the 1963 Regular Session of the Legislature

INTRODUCTION

Three hearings were held by the committee on the subject matter of the authorizing resolution which was referred to us by the Committee on Rules in Los Angeles on October 23, 1961; in San Diego on November 13, 1961; and in Sacramento on November 30 and December 1, 1961.

In addition to general notices of the pending hearings, personal invitations to attend were extended to all representatives of the petroleum industry who had previously demonstrated an interest in the subject matter, plus others in the industry who would normally have such an interest.

Invitations were also extended to representatives of labor, local government and local chambers of commerce as well as representatives of the Attorney General and the State Board of Equalization.

Except for admonitions to avoid repetition of testimony, all witnesses were given the time they desired to present their facts and views.

The general subjects on which testimony was received are

- 1 The effect of gasoline price wars on the general public and business community
- 2 Causes of price wars
- 3 Wholesale pricing practices
- 4 Industrywide setting of retail prices
- 5 Price differentials of independent and rebrand stations
- 6 Alleged control by producers of retail prices charged by their dealers
- 7 Temperature control allowances to dealers

In addition, there was considerable testimony on the part of the dealers to the effect that they were seeking legislation which would establish a price structure under which they could operate profitably. This is an understandable goal but one which the committee believes to be a proper subject for the Legislature only if the public welfare is substantially involved. It is true that many thousands of persons depend directly upon income from those who operate or are employed in the nearly 21,000 licensed service stations in California and that this could represent a substantial portion of the State's population. Nevertheless, the committee does not believe that the testimony heard during these hearings conclusively demonstrated a compelling public interest such as in the gas and electric industries or even as in the dairy industry.

Testimony presented at the hearings has been transcribed and these transcripts with their accompanying exhibits may be examined at the office of the chairman in the Capitol Building, Sacramento.

This report is primarily based on material contained in the hearing transcripts. Where extraneous information has been considered, its source is indicated.

CONCLUSION AND FINDINGS

Based on the findings indicated below, the committee has concluded that in the absence of an adverse effect on the general public welfare and in the absence of a conclusive demonstration that illegal practices are currently being followed, new legislation respecting marketing practices in the gasoline industry is not warranted at this time.

However, since testimony has been inconclusive and even contradictory on these matters, further attention should be given to them by the Legislature in order that a clear picture of industry problems may be obtained and a determination made as to whether new legislation is necessary.

From the evidence made available to it, the committee finds that:

1. Gasoline price wars and practices have no measurable effect on the welfare of the general public.

2. Gasoline price wars and practices have an obvious adverse effect upon the substantial number of people engaged in retailing gasoline.

3. There is no single cause or consistent combination of causes for the recurring retail gasoline price wars in this State.

4. Gasoline price wars are in some manner ordinarily confined to specific defined areas of the State.

5. Wholesale sales of gasoline by producers to distributors and rebranders have been conducted under generally accepted business standards.

6. Is it inconclusive whether gasoline producers have or have not colluded in the setting of uniform retail prices?

7. The customary retail price differential charged by independent and rebrand stations as compared to major brand stations is not a matter of substantial overt controversy in the industry, though it has been offered as an explanation for the 1960 general price war.

8. It is likely that many major producers substantially control the retail price of gasoline sold by their own dealers.

9. However, conclusive proof that aggrieved dealers cannot obtain freedom to set their own prices under existing laws has not been presented to the committee.

10. The committee finds that while the testimony was brief and inconclusive, data presented outlining the problem indicates that further inquiry to reconcile the question of temperature correction of gasoline is required.

DEFINITIONS

There are no official or even semiofficial designations for all of the various types of entities engaged in the gasoline business. The following, however, seem to be the ones in most common use and are used in this report as having the meanings indicated.

Major producers are the larger integrated oil companies which produce, refine and market gasoline under their own brand names. There is no established level of size separating "majors" from "minors," the designations being commonly understood and used throughout the industry.

Minor producers are wholly and partially integrated producers who market their products under their own brand names but are not of

sufficient size to be "major" They are sometimes called "independents" but for purposes of this report "independent" relates to retail outlets as described below.

Wholesalers generally include both major and minor producers as respects their sales to each other, to distributors for resale to retail outlets, and to "rebranders"

Distributors are wholesalers of gasoline which they purchase from both major and minor producers They are also called jobbers or consignees and sell mostly to independent retailers as described below.

Rebranders purchase their gasoline from producers and distributors and sell it at retail under their private brand names

Independents are nonmajor retail outlets, including sellers of re-branded gasoline

Company-owned stations are stations owned and operated by major producers

Consignment stations are stations operated by consignees rather than purchasers of the gasoline sold, i.e., the producer retains title to the gasoline until it is sold to a consumer

Commission stations are owned by major producers and operated by individuals on a commission basis The operator relies on his own initiative to make a profit, his commission being based on net profit rather than gross sales Accordingly, he has a direct personal interest in controlling overhead even though the producer is the legal operator and primarily liable for taxes, social security payments, etc

Contract stations are major brand stations operated by independent contractors and may be either a station which is leased from the producer or a station which is owned by the operator or leased by him from some third person

Convenient outlets are sellers such as car dealers who sell gasoline only as a side line so that price wars and other abnormal price conditions have little effect on their total operations

EFFECT OF GASOLINE PRICE WARS ON THE PUBLIC WELFARE

The committee invited representatives of labor, local government, and chambers of commerce to testify respecting the effect, if any, of gasoline retail price wars and other conditions in the gasoline industry on the welfare of the general public The invitations extended to representatives of labor and local government were declined

Chambers of commerce representatives were of the opinion that gasoline price wars had no effect on the general economy or welfare of the public except for the nonmeasurable effect of loss of profits and employment suffered by those in the industry itself While no exact figures were given to the committee, it would appear that many thousands of persons are dependent upon those who operate or are employed in the nearly 21,000 licensed service stations in California

For the record, it was brought out that many producers and few contract station operators were members of chambers of commerce

There being very little other testimony on the subject, and in the absence of any presentation by the dealer interests to the contrary, the committee must conclude at this time that the retailing of gasoline

does not have the degree of general public interest usually necessary as a condition precedent to regulatory legislation

CAUSES OF GASOLINE PRICE WARS

Witnesses before the committee had little to say concerning the cause and possible cure of price wars, the general testimony seeming to indicate that "the other fellow does it." Fortunately, however, the committee had available to it two recent reports on the problem, i.e.,

"The Gasoline Price War Problem" (dated November 11, 1960), by Richard H. Holton, Associate Professor of Business Administration, University of California, and

"Report of Investigation of the Current Gasoline Price War in California," prepared by and submitted to the Legislature by the Attorney General on April 17, 1961.

The Attorney General's report had the following to say with respect to a severe gasoline price war which occurred in 1960

"... The present price war stems from the desire of major companies which do not market 'independent' brand gasoline in California to diminish, if not eliminate, the traditionally industry-recognized price differential between 'major' and 'independent' brand gasoline at the consumer level. Such desire per se does not add up to the type or quantum of evidence that is necessary to establish an intent to eliminate or injure the competition of the truly independent refiner and marketer of gasoline. Any injury or damage to such a refiner or marketer, and they are being damaged or injured as before stated, is incidental to the main purpose of the majors which allegedly started the price war and which had previously recognized the traditional price differential between 'major' and 'independent' gasoline."

Neither the Attorney General nor Professor Holton have developed data indicating a single cause or combination of causes for gasoline price wars in general the Summary of the latter's report being as follows:

"The price war is unique to gasoline retailing largely because service stations come close to being single product retailers selling brands which, in the eyes of probably a majority of the public, are tolerably good substitutes for each other. The mobility of the consumer permits him considerable choice among service stations and so, once a price war breaks out, he can shift his patronage quite easily from his regular station to a lower priced station if he wishes.

"Several hypotheses which might explain the inception of the gasoline price war were examined insofar as the available data would permit. The excess gasoline hypothesis seems to hold up reasonably well as an explanation of some price wars. The examination of data lends only modest support to the proposition that gasoline prices at retail generally are strong during periods when gasoline supply is low or falling, while price wars are more likely if supply is high or rising. Apparently, however,

"market areas in which supply is likely to be concentrated, either because of the presence of refineries or of transportation terminals, are likely to be chronic price war areas

"The new entrant hypothesis seems almost unquestionable. There have been cases of price wars which were quite obviously caused by the entry of a new marketer who was attempting to establish his position in the market on a price basis.

"The excess retailing capacity hypothesis and the 'eager dealer' hypothesis may explain some price wars, and there may be some other explanations which have been overlooked here. There is undoubtedly some truth of the statement that 'every price war is different'.

"The collusion hypothesis can be neither proven nor disproven. The major companies undoubtedly have the power to 'break' the minors if they were to conspire carefully to do so. The evidence that they have conspired is of a very flimsy sort, however, and there are certain costs to gasoline price wars which would seem to deter the majors from engaging in such a conspiracy.

"Finally, we have seen that the price war is more likely to be spread to the high volume multipump service station than by the dealer who relies to a greater extent on the sale of service, TBA items (ed, i.e., tires, batteries and accessories) and the like for his income. The differences in the demand conditions, the product mix and the cost conditions would seem to dictate different reactions to a falling price situation. Meanwhile the supplying companies face what we might call the 'dealer and dilemma,' which forces them at times to take action which in effect helps to perpetuate the price war. The consignment approach to the price war problem may be advantageous primarily because it lets the supplier have full control over the retail price at each location, free from fear of anti-trust violation.

"Fair trade pricing of gasoline could prevent local price retaliation by major companies selling under fair trade contracts. But this lack of price flexibility on the part of major brands would invite entry of new firms free to undercut the major's prices. Dealers would then be hurt not by lower prices for the gasoline they sell, but by substantially reduced volumes. So fair trade pricing would not solve the problem for long.

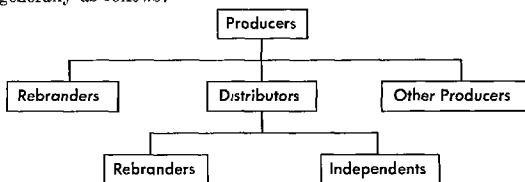
"Why do price wars end? Several different answers seem to apply at different times and places. Often a dealers' association may be instrumental in starting prices back up. Sometimes one or two dealers may have the reputation of being price leaders and they may succeed in moving the price up when they wish, doing so with the same confidence as when they led the price downward. The individual dealers may attempt to inch the price back up, either on their own initiative exclusively or, as in one reported case, because an independent refiner simply went to the dealers to try to persuade them to raise the price. It is impossible to say which one of these patterns of market behavior is most commonly found as the cause of the return of gasoline prices to normal.

"From this discussion it would appear that the gasoline price war would probably continue even if there were no vertical integration in the petroleum industry. We have argued that price wars are more common in the case of gasoline than in the case of other consumer goods because of several factors. First, the elasticity of demand for any single brand of gasoline at any single station is very high, i.e., a large proportion of motorists will buy the (major) brand of gasoline which is cheapest at the moment. This high elasticity results because the consumer is so mobile, and because he is typically not intensely loyal to any single brand. Secondly, the dealer is as a rule primarily dependent on his gasoline sales for his station volume, so if his price is above that of the neighboring stations he cannot restrain his customers from deserting him by offering lower prices on batteries or oil. He *must* offer gasoline at a competitive price. Therefore, he is likely to follow the price of his competition quite closely. Third, and corollary to the above point, since the motorist usually stops at a service station to buy primarily gasoline, his patronage depends on the price of gasoline and not on the price of other items the dealer sells. This is in contrast with the consumer's attitude toward, say, grocery shopping. The housewife may be willing to pay a given grocer a higher price for one or two items than the grocer across the street is charging because the one or two items are just a small portion of the total purchase. So the grocer need not be competitive on any single item, but the service station dealer must be competitive on gasoline.

"Given this particular context of the consumer's purchase of gasoline, there is every reason to believe that the price war phenomenon would be just as common in the absence of vertical integration in the petroleum industry as it is today. Excess supply could still spill over through certain stations, stations who would cut the price to move a larger volume. Consumers would be just as interested in switching stations to save on their gasoline purchases as is the case today. The new entrant hypothesis would still operate to cause price wars in the absence of vertical integration, and there would still be the occasional case of the eager dealer. And excess retailing capacity could be expected to arise sporadically as population, incomes and highway patterns might shift. None of these causes of gasoline price wars appear to be related to vertical integration, so we can conclude that service station operators would be just as plagued with price wars after divestiture as before. One could even imagine that price wars would be a greater problem after divestiture. In the case of Calso's entry into the New Jersey market, discussed earlier, price wars were started by its distributors and their stations. But these distributors were independent of Calso, and Calso had no clear authority over their prices or those of their stations. Thus in this particular case the *absence* of vertical integration might have been the cause of the price war. But to be on the conservative side, we will be content to say nothing more than this: that price wars would be at least as common in the absence of vertical integration as they are today."

WHOLESALE SALES OF GASOLINE

The flow of wholesale sales, exclusive of sales to individual stations, is generally as follows.



It appears that the wholesale sales volume varies widely as to individual producers, particularly the majors, but that in most instances the sales result from excess production rather than from a desire to sell gasoline through other than the producers' brand outlets.

Normally, of course, other producers and rebranders will make purchases only for resale through their own brand outlets. On the other hand, distributors are generally true wholesalers or middlemen and usually resell all of their purchases at wholesale except that in some cases they will themselves retail through stations which they own or control.

Although there are many variations in actual practice, producers generally have two basic prices: (1) the "rack" price which is based on delivery at the producer's plant, and (2) the "tank" price which is the delivered price to individual stations. Although both prices are technically wholesale, "rack" sales are usually in greater quantities, though not necessarily delivered in large amounts, and the price has little or no relation to the "tank" price. Thus the rebrand or other independent station often obtains its gasoline for a lesser price than the contract station owner, which is probably the principal but not exclusive reason independents can sell at a cent or more per gallon below the normal major brand contract station price, even though in many cases the gasoline is identical except for name.

It is apparent that distributors must be astute traders in order to stay in business because (1) they must compete with the "rack" price at which rebranders and other independents often obtain their supplies directly from the producers, and (2) during price wars they have problems similar to the major producers such as the "dealer aid" later described herein in connection with contract dealers.

Nevertheless, the distributors are advocates of the *status quo*, the representative of the California Petroleum Marketers' Council having testified as follows in connection with the council's position that regulatory legislation was not desirable:

"No doubt some would like competition diminished, or even repealed. The CPMC does not. The small element of the industry that is the CPMC likes the game where there is no protection for the inefficient, and where everyone has a fighting chance at success in life."

INDUSTRYWIDE RETAIL PRICING PRACTICES

All of the major producers have divided the State into pricing zones and all major stations within a given area will normally sell gasoline at the same price. The price is based on tangible factors such as transportation costs and intangible considerations such as "what will the traffic bear." For example, the motorist will have noticed price differentials in various parts of the State which do not seem to be and, in fact, are not explainable only on a basis of costs such as transportation.

Such uniformity in pricing has been long regarded by critics of the industry as strong evidence of collusion. The producers, however, contend that it is merely a price level with which all of the producers can live, arrived at through marketing experience; that there would be chaos if there were continual price variances among the majors; and that the competition among producers is real although based on such factors as quality and service rather than price.

A basis for action against a pricing conspiracy among the producers appears to be available to the Attorney General under existing law, i.e., the Cartwright Act (Section 16700 and following of the Business and Professions Code) which is designed to prevent combinations in restraint of trade, and the Unfair Practices Act (Section 17000 and following of the Business and Professions Code) which has as its objective the prevention of unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented. Mr. William C. Dixon, Assistant State Attorney General, testified at the hearing of November 30, 1961, that:

" . . . We have, thus far at least, within the limits of our staff, found no substantial evidence to indicate that the oil producers and marketers operating in the State of California have engaged among themselves in any violation of the Cartwright Act by way of fixing the prices among themselves of the products that they would sell to the dealers or the ultimate consumer."

PRICING PRACTICES OF INDEPENDENT STATIONS

It is customary for independent stations to sell gasoline from one to several cents less per gallon than the price established in the area for major brands, the practice not being generally and openly objected to by the major producers or by the contract stations. This is largely because the independents have not usually had major brand advantages such as advertising and credit cards and frequently offer a minimum of free service, particularly in the case of "self-help" stations. They also are not overly competitive with major stations in high profit areas such as lubrication and oil changes and sales of tires, batteries and accessories.

It has already been noted that the previously cited report of the Attorney General states, concerning the 1960 war, that the price differential of the independents was the major reason for its occurrence.

Contract dealers object to producers selling gasoline directly or through distributors to independents for a price below that charged to the producers' brand name dealers. This practice, of course, often allows the independent to sell gasoline for a lower price than the contract dealer charges for substantially identical fuel.

PRICING PRACTICES OF COMPANY, CONSIGNMENT AND COMMISSION STATIONS

Retail prices charged by producer-operated, consignment and commission stations are, of course, normally subject to complete control by the producers and in substantially all cases, they are so controlled. Although it would be possible for an operator to reserve some pricing control in his consignment or commission contract, no such cases have been brought to the attention of the committee.

While there was little testimony on the point, the committee was told that in the cases of consignment and commission stations, the producers are following business practices normally followed in other fields of retail trade rather than having devised arrangements peculiar to the gasoline industry. However, there was no testimony to the effect that consignment arrangements in other industries included control over retail prices charged the consumer.

Representatives of the contract stations contend, however, that the producers' primary motive in establishing consignment and commission stations is to strengthen their control over retail prices, including those of the contract stations. The committee agrees that such a result could flow, at least incidentally, from the consignment and commission arrangements but cannot make a finding from the evidence before it that the producers are using normally acceptable business arrangements for the purpose of rigging prices. However, the possibility that such an end can be accomplished, unchecked by existing law, well warrants further study and attention by the Legislature.

PRICING PRACTICES OF CONTRACT STATIONS

In most cases, contract station operators are, by the terms of their contracts, allowed freedom to set their own retail prices and the announced policy of the producers is to refrain from coercing them to adhere to company pricing policies. There appears to be little difficulty with this situation under normal circumstances because the operators are usually satisfied with charging the uniform price established in each individual zone.

The principal difficulty arises in connection with so-called "dealer aid" during periods when gas wars are in progress in a situation where, for instance, the usual retail price per gallon of 32.9 cents has been forced down to 27.9 cents, or a drop of 5 cents, the dealer, if he meets the competitive price while purchasing at "tank wagon" will operate at a loss regardless of his volume.

In these situations, it is customary for the producer to voluntarily absorb a proportionate part of the price drop, say, three-fourths of a cent of each one-cent cut in price below the level at which the producer-supplier considers the retailer should have been selling with no regard to the level at which he was selling or which he felt good business practice dictated that he sell. Such discount or rebate is generally referred to as "dealer aid." Such aid may be in other forms, such as a temporary reduction in rent, but is usually in the form of a discount or rebate. The word "voluntarily" is used because the standard forms of dealer contracts rarely if ever provide for such aid.

It must be pointed out, however, that although at least ostensibly the producers and dealers are acting at arms length when they execute contracts, the committee questions whether many prospective dealers are actually in a position to dictate contract terms to the producers. The committee has taken notice that this is at least partly true because there are few other types of businesses which may be set up for so little initial investment and with so little managerial experience. There are, of course, some rare exceptions. A prospective dealer with a long history of successful station management who owns or has a long-term lease on an exceptionally desirable location, would seem to be in a position to gain concessions before contracting to carry a producer's products.

In contradiction to the announced producer policy of not using dealer aid to force conforming retail prices, individual dealers and their association representatives presented specific and documented cases in which local representatives of at least some of the producers withheld dealer aid until such time as the dealer posted prices specified by the producer. They further testified that such practices were consistently followed. The situation was not expressly denied by all of the producers' representatives who appeared at the hearings and, for purposes of this report, the committee accordingly concludes it to be a fact with respect to at least a considerable portion of the industry.

Furthermore, while not documented as in the case of the withholding of dealer aid as described above, there is considerable testimony on the part of the station owners that (1) the producers also control retail prices by manipulating pricing zones, e.g., a recalcitrant dealer will find himself in a special pricing zone in which dealer aid is not offered, but which is closely surrounded by zones in which the dealers are receiving such help, and (2) that the producers often find a subterfuge for canceling the leases of dealers who refuse to adhere to company pricing policies.

Considered alone, the foregoing probably amounts to a *de facto* manipulation of retail prices by the major producers, i.e., together with their control over the prices posted in company, consignment and commission stations, at least a good portion of them have evidently consistently attempted to set the prices charged by contract stations through the device of withholding dealer aid.

However, testimony by producers indicated that in no case has a producer refused to give dealer aid when a dealer has appealed to a level of management above that of field representative. In other words, while it appears evident that the device of withholding dealer aid in the field amounts to *de facto* price setting, higher levels of management have adhered to their announced policy of not interfering with the prices charged by their dealers.

The committee questions the propriety of a situation wherein a dealer, having failed to achieve a satisfactory solution to his problem through his normal producer contact in the field, is forced to refer to higher levels of management for fair treatment.

The committee is aware of and has considered the fact that a dealer will have achieved little if he obtains the right both to receive dealer aid and set his own prices, but at the cost of (1) having his lease canceled for reasons ostensibly other than his insistence on setting

his own prices, or (2) being shunted into a special zone where dealer aid is not available

If at a later time it were shown by competent evidence that the producers are not only coercing dealers into following company price policies through the withholding of dealer aid, but are punishing recalcitrant dealers by the formation of artificial pricing zones, arbitrary cancellation of leases or in some other manner, it would seem proper to enact legislation on the order of that proposed by the Attorney General at the hearing of November 30, 1961, which, as summarized by the Legislative Counsel in Opinion No. 1181, dated January 23, 1962, makes it

“... unlawful for a lessor-supplier of gasoline to attempt to control the resale price of any gasoline sold to a lessee-dealer, to cancel or refuse to renew the lease of a lessee-dealer on the ground that the lessee-dealer does not comply with the marketing or pricing policies of the lessor-supplier, or to discriminate between lessee-dealers through the prices charged such lessee-dealers.”

The committee realizes that, if a producer were so inclined, there are almost limitless ways, other than gasoline rebates, to reward a dealer for adhering to its pricing policies, e.g., rent adjustments, cleanliness awards, tire discounts, and even “under-the-table” payments. The only effective legislation, therefore, would appear to be that under which every one of a producer's dealers, whether consignment, commission or contract, would receive identical treatment in all respects regardless of widely varying efficiency, volume and investment. Such a law would, of course, negate many well-established and ethical practices regularly followed in substantially all other business fields which involve supplier-retailer relationships.

The committee has also considered the establishment of a dealer-suggested state trade commission as well as legislation proposed by the International Service Station Association which has been summarized by the Legislative Counsel in the opinion above cited as follows:

“... Legislation ... which authorized the State Sealer to establish marketing areas in the State and to formulate stabilization and marketing plans therefor, including the fixing of minimum whole-sale and minimum retail prices for gasoline.”

The committee feels that elaborate legislation such as these proposals would be justified only upon a finding that it is necessary to correct a serious problem affecting the welfare of the general public. As already stated, no substantial evidence indicating that such a condition exists is now before the committee. However, it should be noted that the United States Department of Justice and the Federal Trade Commission are currently engaged in extensive investigations and litigation covering the problems described herein, and the Attorney General of California is continually examining into current aspects of the allegedly wrongful marketing practices of the producers. Any findings of these agencies which indicate the necessity of stronger pricing legislation will, of course, be reviewed by this committee or its successors for the purpose of recommending whatever corrective measures may be necessary.

GASOLINE TEMPERATURE CORRECTIONS

Gasoline is expanded by heat and contracted by cold so that fuel purchased at one temperature and resold at a higher temperature will amount to more gallons sold than purchased, while fuel resold at a lower temperature will amount to fewer gallons sold.

The relationship between the atmospheric temperature at which the dealer purchases gasoline and ground temperature at which gasoline for resale is stored has the effect of accentuating this problem for the dealer.

The problems raised by the foregoing are complicated by the tax situation, i.e., the dealer whose gasoline expands or contracts not only gains or loses on the price but also on the state and federal tax, totaling 10 cents per gallon. This is because he pays the tax to the producer-taxpayer on the basis of gallonage purchased and must recover this tax by collection from his customers on the basis of the gallons sold, which may be more or less than the number of gallons purchased.

The State Legislature at the time the Motor Vehicle Fuel License Tax Law was enacted did not fully define "gallon." Although the law has been amended in many ways since that time no precise definition of the word "gallon" has ever been made part of the law. Since 1961, however, (Revenue and Taxation Code, Section 7355) where gasoline is sold in lots of 5,000 or more gallons, the state tax may be measured either by metered gallons or gallons as corrected to 60 degrees, as long as one or the other method is consistently followed for 12 consecutive months. This, in effect, provides for recognition of the generally accepted industry practice of temperature correction. It will be noted, however, that the producer is merely allowed, not required, to sell on a temperature corrected basis.

The dealer interests contend that a correction allowance should be provided for all sales, but did not at the hearings offer any expert testimony or documented data respecting the need or effect of such action.

While the committee recognizes that an inequity may arise in allowing the producer the option of withholding a temperature correction, and in effect determining what constitutes a gallon, it feels that further study will be required to reach a conclusion and provide a sound recommendation on this problem for legislative guidance.

PART II

ADDITIONAL ACTIVITIES

ADDITIONAL ACTIVITIES

COMMITTEE AUTHORIZATION

House Resolution 361, 1961 session, in constituting standing committees of the Assembly as interim committees and authorizing and directing study of subjects assigned by the resolution states in paragraph 1(u), "The Committee on Manufacturing, Oil, and Mining Industry is assigned the subject matter of oil, gas, and other hydrocarbons, and tide and submerged lands, as contained in the Public Resources Code, and uncodified laws relating thereto and the subject matters of manufacturing and mining and other matters relating to manufacturing, oil and mining industry." Pursuant to this directive, your committee has held hearings in the cities and on the subjects cited below.

LONG BEACH HEARING, APRIL 16-17, 1962

The purpose of this hearing was to review the administration of the Tideland Oil Trust by the City of Long Beach. The first day of the hearing was devoted to a tour of the area by the committee members. The formal public hearing on the following day was devoted to testimony on four aspects of the administration of the trust by the City of Long Beach.

1. *Subsidence and Secondary Recovery*

The water injection program, designed to combat the subsidence problem was reviewed. The very satisfactory results obtained since the inception of the program, to include secondary recovery of oil, were outlined.

2. *Harbor Development*

Plans for the furtherance of the Long Beach port facility were reviewed with the use of visual material presented before the committee.

3. *Offshore Oil Development*

A proposal for the exploitation of the tidelands oil found to be in existence in offshore as well as certain townlot locations, which would satisfy the esthetic as well as technical requirements, was presented.

4. *Verbal Presentation*

A verbal presentation for the improvements completed and anticipated outside the harbor district with the use of tideland funds retained by the city in trust, concluded the testimony.

The witnesses in order of appearance were:

Gerald Desmond, City Attorney, City of Long Beach

Edwin W. Wade, Mayor, City of Long Beach

William Harrington, President, Long Beach Harbor Commission

Charles L. Vickers, Port Manager, Port of Long Beach.

Bob N. Hoffmaster, Chief Harbor Engineer

Dudley Hughes, Director of Petroleum and Subsidence Control Operations.

F J Hortig, Executive Officer, State Lands Commission.

Ray C Kealer, Chairman, City Council Oil Committee

Leonard Brock, Petroleum Administrator, City of Long Beach

Manuel Mayuga, Chief Petroleum Engineer, City of Long Beach

Emmet Sullivan, City Council Legislative Chairman

Lawrence McDowell, Marine Director, City of Long Beach.

George Albin, Captain, Chief of Staff to Commander of United States Naval Base

Duane George, Assistant Recreation Director, City of Long Beach

John Mansell, City Manager, City of Long Beach

SANTA BARBARA HEARING, SEPTEMBER 14, 1962

The purpose of this hearing was to review the development of the offshore oil producing facilities in Santa Barbara County.

The committee devoted the morning to a flight over the Channel Islands in Santa Barbara County—San Miguel, Santa Cruz, and Santa Rosa Islands—and the Santa Barbara County coastline from Point Conception to the Ventura county line. The drilling piers, islands, platforms, and barges on state leases within the three-mile limit along the coast were observed. It was noted that the State has respected the Santa Barbara City Sanctuary, that offshore area opposite the city limits in which no wells have been placed.

The public hearing commenced that afternoon with the viewing of a film, "The Invisible Oil Well," which depicted the ocean floor completion technique developed to obviate the need for permanent structures in the offshore area. Ten such wells are in operation or completed in Santa Barbara County.

The committee then heard testimony relative to the jurisdictional dispute over the submerged lands between the mainland and the off-lying Channel Islands, which are believed to have oil-bearing properties. The U S Supreme Court in 1947 denied a state claim to this area, and the federal government holds that its authority derives from the Outer Continental Shelf Lands Act of 1953. The State contends that these submerged lands are within the State's historic boundaries, which were quitclaimed to the State by Congress in 1953. The executive branches of the state and federal governments are attempting to resolve this dispute without expensive and extensive litigation. At such time as an answer is provided, action to verify or establish county boundaries over this area will be required.

Other items of interest primarily to the city and county officials were also discussed.

The witnesses in order of appearance were:

F J Hortig, Executive Officer, State Lands Commission

Edward L. Abbott, Mayor, City of Santa Barbara

Daniel Grant, County Supervisor, County of Santa Barbara

Ward Scott, President, City Council, City of Santa Barbara

Harry Holmquist, County Assessor, County of Santa Barbara

Pearl Chase, Santa Barbara

Stanley Tomlinson, City Attorney, City of Santa Barbara

PART III

LETTER TO CHAIRMAN KENNICK

LETTER TO CHAIRMAN KENNICK

November 21, 1962

HONORABLE JOSEPH M. KENNICK, *Chairman*
Assembly Interim Committee on Manufacturing,
Oil, and Mining Industry
State Capitol
Sacramento, California

DEAR MR. KENNICK:

The undersigned members of the Assembly Interim Committee on Manufacturing, Oil, and Mining Industry have not concurred with the Majority Report of this Committee as it deals with the question of temperature correction in the sale of gasoline. We feel that certain self-evident factors relating to this problem have not been mentioned.

It is recognized in your report that the difference between the atmospheric temperature at which the dealer purchases his fuel, and the ground temperature at which the dealer sells may result in a loss to the dealer unless his purchase is predicated upon a correction to 60°.

However, we believe that the majority of the gasoline sales in California are under climatic conditions which would result in losses to the dealer if deliveries are not temperature corrected.

Furthermore, we find that it is the practice of the industry to measure sales in corrected gallons with only a few exceptions.

In view of the inequities which result from these exceptions, we recommend that legislation be enacted which will make it unlawful for any person to sell, offer for sale, assist in the sale of, permit to be sold, or offer for sale, or to deliver to any premises or any vehicle any product as or purporting to be, "gasoline" in a quantity of 500 gallons or more unless the basis for settlement for such product is 60° Fahrenheit.

The Minority strongly feels that this is a matter of valid public interest.

Respectfully yours,

JOHN C. WILLIAMSON
JACK T. CASEY
CHARLES B. GARRIGUS

o

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ASSEMBLY INTERIM COMMITTEE REPORTS
1961-1962

Preliminary Report of the
ASSEMBLY INTERIM COMMITTEE
on
FINANCE AND INSURANCE

**FIRE INSURANCE
LAND SALE CONTRACTS
CAL-VET INSURANCE**

THOMAS M. REES, *Chairman*
RONALD B. CAMERON, *Vice Chairman*

PHILLIP BURTON
JACK T. CASEY
ROBERT W. CROWN
BERT DeLOTTO
RICHARD T. HANNA
JOHN T. KNOX
ROBERT L. LEGGETT

HAROLD LEVERING
ROBERT T. MONAGAN
JOHN A. O'CONNELL
BRUCE V. REAGAN
W. BYRON RUMFORD
HOWARD J. THELIN
JEROME R. WALDIE

GEORGE A. WILLSON

April, 1962

STANLEY EVANS, *Consultant*
ANTHONY JOSEPH, *Counsel*
SYLVIA ROSENSTONE, *Secretary*



Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

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Speaker

HON. JEROME R. WALDIE
Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore

HON. JOSEPH C. SHELL
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Chief Clerk

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LETTER OF TRANSMITTAL

March 27, 1962

*Honorable Speaker of the Assembly,
Honorable Members of the Assembly,
Assembly Chamber, State Capitol,
Sacramento 14, California*

In view of the fact that your Committee on Finance and Insurance has concluded three inquiries undertaken so far in the 1961-1962 interim and, further, in consideration of the wide interest in these three subjects, this preliminary report is now submitted.

The committee shall, of course, continue to watch developments in these areas in order to prepare recommendations to the next regular session of the Legislature.

Respectfully submitted,

THOMAS M. REES, *Chairman*
RONALD B. CAMERON, *Vice Chairman*

PHILLIP BURTON
JACK T. CASEY
ROBERT W. CROWN
BERT DELOTTO
RICHARD T. HANNA
JOHN T. KNOX
ROBERT L. LEGGETT

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GEORGE A. WILLSON

ASSEMBLY
CALIFORNIA LEGISLATURE
April 12, 1962

ASSEMBLYMAN THOMAS M. REES
State Capitol, Sacramento 14, California

DEAR TOM: As you will note, I have signed the Assembly Interim Committee on Finance and Insurance report. I do, however, want to go on record that in signing it, I do not agree with all of the conclusions or findings.

With best regards,

Cordially yours,

HAROLD K. LEVERING

ASSEMBLY
CALIFORNIA LEGISLATURE
April 2, 1962

HONORABLE THOMAS M. REES, *Chairman*
Finance and Insurance Committee
Room 5175, State Capitol, Sacramento, California

DEAR MR. REES: The report of the Finance and Insurance Committee on Fire Insurance Rates, Land Sale Contracts, and the Cal-Vet Insurance have been submitted to me for my approval. Since I do not approve of some of the conclusions and statements contained in the report on the Cal-Vet Insurance situation, I am writing you this letter to indicate my disapproval of that particular part of the report although I do join in approval of the report insofar as it pertains to land sale contracts and fire insurance rates.

Sincerely yours,

HOWARD J. THELIN
Assemblyman, 43d District

ASSEMBLY
CALIFORNIA LEGISLATURE
April 4, 1962

HONORABLE THOMAS M. REES, *Chairman*
Assembly Finance and Insurance Committee
Room 5175, State Capitol, Sacramento, California

DEAR MR. REES: The report of the Finance and Insurance Committee on Fire Insurance Rates, Land Sale Contracts, and the Cal-Vet Insurance have been submitted to me for my approval.

Although I did not serve on the Subcommittees on Fire Insurance Rates and Land Sales Contracts, I did participate in hearings on the Cal-Vet insurance. In this portion of the report, I disagree with the conclusions. I also have reservations on some of those conclusions on the subject of fire insurance rates.

Sincerely,

BOB MONAGAN

**FIRE
INSURANCE**

On July 27, 1961, the Pacific Fire Rating Bureau suddenly announced substantial increases on fire insurance rates for an estimated 15,000 property owners in three mountainous areas of Los Angeles and Ventura Counties [see map]. Although the bureau understandably did not choose to mention the fact, the surcharge went as high as 400 percent over standard rates.

The importance of the PFRB's action is made manifest by the fact that the bureau, by its own admission, prescribes rates for insurance companies doing 70 percent of the fire underwriting in California.

In two public hearings the General Insurance Subcommittee¹ explored the basis for the action, listened to firefighting experts and heard complaints from indignant policyholders.

1. Rationale for the Surcharge

Basically, the fire underwriters—through the PFRB—contend that their action was necessary in order to assure property owners continued availability of coverage. “* * * what needs to be kept in mind,” PFRB general manager Al Gilbert told the committee, “is that not all companies are willing to accept the poor risks—or their share of the poor risks along with their share of the good risks—so this has a tendency in a confined area such as this to put an additional burden on a limited number of companies who are willing to provide a continuing market for property owners in this area.” What was needed, in other words, was a special rate to reward insurance companies who had stood by their clients in the face of recurring brush fires and, on the other hand, to induce those companies which had shied away from the area to resume taking risks.

“While it is true that this is the first area to receive special rating treatment *designed to relieve the tight market situation*² in brush-covered or forested areas, our program is designed to cover all applicable areas within the whole State and will do so as soon as our surveys are completed,” Mr. Gilbert testified. (Curiously, however, when Chairman Rees proposed an assigned risk plan prior to the December 11 hearing, National Board of Fire Underwriters spokesman W. F. Williams insisted that, “The only possible justification [for it] would be the absence of an insurance market for homeowners in an area of unusual fire hazards. *We do not believe such a condition exists.* While some people who have extremely hazardous exposures may have to shop around somewhat, *we have seen no evidence of the insurance market disappearing.*”)³

The underwriters' spokesmen laid great stress on the fire losses sustained by residents of the Santa Monica Mountains, the Verdugo Mountains and the San Rafael Hills in the past 15 years. They particularly cited the holocausts which have destroyed valuable properties in Malibu (1956), Laurel Canyon (1959), the Hollywood Hills (1961) and Bel Air-Brentwood (1961)—destruction which the bureau insists is far out of proportion to the statewide experience.

The terrain of the areas singled out can be roughly characterized as mountainous (interlaced with deep canyons) and covered to a large extent by

¹ The subcommittee is composed of Assemblymen Ronald Brooks, Cameron, Harold K. Levering, Bruce V. Reagen, W. Byron Rumford, Howard J. Thelin and Thomas M. Rees (chairman). The hearings were held on October 5, 1961, in the Los Angeles State Building and on December 11, 1961, on the campus of the University of California at Los Angeles.

² Emphasis added.

³ Emphasis added.

chaparral, a type of brush that becomes highly inflammable under prolonged, dry conditions. For these reasons the PFRB has chosen to describe the areas within the surcharge perimeter as "brush fire areas."

Since neither the topography nor the climate is unique to the Santa Monica Mountains, the Verdugo Mountains and the San Rafael Hills, the reason the bureau gives for singling out these regions is the plain fact that they have sustained "disproportionate" losses.

In view of the fact, however, that the PFRB could not produce statistics to demonstrate how excessive are the losses in the three Southern California areas *vis-a-vis* the entire State, Assemblyman Cameron asked why the increased rate was not spread among policyholders throughout California.

MR GILBERT Well the answer to that is the history of this area. There have been fires in this area consistently over the past 10 years and even prior to that.

ASSEMBLYMAN CAMERON This is equally true at Lake Tahoe and it's equally true at Lake Arrowhead. I go up there almost every other weekend and there's always a fire every time I go up there.

MR GILBERT Well, this may be true, but to the best of our knowledge, these fires have not involved a large number of structures as the fires have in this particular area.

ASSEMBLYMAN CAMERON Well, but all of the rest of your rates are on a statewide basis. Is that correct?

MR GILBERT Yes, that is correct.

ASSEMBLYMAN CAMERON This is the single instance where you're singling out a given area for a separate treatment than that which you treat on a statewide basis?

MR GILBERT That is true.

2. How the Amount of Surcharge Is Fixed

The first consideration involved in determining the amount of surcharge on a specific house ⁴ is its **fire protection classification**. This is determined by the National Board of Fire Underwriters which consults with the local fire department. "Class 1" indicates optimum fire protection (i.e., proximity of fire station, high calibre firefighting equipment plus skilled firemen, ample water available, etc.), while "class 10" signifies that fire protection is insignificant or nonexistent.⁵

Other factors taken into consideration include:

A. **Distance from brush** (i.e., minimum distance of any portion of a building—or any one of a group of buildings—to brush or *natural vegetative growth*, excluding "cultivated" shrubs if they will not "readily" transmit fire).⁶ If the homeowner lives on a hillside the slope gradient will figure in the computation of distance.

B. **Distance from nearest fire station.** Optimum distance is less than five miles, but the station must be "recognized."

C. **Water accessibility** (i.e., best circumstance is where the house is located within 1,000 feet of a fire hydrant equipped with 2½-inch hose outlets connected to at least a 4-inch water main).

⁴ The surcharge applies to all manner of buildings but since the areas involved are at least 90 percent residential (or else uninhabited) we shall speak of "houses" in this report.

⁵ None of the dwellings in the surcharge area fall into class 1 whereas a sizable number rate class 10. The bulk of the buildings are in classes 4, 5 and 8. The City of Los Angeles, as a whole, is rated class 3.

⁶ The PFRB chooses to leave these terms ambiguous. Presumably the individual insurer, through his agent, is to decide what is "natural" and what is not, whether or not shrubbery will act as a conductor to flames.

D. **Type of roof** is of importance to the extent that a noncombustible roof (e.g., metal, tile, slate or composition) will entitle the owner to a reduction of 10 percent in the surcharge—but in no event more than 10 cents on the annual premium dollar.

The table below provides the gradation in the surcharge according to the foregoing criteria. Column "A" charges apply where *all* the optimum criteria cited in points C and D are met; conversely, Column "B" indicates that one or more of these criteria are not met.

Exposure distance in feet	Class of protection								
	1-4		5-6		7-8		9-10		
	Col A	Col B	Col A	Col B	Col A	Col B	Col A	Col B	
None or									
Under 30	50	50	60	60	80	80	160	160	
30	35	45	45	60	70	80	160	160	
60	25	35	30	40	40	60	160	160	
100	10	20	15	30	30	40	160	160	
200	0	0	0	0	20	30	120	140	
300	0	0	0	0	0	0	80	100	
400	0	0	0	0	0	0	40	60	
500	0	0	0	0	0	0	0	0	

3. The Pacific Fire Rating Bureau

The PFRB is described by its chief counsel, Bert W. Levit, as a nonprofit, voluntary association of insurance companies whose purpose is to "fix" rates in the area of fire insurance and allied lines. It has approximately 80 members and 120 subscribers, the latter consisting of those insurers who make use of the bureau's research but do not belong to it.

The PFRB was organized in 1948 under the provisions of the **McBride-Grunsky Act of 1947** [Insurance Code §§ 1850-1860.3] which gave formal sanction to co-operative ratemaking organizations (The McBride-Grunsky Act was the result of a Supreme Court decision⁷ which panicked the insurance business by holding that federal antitrust laws applied to it as well as other interstate businesses. Following on the heels of this decision the 79th Congress enacted Public Law 15⁸ and thereby told the states to enact regulatory legislation if they wanted to escape federal control.)

Unlike many states, California does not require fire underwriters to submit their rates to the Commissioner of Insurance for his approval prior to putting them into effect. McBride-Grunsky does not require filing at all, although somewhat the same purpose is served by a requirement that rates at least be "published."

The commissioner is required to apply three tests to rates. These are

- A. A rate must not be **excessive**.
- B. A rate must not be **unreasonable** (too low).
- C. A rate must not be **unfairly discriminatory**.⁹

The commissioner must periodically examine ratemaking agencies such as the PFRB to determine whether these three tests are met. The law requires the commissioner to conduct an examination no less frequently than once every five years. In addition, he possesses authority to take administrative

⁷ *United States v. Southeastern Underwriters Association et al.*, 322 U.S. 533 (1944).

⁸ 59 Stat. 33 U.S.C. §§ 1001-1015.

⁹ The meaning of "unfair" discrimination will be discussed below in Section 6.

action at any time¹⁰ against an individual insurance company or ratemaking agency when he finds that one or more of the tests is not satisfied. Upon complaint from a policyholder the commissioner has available to him several courses of action. This discretion significantly includes the privilege of taking no action at all if he so chooses.

In an "all-industry" state, rates, following approval, become binding on all members and subscribers of a bureau. In California, however, the law forbids formal adherence to the bureau's rates on the part of insurers. *But*, "The fact that two or more admitted insurers, whether or not members of a rating or advisory organization, use, *either consistently or intermittently*, the rates or rating systems made or adopted by a rating organization * * * shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement."¹¹ In other words, it is not in the public interest for insurance companies to commit themselves to concerted action to abide by the rates fixed by a rating bureau, whereas it is altogether honorable and ethical if the companies unanimously—but individually—elect to follow rates "recommended" by a rating bureau.

Whether or not PFRB members and subscribers otherwise scrupulously follow the prescribed rates of the bureau, their advantage in making use of the new surcharge is obvious. Mr. Gilbert told the committee on October 5:

It may be well to point out that our rates are advisory only and that California rate law prohibits any rate adherence agreements. I feel reasonably sure, however, that the hazard potentials of the brush problem are recognizable by those companies which make their own rates as readily as they are by those designed on bureau rate promulgations.

If the brush hazard is "recognizable" by insurers who make their own rates as well as PFRB members it would not seem likely that any significant number of companies is going to ignore the surcharge.

4. Are the Fire Underwriters Losing Money?

In view of the McBride-Grunsky Act's proviso on inadequate rates it is well to ask whether the 368 insurance companies doing fire underwriting in California have found it an unprofitable venture.

This facet of the committee's inquiry received a good deal of attention at the October 5 hearing. Mr. Rees first put the question directly:

CHAIRMAN REES * * * In Southern California, are the fire insurance companies losing money? Had they been before your new regulation?

MR. GILBERT Well, for the last three or four years the fire insurance companies—not only in Southern California but in the United States—*have consistently lost money in their underwriting ventures*. There have been just a pyramiding and ever endless numbers of substantial fires that have brought about this and it hasn't necessarily been confined to the fire business * * *¹²

"From the records that you have," Assemblyman Levering inquired, "do these companies have an underwriting loss from fire alone? Someone said an underwriting loss." "Yes, that's true," Mr. Gilbert confirmed, "I said that."

¹⁰ On November 27, 1961, Commissioner McConnell advised Chairman Rees that a special examination of the PFRB commenced on November 13. He also stated that the last previous examination was completed in March 1958, and that it covered the preceding eight years.

¹¹ From Insurance Code § 1813.6 (emphasis added).

¹² Emphasis added.

The point was pursued by Mr. Cameron: ¹³

ASSEMBLYMAN CAMERON. * * * You stated, as I understand it, categorically, that there was an underwriting loss by the fire companies in the State of California in the last several years. Now, is this correct or not?

MR. GILBERT. Well, I'd have to qualify that.

ASSEMBLYMAN CAMERON. In what respect, sir?

MR. GILBERT. Well, I didn't mean to imply that all companies doing business in California .

ASSEMBLYMAN CAMERON. No. We're talking about the aggregate. We're talking about the aggregate of all companies in the fire business.

MR. GILBERT. There might have been one or two years in the last five when the aggregate would have produced possibly 1 percent. 1½ percent profit.

ASSEMBLYMAN CAMERON. Which, in essence, is a loss because you're shooting for 6 percent * * * So this is the way you're saying "a loss." All right.

MR. GILBERT. Now, * * * in the other three of those five years the aggregate experience exceeded 100 percent. There were two years when the total of losses incurred and premiums earned was in the high nineties. And the other two or three years was above 100 percent. ¹⁴

ASSEMBLYMAN CAMERON. * * * In the residential property [line, as opposed to other lines of fire insurance,] did you say that the loss ratio was running approximately 48 percent—in the aggregate, again?

MR. GILBERT. Yes.

ASSEMBLYMAN CAMERON. Now, what is the expense ratio in the residential property—approximately, [and] in the aggregate?

MR. GILBERT. Well, in the residential property, generally speaking, I know that companies generally pay a little higher commission because of the added [acquisition] costs.

ASSEMBLYMAN CAMERON. All right. [That would be because of the] shorter term policy.

MR. GILBERT. So we do not make any distinction in our overall rate studies of the difference in commission factors or types of bills. We use a single average which represents the total expenses and . . .

ASSEMBLYMAN CAMERON. Which are running how much, then, on the total?

MR. GILBERT. Well, at the present time, I would say close to 47 percent, 47-48.

ASSEMBLYMAN CAMERON. When you add these two [48 percent on the loss ratio and 47 percent on the expense ratio—Ed.] together you get 95 percent. So, giving a little bit extra for single-family residences, it's been at least a break-even proposition. It hasn't been a substantial loss on single-family residences [It has been] an underwriting loss. It's been a break-even, *not making quite your normal 6 percent, but making an underwriting profit* ¹⁵

MR. GILBERT. That's true.

While the insurance companies' spokesmen might be excused for using the word "loss" in their own specialized way (i.e., meaning no loss at all but a profit so low as to fail to qualify as lucrative), the foregoing discussion should serve to dispel any impression the public might otherwise have gotten that the fire underwriters are teetering on the edge of bankruptcy.

But since generalizations are bound to be vague, it might be useful to cite the experience of a specific company. The Firemen's Fund (and its subsidiaries) constitutes one of the largest insurers doing residential fire underwriting in

¹³In the discussion which follows the reader should bear in mind that the percentages quoted are based on a hypothetical premium dollar. Loss ratio indicates the proportion of the dollar paid out in claims. Expense ratio means the sundry costs incurred by the insurer and includes brokers' or agents' commissions, general administrative expenses, taxes, advertising costs, etc.

¹⁴Anything between the figure in the nineties and one hundred would represent a profit anything over one hundred would mean a loss—the companies, as a whole, would be "in the red" for that particular year, at least as regards their residential line.

¹⁵Emphasis added.

California. In the February 26 issue of *Insuranceflash* Firemen's president, James F. Crafts, is quoted as reporting that despite claims from Hurricane Carla in September and the Bel Air-Brentwood holocaust in November, his company and its affiliates had an adjusted underwriting profit of \$3,389,000 in the second half of 1961. But, for the entire year Firemen's Fund had a loss ratio of 63.3 percent and the result was an underwriting loss of \$1,089,000. In view of this, then, how could Mr. Crafts say that "1961 was a fairly satisfactory year for the Fund Insurance Companies"? Because income from premium dollars invested totaled \$15,749,000.

5. Should the Surcharge Be Applied Statewide?

Throughout the discussion of loss ratios the committee repeatedly encountered the fact that the PFRB's statistics are based on statewide experience. Assemblyman Reagan first developed the point when he sought figures on the loss ratios for Southern California. Mr. Reagan drew the conclusion that the residential or dwelling lines were carrying the burden for other lines of fire insurance.

MR. GILBERT [We] try to set the rates to produce Bear in mind that our rates are predicated mainly on past experience

ASSEMBLYMAN REAGAN Would it be possible—and should it be possible—to divide that up as between Northern California and Southern California? I suspect that we're carrying a very substantial portion of that burden

MR. GILBERT Well, this argument goes on all the time, Mr. Reagan

ASSEMBLYMAN REAGAN Has it ever been answered?

MR. GILBERT Well, I think the simplest answer would be something like this While Southern California may go through a period of five [or six] years with an abnormally low loss ratio, it doesn't take much of a loss to turn that situation where the reverse would be true

ASSEMBLYMAN REAGAN Well, is there any time during the last 10 years that it's been any other way?

MR. GILBERT Well, we've had no occasion to examine it that closely from a standpoint of the statistics that are available

The inability of the fire underwriters to produce statistics documenting the amount of claims they have paid for fire losses in Southern California does not in the least detract from the fact that this area of the State has indeed suffered catastrophic damage from fires. In the wake of the holocaust that ravaged a sizable area in Bel Air and Brentwood on November 6, 7 and 8, 1961, it would be particularly unrealistic to maintain otherwise. But the lack of comparative figures gives rise to a suspicion that the three Southern California areas are not being treated fairly.

At the October 5 hearing Los Angeles City's Fire Chief William L. Miller contended that the Santa Monica Mountains, the Verdugo Mountains and the San Rafael Hills were collectively being used as a "guinea pig." He told the committee that if a rate increase was needed it should be applied throughout the brush-covered and mountainous areas of the State. His position was seconded by spokesmen for the fire departments of Los Angeles County, Ventura County, City of Burbank and City of Beverly Hills.

As indicated earlier, Mr. Gilbert did promise that the PFRB's surcharge would be extended to other sections of the State "as soon as [the bureau's] surveys are completed." When asked by Assemblyman Cameron if it would not have been advisable for the bureau to withhold its surcharge on the Southern California regions until a statewide program could be worked out, Mr.

Gilbert returned to his main theme that the surcharge was crucial to forestall a withdrawal of the fire underwriters from the three Southern California areas.

And when will the rate increase be applied statewide? " * * * This will depend upon the completion of our general studies as a whole," Mr. Gilbert explained. "We may very well examine the situation [at] Lake Arrowhead. We may take another look at the area that lies east of Pasadena, out to San Bernardino. And we'll certainly take a good, hard look at Lake Tahoe . . . Perhaps up in Lake County . . ." ¹⁶

Mr. Gilbert's vague and speculative response tends to discourage any expectation of an imminent extension of the rate increase and a concomitant reduction in the surcharge on Southern Californians.

6. What Does "Unfair" Discrimination Mean?

At the December hearing Mr. Gilbert advised the committee that " * the fundamental process of all rating involves discriminating or differentiating between insured properties in order to determine a proper rate to reflect the differences and hazards encountered."

This view was supported by Chief Assistant Insurance Commissioner Joseph D. Thomas who told the committee " * the phrase[s] 'discriminatory' and 'unfairly discriminatory' and those such things are so general that they mean very little in the abstract. Until you start to apply them in particular situations, they are almost meaningless." ¹⁷

Chairman Rees, pointing out that there is a brush fire hazard in other parts of the State, asked if it wasn't discriminatory to single out the three Southern California areas. "Assuming that the conditions are identical, yes, there would be something to get excited about * * *," Mr. Thomas replied. "If they are distinguishable, then it would not be a discrimination to handle one differently than the other."

ASSEMBLYMAN LEVERING: Now, Mr. Thomas, this answer that you just gave us here between "identical" and "distinguishable" is quite an answer. If it is identical, then you would have exactly the same number of houses. You could have conditions that would make it a *parallel* situation, but it would not be *identical*. I do not think that is the way to approach it at all.

MR. THOMAS: Well, perhaps I did not use quite the right words, Mr. Levering.

ASSEMBLYMAN LEVERING: Maybe not, but * * * I do not want to see an "out" on this when I think [that] plainly and clearly [there] are areas that are substantially the same and should be treated in the same manner.

MR. THOMAS: Well, I think you are correct and if they are substantially the same, they should be. But I do not think that perhaps with reasonableness that

¹⁶ Emphasis added.

¹⁷ On February 19, 1962, Insurance Commissioner F. Bettison McConnell replied to a query from the committee on this point. He stated, in part: "You * * * ask what criteria were applied to distinguish between discrimination as such and unfair discrimination. No criteria except innumerable specific examples have or can be used. Let me explain. These are terms of comparison in the abstract, unrelated to specific cases, they are practically meaningless. The problem is clarified by asking the question: What criteria do you use to determine whether something is cleaner or handsomer or more beautiful? When the specific things to be compared are fully described, criteria for making that aesthetic comparison have to be chosen by the person upon whom devolves the responsibility of deciding. In the case of this McBride-Grunsky proviso the Legislature has provided in each annual budget the funds which have been found to be necessary to administer and enforce this and related provisions of the law. The law does not authorize this department to promulgate advance rules or tests by which to limit future judgment or discretion. We have not found there are any serious difficulties in applying the proviso and I believe our decisions under it have been considered generally to be sound, fair and just by the public and the insurance industry. The same proviso, or one nearly the same in meaning is the test in practically every state rating law. These generally have been found to work satisfactorily. So far as I am aware the proviso has never been 'tested' in the sense of court decisions or formal Attorney General opinions in the State of California. It or similar provisos have been so 'tested' elsewhere but as explained in the beginning the decisions have no abstract value because such is authority only for the correct result which should follow from the comparison of two specifically described and defined risks."

they should be expected to survey a state as large as California and do it all at one time I think that they are progressing—maybe not as rapidly as some of us would like—but I think they are * * * surveying the whole State on this situation ¹⁸

The Commissioner of Insurance has instituted an examination of the Pacific Fire Rating Bureau under the powers given him in the McBride-Grunsky Act. Presumably he will make a determination as to whether or not the fire underwriters unfairly discriminated against the homeowners in the three Southern California areas when it singled them out to bear a surcharge. In view of Mr. Thomas' indulgent attitude toward the PFRB it would be somewhat of a surprise if the commissioner were to find against the underwriters.

7. Effect of the Surcharge on Property Owners

Fundamentally, there are three major insurance problems confronting the people who own property within the PFRB's surcharge perimeter.¹⁹ These are:

- A. Meeting the increased cost of fire insurance.
- B. Trying to obtain coverage elsewhere once the insured has been canceled or refused renewal.
- C. Trying to obtain additional coverage to meet the full value of the home and its contents.

At the December hearing Mr. Albert J. Hoyt, President of the Topanga Canyon Improvement Association, testified that his fire insurance was unilaterally canceled long before the Bel Air-Brentwood fire because his house, in the words of the insurer,²⁰ is located in one of " * * * certain areas in Los Angeles County in which our Company no longer writes Insurance."

Topanga is not exactly a high-class community, in the sense that people are very wealthy, and [can afford] a fivefold increase in insurance rates * * *. In my own case, I have done considerable shopping around and I find that the minimum rate I could ever expect to pay would be five times what I was paying before—and that was not certain. They said, "Well, it might be higher than that after [we look] the place over," and that despite the fact that we have a house that is as fireproof as we can make it with asbestos shingle roofs, stucco construction, metal shields for the windows and a hundred [feet] clearance around all sides. There have been a great number of people faced with this same problem and some of us are simply in the position we cannot afford the rates charged * * * so we are sitting there uninsured.

Prior to his cancellation Mr. Hoyt was paying \$116 for two years' coverage. The lowest figure he was quoted for insurance with another company was \$550. He said that he had checked with seven or eight companies through agents and " * * * two-thirds of them simply shrugged and said, 'We won't touch your area.'"

At the same hearing Mr. Gilbert reported that an audit of 229 policies submitted to the PFRB's Los Angeles office over a little more than a two-month span revealed that the average amount of surcharge has been somewhere between 160 percent and 170 percent rather than the frequently mentioned 400 percent. Whether or not this average will stand as more policies come due for renewal remains to be seen, but it is worth examining the effect of even a "mild" surcharge. Mr. Matthew Miller of Malibu, for example, was surcharged a trifle more than 100 percent (i.e., his yearly premium went from \$228.58 to \$460.25). Consequently, his monthly bill for fire insurance has jumped from less than \$20 to \$38.40! Add this figure onto other payments

¹⁸ Emphasis added

¹⁹ According to some brokers, persons living outside the perimeter, but in the vicinity of the Santa Monica Mountains, are encountering some of these problems.

²⁰ The quote is from a letter which the witness read to the committee.

for mortgage amortization, interest, taxes and special assessments and it becomes readily apparent why the surcharge, *when considered along with the other costs the property owner must bear*, is a cause of considerable discontent.

Extent of the unavailability of insurance coverage is difficult to gauge at this time. The incidence of outright cancellation has probably been kept low due to the efforts of brokers and agents through their professional organizations.

Mr. Merritt Moselle, President of the Insurance Brokers Association of California, reported the results of a poll taken by his organization.²¹ In response to the question, "Do you plan to cancel any existing insurance in the brush areas?", Mr. Moselle found that one company indicated it would, two companies were undecided; "and the others definitely stated that no cancellations were anticipated."

Insurance people see a great distinction between outright cancellation of a policy in midstream, so to speak, and, on the other hand, refusing to renew a policy when its term expires. To the homeowner, of course, the effect is about the same: he must find coverage elsewhere—and fast. There is a body of evidence that suggests that, in certain types of insurance, the “dumping” of an insured—whether by outright cancellation or by refusing to renew—has the effect of placing a stigma on him that prejudices his chances with other insurers. Mr. Walter Lindecker, speaking for the California Association of Insurance Agents, assured the committee that “... cancelling and re-writing all classes of risks [is] virtually a daily occurrence. It is one of the things that makes life miserable as far as an agent goes, but it does not mean that there is any improper practice or that any hardship is being worked on any single insured. It is not.” Asked to amplify his statement, Mr. Lindecker conceded that cancellation is a “consideration” in certain lines of insurance but that, in fire insurance, it is no great problem when “the facts” are presented to the insurer for his consideration. While there is some risk in generalizations, it does not appear that “dumping” of risks has so far left uninsured those persons who are able and willing to pay. In those cases that have come to the committee’s attention, the gap between different underwriters has not, as a rule, endured longer than a week. This, too, is probably due to the efforts of brokers and agents. On the other hand, it should be noted that a week—or even a few days—without coverage could make all the difference in the world. The Bel Air-Brentwood fire (coupled with the concurrent Santa Ynez blaze) needed only three days to wreak \$24,000,000 damage.

On the matter of renewals, Mr. Moselle reported 88 percent of the companies in the IBAC poll said they planned to renew existing policies but the question put to the insurers included the intriguing clause, "assuming the property meets underwriting requirements." "Underwriting requirements" is an intentionally broad term that turns up with disturbing regularity whenever insurers choose to cancel or refuse renewal of policies and do not elect to give a specific reason. For example, there is the case of Mr. Ben Orel of Hollywood. In January, 1962, Mr. Orel forwarded a letter from his insurance company to Chairman Rees. The insurer succinctly stated that the reason Mr. Orel's policy was being canceled was because "the risk in question does not meet our underwriting requirements." When he pressed his agent for a more adequate explanation Mr. Orel reports he was told that the company simply was no longer accepting risks in the surcharge perimeter.

²¹ The poll was based on a sample of 40 companies out of 168 admitted fire underwriters in California. In support of the representativeness of his sample Mr Moselle observed that the responding insurers do 80 percent of the residential line underwriting in this State.

Mr. W. V. Slevin, Assistant General Manager of the National Board of Fire Underwriters, spent a large portion of his time before the committee on December 11 in a recital of the steps which the insurance community has taken to persuade homeowners to insure their property to its full value. He pointed out that the fire underwriters had used all the news media to present the message to the public.

There would seem to be more than a little irony in Mr. Slevin's account when one considers the difficulty encountered by a number of homeowners in trying to increase the amount of insurance on their property after they discovered that their coverage would not fully indemnify them for a total fire loss. Mr. Howard Solomon of Mandeville Canyon in Brentwood testified that his insurer would not consider increasing his coverage after the Bel Air-Brentwood fire.²²

MR. EVANS * * * What are you insured for now—the total?

MR. SOLOMON We were able to get 30,000 on the house and 12,000 on personal property.

MR. EVANS And do you think that is adequate coverage?

MR. SOLOMON: No, but [I am] using an excellent broker * * * [and] normally I am guided by what his feelings are * * * and as far as the house itself is concerned [its true value] probably would not exceed the 30,000 by too great a figure. *But the personal property would exceed the 12,000 figure and this is where we should have additional coverage*

MR. EVANS * * * Is it correct to say that you did not attempt to get further coverage because—

MR. SOLOMON I did attempt to, but * * * they went on record as saying pointedly they will not increase the coverage.

MR. EVANS I see And that cut off any attempts?

MR. SOLOMON: Yes.

MR. EVANS Did you have any reason to believe that your broker could place you with some other company [for] what you feel would be adequate coverage?

MR. SOLOMON: My broker tried several companies I do not have the names of them, but he was unable to get coverage inasmuch as they claim this was an extreme hazard area and they no longer wish to insure there

In the light of similar cases which have come to the committee's attention it would seem that the homeowner is doing well to (1) afford the surcharge, (2) convince his insurer that his policy should be renewed, let alone (3) add to the amount of his coverage.

8. The Attack on Fire Hazards and Impediments to Firefighting *

Attempts by the City of Los Angeles, which encompasses most of the inhabited surcharge area, to deal with fire hazards were begun before the Bel Air-Brentwood fire and accelerated after it. Studies undertaken and decisions made following that holocaust indicate that while the city government has for years procrastinated in facing up to some tough decisions a determined effort seems at last to be underway.

On February 23, 1962, a city ordinance banning all new construction in a major part of the Santa Monica Mountains for 120 days took effect. In the interval the city council anticipates "complete regulatory control" over subdivisions will be overhauled and new building requirements promulgated.

²² It might also be noted that this homeowner found his three-year premium soaring to nearly \$500 from \$190 and was only able to renew his coverage because of the vigorous efforts of his broker

Combustible Roofs

A reappraisal of the design, specifications, and composition of homes located in canyons and on hilltops is in order. Los Angeles Fire Department officials believe that many buildings will not burst into flames from nearby brush fire heat or ignite from flying embers if the right design and building material is utilized.

In describing what happened in November's holocaust, Chief William L. Miller has given a vivid description of ember-ignited fires.²³

At the start of the Bel Air blaze the fight was going well in a typical house-to-house running battle along Stradella Road as firemen kept pace with a fire front which roared at the backs of houses just below the ridge in its southward run along the west wall of Stone Canyon.

For several blocks each home was wrested from destruction by firefighters in scurrying, choking hand-to-flame combat.

Then suddenly, at the height of the battle along Stradella, the fire command radio crackled that fire had broken out in the next canyon to the west.

Not a block away, not two blocks away, but more like a quarter of a mile behind the struggling firefighters.

The fire—in firemen's language—had "spotted," that is, flying brands in 40 to 50 m.p.h. winds were starting a dozen spot fires which soon became major emergencies in their own right with homes threatened and starting to burn.

The battle scene changed from a ground attack by the fire to something like an artillery barrage of flying fire brands—or like a paratroop attack behind the lines of the firefighters.

The same phenomenon was observed by Captain Max Schumacher, a helicopter pilot for Los Angeles Radio Station KMPC. On November 17 Capt. Schumacher told Mayor Yorty's Fire Inquiry Board that while aloft he saw the fire jump between 500 yards to 1½ miles by virtue of flying brands.

These brands result from houses having shingle or "shake" roofs which burn and release their particles into the air. This matter is carried into the upper wind levels by thermo updrafts. It is then capriciously dropped on combustible or noncombustible surfaces. If a brand lands on a shingle or "shake" roof it is almost certain to cause severe damage if not destruction. *Thus shingle roofs pose a double hazard: they catch fire and burn quickly and they also abet the spread of a conflagration.*

The subcommittee toured the Bel Air-Brentwood fire area on December 11. Chairman Rees described the scene:

* * * There was a very strong tendency for houses that had shake roofs—heavy shingle roofs—to burn up. We saw many streets where four houses would be burnt that had shake roofs and * * * two houses, say, that had stone roofs or gravel roofs would still be standing. * * * All throughout the fire area we found that there was not a definite pattern of every house along the street being leveled. [rather,] there would be two or three houses along a street and then [the fire] would jump a ridge and there might be 15 homes [destroyed], such as on Chalon Road or Tipton, but then there would be little spots here and there ranging up to a half to three-quarters of a mile away from the major fire areas where you would have fire losses.

At the November 16 meeting of the Mayor's Fire Inquiry Board Mr. Rexford Wilson of the National Fire Protection Association produced statistics on fires since 1900. "The largest wood shingle conflagration is over 10 times the size of the largest nonwood shingle type. The average wood shingle conflagration is larger than the largest nonwood shingle conflagration," Mr. Wilson

²³ This account is taken from the *Los Angeles Times* of November 26, 1961.

recalled a Cassandra-like prophecy he had made in a report to the city government three years earlier:²⁴

If wood shingles or shakes continue to be used at the rate [which they have] enjoyed over the last 5 to 10 years, then the certainty of a major wood shingle roof conflagration in the areas studied will be assured

Noting that San Francisco's building code requires fire-retardant roofing to be used throughout that city, Mr. Wilson recommended a similar ordinance for Los Angeles and asserted that it should be the first step in attacking the fire hazard.

On November 14 the Hill Brush Fire Committee called for such an ordinance and on December 15 Mayor Yorty put his weight behind the proposal. Whether the city council will require fire-retardant material on all new and replaced roofs in the brush hazard area remains to be seen. It can be predicted that such a requirement, coupled with other changes in the building code (e.g., restrictions on cantilever construction, "picture" windows, exits, width and configuration of driveways, etc.) will meet vigorous resistance from manufacturers of wood shingles and home builders.²⁵

Brush Clearance

Mr. Joe H. McCormick, President of the Building Contractors of California, is representative of those who insist that brush clearance is the basic solution to the fire hazard. He has gone so far as to maintain that:²⁶

Most of the construction changes that have been recommended as protective measures would be unnecessary if the brush removal program takes place. If our hillside are cleared of combustible brush, *whether or not a man has a wood shingle or an asphalt roof on his house will be of little consequence in determining how safe his dwelling is in the hills as it is anywhere else in Southern California*

Since July of 1959 the County of Los Angeles has had a stiff brush clearance ordinance which empowers its fire chief to order the removal of brush around a home and, if the owner refuses to comply, the county can itself remove the growth and charge the expense to the owner. A similar ordinance is contemplated for the City of Los Angeles and has the backing of Mayor Yorty, Chief Miller, the Hill Brush Committee and the Fire Inquiry Board. Its enactment seems assured.²⁷

"Clearance" of brush, however, does not necessarily mean complete eradication. The county ordinance provides for a firebreak of 30 feet around each structure with an additional 70 feet beyond cut to 18 inches in height according to the judgment of the fire department. *Trimming*, as opposed to *removing*, brush obviously means that a continuous program must be carried on. But it is also obvious that retention of some brush means that soil erosion can be prevented.

Total removal of brush, if not accompanied by replanting of succulent vegetation, obviously raises the grim spectre of landslides. Following on the heels of the dry season of 1961 came the extraordinary rains of February 1962. By February 25 Los Angeles' seasonal rainfall amounted to 17.65 inches—dramatic contrast to the meagre 3.99 inches which had fallen as of the same

²⁴ The quotes are from the official transcript of the proceedings. It might be noted here that NFPA's research is financed by the fire underwriters.

²⁵ Building contractors last year fought a resolution to clarify Los Angeles City's Municipal Code on landscaping of mountain and foothill properties. The resolution was considered at four sessions of the Building and Safety Commissioners before it was finally promulgated on November 16. Much to its credit, the insurance community gave its active support to the move to provide for fire resistant foliage around houses and for grading designed to lessen the possibility of landslides and erosion.

²⁶ This quote appeared in the *Los Angeles Times* of February 18, 1962. Emphasis added.

²⁷ The county's ordinance was enacted under authority of the Health and Safety Code, §§ 14875-14905, while the city's ordinance would be by authority of Chapter 13 of the Government Code. Some confusion arises by virtue of the fact that both state laws are referred to as *The Weed Abatement Act*.

date the previous year! Along with the rainwater coursing down canyon walls in Bel Air and Brentwood came mud, tons of mud filling swimming pools, obscuring streets and moving houses off their foundations. The unwanted "brush clearance" brought about by the fire of November 6, 7 and 8 spawned landslides which devastated the homes of people who had been fortunate enough to survive the brushfire.

Brush clearance—or, more accurately, brush control—is not itself the solution. The brush hazard, as we know it today, will probably be eliminated only when the open brush areas are completely subdivided

Water Supply

The development of the foothill and mountain areas has, however, been so intensive in the past decade that the supply of water has not kept pace. Many homes were lost in November's holocaust simply because water mains were overtaxed and firemen could not get enough pressure to quench the flames. Accordingly, the Hill Brush Fire Committee has recommended that further division of land be halted until a greater supply of water and fire hydrants is feasible. Adequacy has been defined as water flow measure of 750 gallons per minute with hydrants no further than 1,000 feet distant from any house.

Other problems which have been singled out for treatment include excessively narrow streets, dead end streets, limited access into canyons and over ridges, overhead power lines and houses built too close to one another.

Mr. Richard E. White, President of the Federation of Hillside and Canyon Associations and a veteran of interminable hearings and disputes over building requirements and fire prevention measures, indicated at both the October and December hearings that property owners would willingly support whatever measures are necessary to minimize the fire hazard. He summed up.

We would be better off if the hills were completely developed, but we are having to go through a transitional state here where these patterns of brush work their way in and out of the houses among the various developments. And until the development is complete—until we can rush through the type of protection that the Mayor's Hill Brush [Fire] Committee, for instance, has recommended * * —we have to have these insurance companies stand by us. We feel that they have a stake in this thing. They have certainly prospered from their insurance business and they have a stake in seeing that we continue to prosper and develop as a city.

9. Conclusions

A. The committee does not dispute the fact that, over the past 15 years, fire underwriters have had to pay substantial amounts of money for fire losses in California.

B. There probably is justification for some fire insurance premium increase but it is contrary to the traditional insurance practice of spreading the risk to isolate three areas in Southern California to pay a surcharge. Moreover, since it is perfectly obvious that the flammable conditions in the Santa Monica Mountains, the Verdugo Mountains and the San Rafael Hills are not at all peculiar to these areas alone, it is discrimination to surcharge the property owners in these localities.

C. Neither the Pacific Fire Rating Bureau nor the National Board of Fire Underwriters has given any indication when the survey of other brushfire hazard areas in this State will be completed and no assurance has been given that when the surcharge is extended to these similar areas the rate for Southern Californians will be reduced. The committee believes such a commitment should be made.

D. If the Department of Insurance, upon conclusion of its current examination of the Pacific Fire Rating Bureau, finds that the antidiscrimination provisions of the McBride-Grunsky Act has not been violated then the 1963 Legislature should amend the law to give it meaning

E. Since California law does not provide for prior approval of rates by its Insurance Commissioner and therefore the public is presented with a sudden *fait accompli* when new rates are promulgated, this committee recommends prior notice of rate changes with a reasonable time interval for all interested parties to examine the proposed rates and the criteria used to fix them.

F. Spokesmen for the fire underwriters have declared their willingness to support measures by local governments to reduce the brushfire hazard. As proof of their good intentions they should actively participate in the move to perfect and enact these measures by adding their considerable influence to the drive.

G. Cases indicate, but do not prove, that the PFRB's surcharge perimeter has defined for certain insurance companies a "gray zone" into which they will not go and, indeed, will retreat from as quickly as possible. The committee intends to watch this situation and if matters worsen to the point that insurance coverage simply becomes unattainable for a majority of homeowners it will not hesitate to recommend that the 1963 Legislature enact an assigned risk plan.

H. Section 2071 of the Insurance Code should be amended to provide for more than five days' notice of intention either to cancel a fire insurance policy or refuse renewal of it upon its expiration.

I. In their fear of making building and zoning regulations which would inconvenience or cause economic hardship to contractors and the building materials industry local governments have courted disaster. As a result disaster has come time and again, culminating in the inferno of November 1961. The City of Los Angeles has particularly neglected its responsibilities. Under the leadership of Mayor Yorty, however, the city at last appears resolved to enact the ordinances necessary to minimize the susceptibility of buildings to fire and to make it feasible for the fire department to control brushfires.

J. The wood shingle manufacturers have been derelict in their obligation to develop a product which will not make firetraps of the homes of Californians. The industry should accelerate research on a method of treating wood shingles so they will resist rather than abet fire.

**LAND SALE
CONTRACTS**

The purpose of the subcommittee was to investigate the need for legislation in regard to land sale contracts, the hearing was held in Richmond due to the location of three distressed tracts in that area.

1. Background

The Rancho del Mar, Country Club Crest and Pinole View tracts were developed between 1955 and 1960. The homes built were in the \$12,000 to \$14,000 range. Down payments on these homes were between \$125 and \$653. The monthly payments excluding taxes and insurance ranged from \$87.75 to \$104 with the preponderance under \$92.50.

During 1958 and 1959 the properties were sold under contracts of sale. First trust deeds were held by either Home Mutual or Berkeley Savings and Loan Association. The original loans were from \$9,650 to \$11,100. The difference between the amount of this loan and the contract sale price of the home approximated the face amount of a second deed of trust. After the sale of the properties the equity held by the subdividers was sold to Dependable Properties, Inc.¹ Second deeds of trust were created by Dependable. All the second deeds and the remaining equity were then sold to Mason Mortgage and Investment Corp. These deeds of trust were purchased by investors throughout the eastern part of the United States.

Many home buyers were in default on their payments when Mason acquired title to the property. The overdue payments were paid by Mason in May 1960. From that date until October 1960, when Mason filed a petition in bankruptcy court, payments were promptly made to the beneficiary whether the contract purchaser was or was not current in his payments.

The trustee in bankruptcy failed to remit payments from the contract purchasers to the savings and loan associations. This resulted in the recording of defaults upon the associations' books. The associations were restrained from foreclosing on the properties by order of the bankruptcy court.

By the time the bankruptcy court's restraining order terminated, notice of default had been filed on 418 properties located in the three tracts.

For purposes of liquidation the trustee in bankruptcy appointed an agent who was to bring about refinancing of the properties and secure whatever amount he could for Mason's equity. In July Mason's agent notified tract residents that they had one week in which to obtain "refinancing." He also wrote investors in Mason Mortgage and Investment Corp. who held second deeds of trust on these properties that an impending foreclosure was going to "wipe out" their interests. The effect of these two letters coupled with a general lack of information created near panic in the tracts.

When apprised of this situation, Governor Brown directed the California Board of Investment to investigate the problem and assist the home buyers however possible.

A conference was held with representatives of the savings and loan associations. They immediately agreed to withhold further foreclosure action.

The Board of Investment and the respective savings and loan associations determined that a refinancing program with the objective of vesting fee

¹ Dependable Properties paid cash to the subdividers and bought their equity in the tract with the intention of creating second trust deeds to be sold to Mason Mortgage. This entire operation is described on pages 35 and 36 of The Final Report of the Subcommittee on Real Estate Contracts and Trust Deeds, Vol. 23, No. 15, December 1960.

title² in the home buyer was the ultimate solution to the problem. This plan has been put into effect and many of the home purchasers in the three tracts have been given fee title to their homes.

These specific facts are set out only to give the reader perspective. The same general problem has occurred in other tracts in other sections of the State.

2. The Hearing

The Subcommittee on Real Estate Contracts³ of the Assembly Interim Committee on Finance and Insurance was called to order at 10 a.m. in Richmond, California, on October 3, 1961, by the subcommittee chairman, Jerome R. Waldie.

The first witness called was Preston N. Silbaugh, Director of the Department of Investment and Commissioner of the Division of Savings and Loan. He testified to the action of the Department of Investment in bringing about agreement between the savings and loan associations, the home buyers and Mason Mortgage Corp. and made recommendations for corrective legislation.

* * * I believe that the heart of the problem here is [that] in the use of the contract of sale in subdivision financing where there's an underlying deed of trust and a subsequent sale on contract, the contract vendee is really at the mercy of the contract vendor. If the vendor is not keeping up with his payments—that is the payment on the underlying deed of trust—the contract vendee can have his house foreclosed out from under him even though he, himself, has remitted each and every one of his payments on time. Now the purchaser of the house should have more protection than this. Although it presently is a misdemeanor to collect contract installments without paying these contract installments toward due installments under a trust deed, this is pretty scant protection in a bankruptcy situation. And, of course, it's no protection at all against the wilful violator, given the fact that adequate policing would be an incredibly large undertaking, so the simplest and most direct method of giving the home purchaser the protection he needs and should have would be to curtail the use of land sale contracts legislatively by preventing its employment as a sales vehicle in all original tracts or subdivision activities.⁴

In response to questions by several members of the subcommittee Commissioner Silbaugh addressed himself to the reason for limiting abolition of land sale contracts to subdivisions:

* * * purchase in a subdivision I don't think is truly an arm's length transaction between two individuals on equal footing. Merchandisers of subdivisions are in a position to present to the prospective purchaser a rigid package on a take it or leave it basis * * *. They [the buyers] should be entitled to a recorded instrument which will reflect the buyer's interest and his equity, which is an interest and an equity which he, himself, should be able to mortgage if he desires and it should be an interest which cannot be wiped out by dereliction of some third party * * *. I think you could argue that curtailment of the contract of sale would lead to a more careful credit appraisal of the prospective purchaser because it would not be quite so easy to remove him upon default.⁵ Therefore you would argue further that it indirectly would work to the best interest of the housing industry. Be that as it may, the fact is that the contract of sale affords the contract vendee a paucity of protection and great abundance of risk.

² "Fee title" is one in which the owner is entitled to the entire property, this does not mean that there are no encumbrances or liens against the property. A title which is free from encumbrances is a "clear title."

³ The subcommittee is composed of Assemblymen Phillip Burton, Bert DeLotha, Richard Hanna, John Knox, Robert Leggett, Bruce Reagan, Thomas M. Rees, W. Byron Rumford, Howard Thelin, George Willson and Jerome Waldie (chairman).

⁴ Emphasis added.

⁵ Emphasis added.

Assemblyman Thelin questioned Commissioner Silbaugh as to the alternatives to the land sale contract which would allow a person to move into a home with a low down payment.

*If you have a first and a second on the premises I think that in a good many cases you can achieve 100 percent financing, but of course, I am not an advocate of 100 percent financing I do believe that an individual going into a home should have an equity in that home I think it is an invitation to disaster when lenders put individuals in homes where they really have no more interest than the average renter**

Mr. William H. Doss, a homeowner in the Pinole tract, testified that the first time he realized his payments were not being applied against the indebtedness on his home was when he read in the *Richmond Independent* that many of the tracts were in default and steps leading to foreclosure sale had been started.

Mrs. Gary Ayers, a homeowner in Pinole, stated that not until she received a letter from the holder of a second trust deed against her home did she realize that her property was in jeopardy. The holder of the second lived in Adelphi, Maryland, and was seeking the co-operation of the Ayers' to pay off deficiencies which arose when payments made by the Ayers to Mason Mortgage were not forwarded to the savings and loan which held the first trust deed on her property. She further stated that prior to notification by the second trust deed holder she had no idea that any savings and loan held a lien against her property:

I called the [savings and loan] and, of course, I was somewhat surprised to find out that our records were delinquent and I kept telling them this is impossible, it's a grave misunderstanding, it can't be, I have cashed checks And, unfortunately, the money was not forwarded so these cashed checks meant relatively nothing We had no idea when we signed the conditional sales contract that this particular thing could happen

Mrs. Edna A. Miller, a homeowner in a Napa County subdivision, told the committee that Mason Mortgage had sold the second trust deed on her home to a minor who resided in Oklahoma. The child cannot release or sell his interest until a guardianship is established. This may only be done in the state where the child resides. Although Mrs. Miller had placed a sufficient amount in escrow and had commitments on loans that would have allowed her to refinance she was unable to do so because the encumbrance against her property was held by a person who was unable to compromise his claim without supervision by a court.

In response to questions concerning the cost to homeowners in keeping their homes one witness said his phone bill had run as high as \$70 a month; another said it had cost \$1,300 to keep her home. These costs did not include payment of any of the defaulted payments as these were either cured by the second trust deed holder or were taken as an additional loss by Mason Mortgage.

Mr. Lee M. Stephens, speaking from his background as a contractor, discussed the good and bad features of contracts of sale, and the possibility of using a first and second trust deed as a substitute.

ASSEMBLYMAN LEGGETT: Now, could you use as an alternative a first and second trust deed method of financing?

MR STEPHENS: Yes, I think we could

ASSEMBLYMAN LEGGETT: And couldn't that accomplish generally the same thing by allowing people to go into property with a regular first deed of trust and

* Emphasis added.

a substantial second deed of trust and still go into the same property with the same small down payment?

MR STEPHENS No, sir I don't believe that would be possible

ASSEMBLYMAN LEGGETT. Why is that not true?

MR STEPHENS The reason for that is the cost of clearing title in the cases where people vacate the property

And in the same vein:

ASSEMBLYMAN KNOX * * * the reason you said you can't use a deed of trust approach, rather than the contract of sale approach is that the cost of clearing the title in case of default is greater. What cost would that be?

MR STEPHENS * * * in those cases where we cannot locate the buyer and clear the title back through a quit claim deed or something of that nature, then we would have to go right through a complete foreclosure action and tie up that empty property for the 90 days that is required, as well as the cost of foreclosure

ASSEMBLYMAN KNOX Of course, if that person sat there and refused to move and demanded and defended against the eviction action, it might be construed as a common law mortgage, which would give him equity of redemption⁷ which would take even longer, wouldn't it?

MR STEPHENS In those cases, it not only takes longer, but it costs more

ASSEMBLYMAN KNOX So that, it's a double edged sword. It could be worse than a deed of trust?

MR STEPHENS Right

Mr. Stephens further stated that a primary reason for using the land sale contract was that his company was obtaining approximately 8 percent interest from the home buyer while the holders of the first and second generally only charged between 6 and 7 percent. The credit standards required under a land sale contract could be met by many more people than under a trust deed. When they attempted to sell the land with first and second trust deeds rather than under a land sale contract they limited the group of eligible buyers. Mr. Stephens testified that requirements under a trust deed are more rigorous because title to the land is passed to the buyer.

In response to questioning by Assemblyman DeLotto, Mr. Sherman Miller, Vice President of Pioneer Investors Savings and Loan Association, disclosed that the loans in the Bay area tracts were approximately 80 percent of the appraised value. Mr. Miller further disclosed that the land was owned by his association and was sold to the builders. On one tract the association put in offsite improvements.

Assemblyman DeLotto pinpointed overlending by the financial industry and the sale of homes on "nothing down" terms as two of the reasons for widespread softness in the homebuilding industry.

Mr. Miller submitted a list of possible solutions to problems created by use of the land sale contract. He suggested a standard contract of sale form which, among other things, would prohibit the use of automatic subordination.⁸ Chairman Waldie inquired about this proposal.

MR MILLER The automatic subordination of the contract holder's interest to secondary financing could not take place. He must concur and agree and permit this so that you cannot have the situation of a second deed of trust being put on without his knowledge.

CHAIRMAN WALDIE You mean the vendee⁹ must know and permit the second deed or any subsequent encumbrance?

MR MILLER That is right.

⁷ "Equity of redemption" is the right of a mortgagor of property to redeem the property after it has been forfeited, at law, by a breach of the condition of the mortgage.

⁸ When a home purchaser agrees to buy on a contract of sale which contains an "automatic subordination" clause he has agreed to subordinate his claim to the property to the claim of a subsequent lender.

⁹ The vendee under a land sale contract is the buyer, the vendor is the seller. Throughout this report the vendee is referred to as the "buyer" or "home purchaser", the vendor as the "seller" or "subdivider".

CHAIRMAN WALDIE And he would have the right to refuse?

MR. MILLER That would be right

Professor John R. Hetland, Professor of Law, University of California at Berkeley, was asked if he had any recommendations for legislation that would make the land sale contract an equitable device for all parties.

* * * the contract is valuable to those that are using it only because they are misusing it. The builders and the savings and loan personnel [who] defined the contract as a "convenient device to get people into houses for a low down payment" find this so only because the people don't know what the remedies are. They find that people move out without clouding the title. And for this reason they have misused the contract and they have found this to be a good security device.

On the other hand, the buyers may discover what the remedies are and as soon as this happens, the contract is less useful to the builder than would be the deed of trust or mortgage.¹⁰ It seems to me the easy solution to the problem is to clarify the remedies available in such a way that they coincide with the judicial remedies and this would be primarily to compel foreclosure, perhaps foreclosure by action, perhaps followed by a statutory year of redemption.

He went on to say that this legislation would give the buyer such a well-protected position that those Californians selling real property would use the deed of trust or mortgage with a power of sale. Professor Hetland pointed out that in terms of enforcement the trust deed with a power of sale is a more liberal security device than you find in almost any other state.

3. Why Sellers Use Land Sale Contracts

The land sale contract, as a security device, has brought much grief to many home buyers in California. The sellers who use land sale contracts generally claim that a buyer may move into a home with less money down under a contract of sale than a sale involving trust deed financing. They further claim that the lower down payment may be accepted because the property may be prepared for resale after default by a less costly process than is necessary when trust deed financing is used. Since title to the property remains with the seller until the full indebtedness is paid the seller will generally resell the property immediately after default by the buyer. If a second buyer should default the seller will resell to a third buyer and so on until a buyer completes all the payments under the contract and title is passed.

If a home is sold under a trust deed transaction title is immediately transferred to the buyer and he may record his interest as fee titleholder¹¹ in the property. The buyer will make a down payment and sign a promissory note for the balance of the purchase price. As security for his promise to pay he signs a trust deed with a power of sale which will allow the lender to sell the property if the buyer defaults on his promise to pay. After a default by the buyer the lender must file a notice of default and then wait 90 days. At the end of this 90-day period he may file a notice of sale, after 20 days the property may be sold. Thus the holder of the trust deed must wait 110 days from the time of the default to sell the property and regain the amount loaned.

A land sale contract vendee [home purchaser] may not record his interest in the property unless the seller will acknowledge¹² the contract. Many land sale contracts contain a provision that should the home purchaser record, the entire balance of the contract will be immediately due. Other contracts con-

¹⁰ Emphasis added.

¹¹ *Supra*, footnote 2.

¹² After transferring title the grantor goes before a competent court or officer and "acknowledges" the transfer as a genuine and voluntary act and deed.

tain an express prohibition against recording by the home purchaser. Although the validity of these contractual provisions is doubtful they are accepted by contract buyers as legal and therefore effectively deter the home purchaser from requesting the seller to acknowledge the contract, let alone attempting to record his interest.

As the home purchaser's title is not of record the seller feels safe in reselling the property immediately after the home purchaser vacates. If the home purchaser abandons the property, sellers generally will not record any new instrument or enter into any legal proceeding prior to reselling the property. If a home purchaser falls behind in his payments the seller will point out provisions in the contract which allow him, after a short waiting period, to enter the premises and take possession without process of law; the contract may further state that the seller may remove property of the buyer without becoming liable for damages because of trespass, assault, battery or otherwise; the seller will also mention the provision by which the home purchaser agreed that upon default he would execute and deliver a quit claim deed to the seller; the home purchaser discovers that the contract requires him to pay rent at a specified rate per day from the time of the default; lastly by signing the contract the home purchaser finds he has agreed to pay all the seller's cost and expenses, including attorney's fees, which are incurred in removing him from the property after missing a payment. The cumulative effect of these provisions will cause home purchasers to sign a quit claim deed and relinquish all their interest in the property.

It is because the home purchaser under a land sale contract believes he cannot record his interest—and, in fact, can usually be intimidated into giving up his rights—that the sellers of homes need not use legal remedies to regain their title. Since the period of time required to remove the delinquent purchaser from the land is short and no attorney's fees or costs of foreclosure sale are incurred, the seller feels justified in accepting a small down payment.

Most subdividers realize that the home purchaser under a land sale contract does have substantial legal safeguards which, if used, would increase the cost of preparing property sold under a land contract for resale after default. Although they are aware of these legal safeguards they feel secure in depending upon the ignorance of the home buying public as regards their legal rights under a land sale contract.

4. Home Purchaser's Rights

If a home purchaser who is buying under a land sale contract falls behind in his payments what rights does he have?

The home purchaser may recover the balance of what he has paid over the actual damage to the seller in not completing the contract. The seller may not recover any amount in excess of the payments received. The home purchaser may request and compel the seller to foreclose by means of judicial sale. Even after the sale the home purchaser would have a year during which he may redeem the property by paying the balance due on the contract. During this statutory redemption period the home purchaser may remain in possession. If the value of his property were to rise he may be able to obtain a loan large enough to pay the balance due under the contract. Throughout this period the seller would be receiving no payment against his investment in the property. If the buyer does not pursue his rights to the point of forcing a judicial sale

he may still require the seller to quiet title by court suit. This suit would be subject to all the possible delays involved in litigation and court calendars.

It would seem that a home purchaser could compel the seller to acknowledge the contract and then have his interest recorded. Even if this is not available the buyer may record his interest through various other devices.¹³ Once the interest of a home purchaser is recorded the seller may only clear his title by court decree in quiet title action.

Thus, the low down payment accepted by the seller of homes when he sells on a land sale contract is based on the failure of home purchasers to pursue their legal rights.

5. Home Purchaser Position Under a Land Sale Contract

The home purchaser who is buying under a land sale contract must depend upon the seller to a very great extent. Since the seller retains title it is he who will make the payments on loans secured by the property. These loans usually are made to allow the subdivider to purchase the land and construct the home. The seller is the borrower and it is he who must pay the lender. If payment is not made by the seller the property will be sold at a foreclosure sale. *Even though the home purchaser has made every payment, if the seller does not make payments on his loans the home purchaser may lose his home, the value of the improvements he has made and all his payments.* Any cause of action he may have against the seller will generally be worthless as the seller is bankrupt or he has fled from the jurisdiction.

The seller also must pay the taxes against the property. Mechanics' liens for on-site and off-site improvements may be filed against the property if the seller does not pay all the workmen and material dealers involved in building the home and making improvements.

The seller may encumber the property by making additional loans and putting up the property as security after the home purchaser has signed the contract. The seller may hope to have a clear title by the time the home purchaser's last payment is made but this is not enough to safeguard the expectation of the home purchaser who is required to make payments over a period of years while trust deeds are encumbering the property.

6. Attempts to Provide Protection for Home Purchasers

A recent regulation¹⁴ enacted by the Commissioner of Real Estate will give some protection to a home purchaser in this situation. This regulation requires all contract of sale forms used in connection with sales of single family subdivision dwellings to contain a provision which allows the home purchaser to make his payments to the seller in such a manner that they will be payable to the order of the holders of any encumbrance against the property. *While this provides some protection it presupposes that the home purchaser will have knowledge of the encumbrances against the property.* This information is contained in the public report given to the home purchaser at the time of entering into an agreement to buy a subdivision home, however, the homeowners who testified before the committee had no knowledge of trust deeds encumbering the seller's title although there were first and second trust deeds outstanding.

After the home purchaser takes possession the seller-titleholder may suffer a mechanic's lien¹⁵ which will encumber the title. If the work on which the

¹³ California Land Security and Development § 217 Continuing Education of the Bar Practice Handbook No. 14 (1962).

¹⁴ Title 10, California Administrative Code § 2819.

¹⁵ A "mechanic's lien" exists in favor of persons who have performed work or furnished material in and for the erection of a building, or other improvements to a lot or tract.

mechanic's lien is based was commenced prior to the time the home purchaser signed the contract of sale it will be an encumbrance which will jeopardize the title the home purchaser expects to receive. Where the building of the home had commenced prior to execution of the contract any person entitled to a lien for work done on the house, even though his work was begun months after the commencement of the house, may file a mechanic's lien which dates back to the commencement of the house. If the construction of streets, sidewalks, sewers or other public utilities in front of or adjoining the home is started prior to the signing of the contract and claims for this work are not paid by the seller the home purchaser will again find encumbrances placed against the seller's title. During the period that liens may attach the home purchaser must continuously check to ascertain if a lien has been recorded which encumbers the title of his seller. Even if he is aware of a subcontractor's claim he may not make his payments payable to the order of the subcontractor until a mechanic's lien is filed and encumbers the seller's title. The Real Estate Commissioner's Regulation provides protection to the home purchaser only after the encumbrance is filed against the property.

If the seller-titleholder has not paid his taxes to the federal government a lien may be filed and the property sold. Even though the home purchaser has made payments over a period of years prior to the time the seller fails to pay his taxes the fact will not protect the home purchaser's interest.

The expectation of a home purchaser entering into a contract of sale is that he will receive an unencumbered title when he completes all the conditions of the contract. Prior to the 1960 Extraordinary Session of the Legislature the home purchaser could only make his payments and hope that the seller-titleholder would use these to pay the obligations which encumbered the property.

In 1960 the Subdivision Law¹⁶ was amended in regard to transactions involving sales of subdivision real property by contract of sale. The amendments made it a misdemeanor to cause, permit or suffer an encumbrance upon such property in an amount in excess of that owing under the contract. Another section was added which makes it a misdemeanor for any such seller to accept a payment from the home purchaser without subsequently applying it to any indebtedness of the seller for which the property involved is placed as security.

The purpose of this legislation will not be achieved so long as violation is a misdemeanor. The sanction is not severe enough to deter a devious seller from following a longstanding and successful business practice. The subdivision realizes that the burden placed upon the Real Estate Commissioner's office to discover, investigate and persuade district attorneys to prosecute violators will effectively prevent prosecution in virtually all cases. Amendment to make such acts felonies seems particularly undesirable as prosecution will be even more unlikely and conviction practically impossible.

The combination of an unrecordable interest and the lack of control over money paid to the seller left the home purchaser in a very weak position.

In light of the apparent nonexistence of protective provisions for payments made by a land contract purchaser the Attorney General's Opinion 62-1¹⁷ was most welcome. This opinion was rendered in response to a request by the Real Estate Commissioner for clarification of the sections of the Subdivision Law which control the handling of deposit money and purchase money received on sales of subdivision lots.¹⁸

¹⁶ Business and Professions Code §§ 11006-11202, the specific sections referred to are Business and Professions Code §§ 11200, 11201 and 11202.

¹⁷ 39 Opinions California Attorney General 16 (1962).

¹⁸ Business and Professions Code §§ 11013-11015.

To quote the opinion of the Attorney General:

The overall purpose was that the purchaser of a subdivision lot would be able to receive legal title free and clear of an existing blanket encumbrance and other encumbrances upon payment of the purchase price or would have the assurance that he would receive back his deposit or purchase money.

The opinion concludes:

Where subdivision homes and lots are being sold under conditional land sale contracts, the Subdivision Law requires the impoundment of all installment payments until title is delivered to the purchaser unless alternative procedures authorized by said law are followed * * *.

This requirement applies whether the property is subject to a blanket encumbrance or not.¹⁹

Prior to the Attorney General's Opinion the Division of Real Estate had interpreted these sections to require impoundment of payments *only until a properly signed contract has been delivered to the purchaser*. Under the former interpretation there was no control of money paid to the seller after he delivered a copy of the contract of sale to the home purchaser. This allowed the seller to use the payments in any manner he saw fit. Since he was not obliged to have a clear title until all payments and all other conditions of the contract of sale were fulfilled the home purchaser could not compel the seller to make payments against loans or liens encumbering the title.

Subsequent to the release of Attorney General's Opinion 62-1 the real estate industry and the Division of Real Estate have been working on alternatives to impoundment of payments. Five sets of proposed regulations have been discussed by the interested parties.

The subdividers desire free use of money paid by the home purchaser, while the Real Estate Commissioner wants to restrict that freedom to the extent necessary to protect the buyer. Where the subdivision lots are improved or to be improved the regulation²⁰ presently under consideration provides three alternatives to full impoundment.²¹

1. Under the first alternative funds would be impounded only until the onsite and offsite improvements have been completed, a notice of completion has been recorded and all mechanic's liens have been satisfied or the lien period has expired. In addition, the subdivider and holders of existing encumbrances against the property must enter into an agreement which will require the subdivider to furnish to the holder of the encumbrance the name and address of the home purchaser. The holder of the encumbrance agrees to notify the home purchaser if any installment due from the subdivider is not paid. This notice must be given within 25 days from the date such unpaid installment was due. The holder of the encumbrance further agrees that he will not file a notice of default²² until 14 days after the date of mailing such notice. The home purchaser shall have the right to make any such payments not made by the subdivider which jeopardize the title to his home.

2. Where each improved lot is subject to an amortizable lien held by a lender who is regulated by a government agency and authorized to do business in California a second alternative to full impound is assignment of all contracts of sale by the subdivider to the holder of the senior encumbrance; the

¹⁹ 39 Opinions California Attorney General 16 at 27 (1962).

²⁰ Title 10, California Administrative Code § 2814.1 (proposed February 27, 1962).

²¹ "Full impoundment" when used in this report means impounding of all payments until title is passed to the contract vendee.

²² Notice of default must be filed 90 days before the property may be sold. Civil Code § 2924(c).

assignment must be recorded. Thereafter the home purchaser is notified that he will make all payments to the encumbrance holder who will pay taxes, and all lienholders and then remit the balance to the subdivider.

3. The last alternative may be applied where each improved lot is subject to an amortizable lien. The subdivider conveys the property in trust or records the contract, which contract must contain a provision which prohibits the subdivider from making additional loans based on the security of the home being sold to the home purchaser. The contract will further provide that the home purchaser make his payments to the trustee or a neutral escrow depository who will pay the taxes and the monthly payments on the encumbrances against the lot, the balance then to be paid to the subdivider.

These alternatives are designed to protect the purchaser's payments and his expectation that upon completion of his payments he will receive an unencumbered title.

Since the Attorney General's opinion was published in January 1962 only a few subdivision public reports²⁴ have been delayed because of failure to comply with the impound provisions. The Division of Real Estate has taken the position that until regulations providing alternatives to the full impound requirement are effective they will allow subdivision public reports to issue in spite of the fact that they do not provide safeguards for payments made by the home purchaser or assure the home purchaser that he will receive a clear title upon completion of the contract.

This position taken by the Division of Real Estate has apparently encouraged the real estate industry and the Real Estate Commission to delay the promulgation of regulations. At a meeting of the Real Estate Commission on February 9 they voted unanimously to table further discussion until their April meeting. In spite of this vote the Real Estate Commissioner, realizing the necessity for protective provision, redrafted the regulations and is now pursuing a schedule which will bring them into effect May 5.

Virtually all subdivisions which have been cleared to use land sale contract financing in the period between the release of the Attorney General's opinion and the present date are susceptible to the same problems which have been studied by this subcommittee.

7. Conclusions

1. People who purchase homes on land sale contract generally do so because a very small down payment is required.

2. Since these people are unable to make a down payment large enough to warrant the sellers conveying title and taking back a note and trust deed, they cannot afford legal advice and are unaware of their legal rights.

3. Many sales made on land sale contracts are made without regard to the financial burden the buyer can reasonably undertake.

4. Because these home purchasers have a small amount invested in their homes they will not be as concerned about abandoning the property as a party who makes a substantial down payment.

5. Subdividers generally depend on the value of real estate rising and a continuous level of high employment to keep payments coming in.

²⁴ Business and Professions Code § 11018 requires the Commissioner of Real Estate to make a public report after making an examination of a subdivision.

Business and Professions Code § 11013.5 specifies that the public report shall indicate the method or procedure selected by the owner or subdivider to comply with the sections of the Subdivision Law which control the handling of deposit and purchase money.

6. The subdivider must further depend upon a continuous market for his houses. A slight downturn in the overall economy will not only cause buyers to default but will dry up the market for resale of the home.

7. Subdividers are often enabled to build because savings and loan associations will sell land which they own for a small down payment and then loan the subdivider the funds necessary to construct the homes.

8. The savings and loan association depends upon the land and improvements to secure the loan. Their concern is primarily to their depositor and only secondarily to the interest of the home purchaser.

9. Although the subdivider is dependent upon the buyer making payments in order to make a profit, the savings and loan association may do just as well by buying in the home after default by the subdividers or the buyer and reselling the property to another buyer.

10. Savings and loan associations are dependent upon fees and interest for their profit. The fees and interest charged are at their highest when the association owns the land and makes a loan to enable the subdivider to both procure the land and construct the houses.

11. Those savings and loan associations which follow this course of business are particularly susceptible to a softening in the economy and to the extent they depend upon the property as security for their loans with little or no concern for the buyers' credit they are jeopardizing the deposits of their investors.

12. The higher loan fees and interest rates charged the speculating subdivider will be passed on to the buyer in the sale price.

13. The average home purchaser buying under a land sale contract is probably not aware of the financing between the subdivider and the lender who loans the money necessary to construct the houses.

14. Most home purchasers are unaware of the body of judicial law which provides them protection equally as broad as a mortgagor or a beneficiary under a trust deed.

15. Only 25 percent of the Southern California subdivision filings state that sales are to be made under contracts of sale. In Northern California the figure is 15 percent.

8. Recommendations

1. All land sale contracts should contain the following information:

- (A) Disclosure of the terms and conditions of all prior encumbrances, including the name and address of the lender, the unpaid balance on each loan or lien, the amount of monthly payment, the interest rate and the date on which the final payment is to be paid.
- (B) The date or a method for ascertaining the date on which the deed will be delivered to the purchaser.
- (C) The conditions under which the home purchaser may assign his interest.
- (D) A provision that if the seller or his assigns should default in making payments against loans or liens encumbering the title, the home purchaser may make such payments and set off the amount so expended against the balance owing on the contract of sale.

2. Automatic subordination clauses should be prohibited in contracts of sale for property with single-family dwellings thereon.

3. The home purchaser should be allowed to record the contract without acquiring the seller's acknowledgment of the contract.

4. Amend Business and Professions Code §§ 11200, 11201 and 11202 to apply to sales of nonsubdivision homes on land sale contract.

5. Amend Business and Professions Code §§ 11201 and 11202 so that violation thereof will be grounds for revoking or denying any license to practice a profession or vocation supervised by the State.

6. Create a summary proceeding (similar to an unlawful detainer action) which will allow the seller to clear his title within a very short period after a land contract buyer has abandoned the property.

7. Where the land contract buyer is in default but remains in the home the law should provide for a 90-day notice of default before the seller may begin proceedings under the procedure outlined in recommendation 6.

8. Amend Civil Code § 2943 to require a seller after written demand by the land contract buyer, to prepare and deliver a written statement showing the amount of the unpaid balance of the obligation secured by the contract of sale, the interest rate, the amount of the periodic payments and the date on which the contract is to be completed.

9. Enact an additional section to the Subdivision Law in order to remove any doubt about the Legislature's intent to require impoundment (or an alternative acceptable to the Real Estate Commissioner) of payments made by a land contract purchaser until title is passed.

**CAL-VET
INSURANCE**

On December 1, 1960, in behalf of the State, Director of Veterans Affairs Joseph M. Farber executed an agreement with the National American Insurance Company to provide fire and hazard coverage for Cal-Vet farm and home buyers over a period of five years.

Primarily because this contract was signed with one company as opposed to what had become the usual combine (e.g., 238 insurers participated in the previous arrangement) it has come under attack.

In view of the acrimonious charges and rebuttals that were being exchanged publicly by the summer of 1961 this committee determined that an inquiry would serve the public interest. Accordingly, a Subcommittee on Cal-Vet Insurance was constituted and a public hearing was held in San Francisco on October 17.¹ This report is based substantially, but not wholly, on information brought to light at that hearing.

1. The Cal-Vet Farm and Home Purchase Program

Since 1921 the State of California has assisted its war veterans in buying farms and homes. Through the Department of Veterans Affairs the State will lend up to \$15,000 on the purchase price of a home and not more than \$40,000 for a farm. The statutory ceiling on the interest rate charged the buyer is 5 percent per annum—well below prevailing rates in the conventional money market. Funds for loans are provided through the sale of bonds voted by the electorate.²

The Cal-Vet program parallels the programs of the Federal Housing Administration and the Veterans Administration with provisions for minimum building standards, credit qualifications, restriction on the use of secondary financing, methods and terms of amortization, and so forth. There is at least one significant difference, however. Under the two federal programs the government lends money and takes back a deed of trust as security for its interest, whereas, when a veteran purchases under the Cal-Vet program, title is vested in the State and the individual buys from the State on a land sale contract. Thus it must be borne in mind that the State of California is the legal owner of 128,412 Cal-Vet properties on the books of the DVA at latest count.

It is incumbent on the Director of Veterans Affairs to exercise his best judgment at all times to protect the interest of the State in these properties. Indeed, he would be derelict in his responsibility were he not to vigilantly safeguard this interest.

On the other hand it is in the very nature of his job that the director should promote the welfare of the veteran. It follows from the fact of the farm and home purchase program that the director should endeavor to obtain the best bargain possible for veterans for that is the basis of the program.

It was on this basis that a group insurance program at a special low rate was developed in 1928. In the intervening years coverage has been expanded, rates have changed and different insurers have done the underwriting but one thing has been constant. The buyer has been provided with a special rate for his insurance.³ This low rate has only been feasible because all Cal-Vet buyers have been required to participate in the program. Since insurers

¹ The subcommittee consisted of Assemblymen Ronald B. Cameron, Jack T. Casey, Robert W. Crown, Robert L. Leggett, Robert T. Monagan, Jerome R. Waldie and Thomas M. Rees, Chairman. Committee members Phillip A. Burton, John A. O'Connell and Bruce V. Reagan also participated.

² The bond measure proposed for submission to the voters this year amounts to \$250,000,000.

³ One byproduct of this special rate is that Cal-Vet buyers are not subject to the brush area surcharge applied to many homeowners in Southern California (cf. Fire Insurance Report contained herein).

have come and gone; since all buyers have been required to place their insurance with the company or companies participating in the agreement, it is therefore obvious that the veteran has at no time been free to select from among all insurers admitted to do fire underwriting in California.

The master agreement has been arrived at in various ways since the program was conceived. At its inception the "package" was carried by just two insurers (National Union Fire Insurance Company and Merchants Fire Insurance Company) through two agencies. Next came an accord between the DVA and a single insurer—Pacific National Fire Insurance Company—with no provision for agents because of the direct-writing nature of the contract. This arrangement was, in 1935, succeeded by one in which the DVA dealt with the Board of Fire Underwriters of the Pacific. Because a large number of insurers were for the first time participating in the program there was a very definite need for the services of insurance brokers and agents. The participation of producers⁴ had grown to such an extent that when the contract came up for renewal in 1950 a committee of the California Association of Insurance Agents handled negotiations with the DVA and it was the CAIA committee which, in 1960, submitted, on behalf of the companies, the only signed bid other than that of H. F. Ahmanson and Company which represented National American.

2. The Agreement With National American

At the October 17 hearing Mr. Farber told the committee that soon after he assumed his duties in January 1959 he opened discussions with representatives of the CAIA.

They told me at that time they could not grant a five-year contract and they didn't think they could grant landslide or [coverage for] earth movement subsidence. I then told them to go back to their insurance companies and tell them that, as director " " ", my position was to see that the veterans of the State of California got the best coverage [and] the best rates that we could possibly get for them because the department was the insured—not the veterans—and our position was not only to protect the State of California but to protect the veterans who are under contract.

Mr. Farber related how the agents consulted with the companies and returned with an offer of a five-year contract but reported that they still could not include land subsidence coverage.

Other parties which the DVA reports expressed interest in the "package" included Farmers Inter-insurance Exchange, Liberty Mutual Insurance Company, and Marsh & McLennan-Cosgrove and Company.

The upshot of all these discussions was just two formal bids: one by the CAIA negotiating committee, the other by H. F. Ahmanson and Company.

The breakdown on the agents' bid for five years coverage was:

Dwelling Building Special Form 188NS and 202B	\$0 75 ⁵
Dwelling Building Special Form 188NS, with a \$50 deductible applying to certain items	0 65
Farm Building, no deductible, fire and extended coverage	1 80
Dwelling Building, with a \$50 deductible applying to certain items	1 60

The National American coverages accepted by the DVA were:

Dwelling Building Forms 188NS, 188F and 202 (All Physical Loss), with a \$100 deductible applying to all coverages.	\$0 40
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⁴ For the benefit of the layman, insurance "producer" is a term which includes both agents and brokers within its meaning.

⁵ The quotations are based on \$100 valuation.

Dwelling Building Forms 188NS, 188F and 202 (All Physical Loss), with a \$50 deductible applying to certain items ⁶	0 62
Farm Building, no deductible, fire and extended coverage	0 80

Some comparison between the alternatives is possible but it must be remembered that different forms were cited by the bidders, that is, the "All Physical Loss" form used by National American encompasses several coverages (most notably landslide and subsidence) not included in the form used by the CAIA committee.

While the handling of negotiations has been criticized, it is the agreement itself which has inspired most of the controversy.

Paragraph 11 provides that the department shall issue certificates of insurance to veterans and paragraph 13 states that in the event the DVA errs by not issuing a certificate to a buyer who is in fact paying for coverage and therefore entitled to a certificate, coverage is "automatically" provided.

Coupled together, paragraphs 14 and 26 have proven difficult for critics to swallow. Their cumulative effect is to require all buyers on contract to insure to the full value of their property (i.e., rather than just to the extent of their indebtedness to the State) and all this insurance is to be carried exclusively by National American.

Paragraph 18 entitles the company to review its experience each 12 months and negotiate for a readjustment in rates.

Paragraphs 21 and 22 provide that the department shall make monthly reports of all new risks, cancellations, reductions in coverage, and losses in detail. This report is to be accompanied by a remittance to the company if the difference between premiums paid in and losses paid out favors the latter. If the converse is the case, the company is to send a check representing the difference to the DVA within five days.

Paragraph 23 stipulates that the department shall act as the company's agent in adjusting and authorizing payment of claims.

3. Legal Basis for the Agreement

The statutory authority for the Department of Veterans Affairs to arrange for insurance on its properties is contained in § 987.2 of the Military and Veterans Code ["Insurance shall be in the amount, with the insurance companies, and under the conditions specified by the department"] which was enacted in 1943 and amended in 1947. On the other hand, insurance companies are granted exemption from the antitrust laws to combine for the purpose of offering an insurance program to the DVA.⁷ A companion section to § 987.2, namely § 987.4, gives the DVA sole discretion as to "the amount of insurance to be placed upon the buildings, fences, other permanent improvements, and crops and the amount necessary to be paid for the premiums for such insurance."

One of the first issues raised in the debate over the National American agreement was over the authority of the Director of Veterans Affairs, as opposed to the California Veterans Board, to negotiate and execute the contract. 38 Opinions California Attorney General 107, rendered on September 28,

⁶ For the record, the specific items include loss by fire, lightning, smoke, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, falling objects, vehicle, vandalism and malicious mischief, theft or attempted theft, landslide, total or partial collapse, sudden or accidental tearing asunder, cracking, burning or bulging of hot water heating systems except appliances for heating water for domestic consumption.

⁷ Insurance Code § 1873.9f. This provision, along with an accompanying section, was enacted in 1950 and inserted squarely into the middle of the McBride-Grunsky Act (cf. Fire Insurance Report contained herein).

1961, concluded that while a provision of the Military and Veterans Code vests the *board* with authority to determine the policies for all operations of the department, the *director* had specifically been given responsibility in this matter by virtue of an expression of administrative policy regarding Cal-Vet insurance by the Legislature "In summary," the Attorney General summarized, "... the Director of Veterans Affairs is responsible for the negotiation of the master insurance contract including all of the terms and conditions thereof."

In his long appearance before the committee in San Francisco, Attorney William A. White,⁸ a former commander of the California Department of the American Legion, raised questions regarding the legality of several features of the agreement. At one juncture he was asked whether he believed the contract to be illegal. He replied affirmatively. For this reason he was asked to set forth precisely the questions he would like to have weighed by the Attorney General. On October 25 Mr. White submitted to the committee 11 questions. On October 30 Chairman Rees officially propounded these questions to the Attorney General. The decision of the Attorney General upholding the contract in all respects was handed down on February 27, 1962. As it would serve no useful purpose to trace the same arguments covered in that opinion, Attorney General's Opinion 61/220 is included *in toto* in the appendix to this report.

4. Points of Controversy

Questions of legality aside, doubts about the propriety of several provisions of the agreement as well as the manner in which it was concluded have been expressed by Mr. Farber's critics.

"The American Legion is not concerned over *who* signed the contract," Department Commander Roscoe T. Morse told the committee.⁹ "But the American Legion is vitally concerned over the contents of the contract."

One committee member wondered if the Legion were concerned with the cost of coverage:

ASSEMBLYMAN BURTON In your statement you did not say that it was the Legion's position that they wanted the lowest possible rates

MR MORSE That is true

ASSEMBLYMAN BURTON You did not say that?

MR MORSE No, I did not say that

ASSEMBLYMAN BURTON And you consciously determined not to say that it should be the desire that this coverage be provided at the lowest possible rates?

MR MORSE We would love to have it that way. I will make that statement since you would like to hear it. I think the veteran should get the lowest possible rate, the best coverage; and he should have his freedom of choice to go to the insurance company he wants to get it.

When asked how he would choose as between broader coverage at lower rates on one hand and less coverage at higher rates—but *with freedom of choice*—on the other, Mr. Morse said the veterans "... should get the better coverage at lower rates." And later the witness affirmed, "We are on the side of lower rates if [the veteran] gets proper coverage—if it doesn't cost him more money."

⁸ Mr. White carries impressive credentials as an expert in insurance law by virtue of having served as vice president and general counsel for the Pacific National Insurance Company—the only other company to ever have an exclusive contract for Cal-Vet insurance.

⁹ Emphasis added.

Full Replacement Coverage

The apparent contradiction in Mr. Morse's last statement stems from the fact that the witness meant that the insured should not have to carry additional insurance to meet the DVA's new "full replacement coverage" requirement.

The department's policy now is that veterans whose policies expire must carry insurance to the full value of their property—not merely insurance to the extent of the unpaid balance due the State on the conditional sale contract. The Legion believes that the State's interest is only to the extent of the unpaid balance; beyond that the buyer should have the right not to insure his equity if he chooses.

The department takes the position, however, that the State's interest is not limited to its equity; that if a buyer sustains a loss but has no insurance for his equity and must, therefore, pay a proportionate share of the cost to restore the property out of his own pocket the possibility exists that the damage will not be repaired and the house (or whatever is damaged) will be rendered unfit for resale.

Robert M. DeKruif, President of National American, vigorously defended the department's requirement in his appearance before the committee:

If there is one thing that insurance men in general agree upon it is the factor of insurance to value. The Insurance Agents' Association and the Insurance Brokers' Association and the insurance companies agree on this point.¹⁰ * * *

I am completely amazed at Mr. White's statement—particularly from a person who professes to be an expert—or, at least, well acquainted with the insurance business. May I point out something that is glaringly misinterpreted? This is the fact that he said, on that [hypothetical] \$10,000 home, that the Department of Veterans Affairs only had a \$5,000 interest. He professes that the veteran should have the right to purchase that additional \$5,000 * * * from another company. It is a basic insurance law * * * that insurance policies have to be concurrent. That means they have to read alike in all phases. There is no company that we know of that will issue a policy, such as we are issuing, with the landslide coverages and with the deductibles, and such, so he would be denying every concept of the insurance industry by having them go to another company * * *.¹¹

Commander Morse, however, referred to the additional coverage required by the DVA as "insurance [the veterans] do not want and do not need." In discussing the objections which Legionnaires have raised¹² he observed that "the bulk . . . have been from veterans protesting the arbitrary increase of the amount of insurance they are required by the Department of Veterans Affairs to carry."

Legionnaires' Complaints

Because of his intermittent references to the volume of complaints Mr. Morse aroused the curiosity of the committee:

ASSEMBLYMAN WALDIE: Commander, can you give me some idea of the number of complaints in this bulk of complaints that you received?

MR. MORSE: I have turned that over to Mr. White. He will present that. I do not have the figures.

ASSEMBLYMAN WALDIE: Are they received in your office and turned over to Mr. White?

¹⁰ Cf. testimony of W. V. Slevin of the National Board of Fire Underwriters in the Report on Fire Insurance, contained herein.

¹¹ Emphasis added.

¹² It should be noted, in fairness to the department, that three other veteran organizations (viz., Veterans of Foreign Wars, Disabled American Veterans and AMVETS) have endorsed the agreement with National American.

MR. MORSE That is right. Some I received verbally, some have been by letter and they have been turned over to Mr. White.

ASSEMBLYMAN WALDIE How many letters? Can you tell me?

MR. MORSE I don't remember, offhand.

Since Commander Morse could not remember, the committee asked his colleague about the letters.

ASSEMBLYMAN BURTON. I had assumed, after hearing from [Mr. Morse], that you had a considerable volume of letters and, though numbers are not necessarily important, I would like to pinpoint whether or not we are talking about less than half a dozen letters sent to the [Legion] during the last 10 months, or whether we are talking about several hundred.

MR. WHITE I would say not several hundred.

ASSEMBLYMAN BURTON You'd say it is closer to four or five?

MR. WHITE No, I would say "closer to four or five" would not—

ASSEMBLYMAN BURTON How many letters have been turned over to you—approximately?

MR. WHITE I can't answer that.

ASSEMBLYMAN BURTON Approximately?

MR. WHITE I would say 25 or 30.

On October 23 Mr. White turned over to the committee 26 letters of complaint which had come, by various routes, to the American Legion. The letters were accompanied by a number of forms and letters from the Department of Veterans Affairs as well as sundry correspondence with insurers and producers.

There were 23 letterwriters (three persons wrote twice). Of these 23, 11 indicated they were themselves in the insurance business—either as agents or brokers—although, to be sure, most of these were veterans.

The complaint most often voiced (i.e., mentioned by 52 percent of the writers) was that the one-company arrangement abridged the veteran's freedom of choice (e.g., " . . . a veteran should be permitted to place his insurance with any company, agent or broker * * *"; " . . . the proposed plan reduces the individual veteran's choice of representatives both of brokerage and companywise"). The next most frequent complaint—cited by 34 percent—expressed concern over loss of the counseling services of a producer (e.g., "I am now deprived of careful insurance planning with my broker," " . . . there will be no local agent and all losses are to be adjusted with your department").¹³ Of the 10 complainants who were brokers or agents, seven expressed unease over the loss of business because of the new agreement (e.g., " * * * it will certainly jeopardize a lot of insurance business that I have accumulated . . ."; " . . . all agents or brokers are not in a position to represent the National American Insurance Company . . ."). This complaint was registered by 29 percent of the letterwriters. Five complainants cast reflection on National American (e.g., "The National American * * * does not possess the financial stability that many of the larger and better established companies provide . . ."; "National American and the Ahmanson organization have long been leaders in the coercive placement of insurance . . ."). Four writers expressed irritation, or at least concern, over the fact that National American did not provide a homeowner's policy; four spoke with asperity about treatment accorded them by the DVA; four resented having to insure to full value. The balance of complaints (seven) were spread over four subjects: the problem of increasing coverage under an existing policy; the

¹³ The reader would be correct in assuming that some of Mr. White's letters were addressed to the DVA. As a matter of fact, 61 percent were. Thus there is some overlapping of complaints and the volume thereof as evaluated by the DVA on one hand and the American Legion on the other.

inclusion of land subsidence coverage, the DVA's practice of furnishing certificates rather than policies, the DVA's premium financing arrangement.

On the basis of this documentation it would be fair to say that the letters reflect no organized letterwriting campaign since the grievance mentioned most often by the writers was not the primary objection which the American Legion's spokesmen raised—namely, requirement of insurance to value. Still, it must be noted that, as Commander Morse lamely observed, "It is very hard to get anybody to put anything down in writing, many times."

Freedom of Choice

The complaint that was most often voiced was that the veteran was denied freedom of choice. As the hearing progressed it became clear that "freedom of choice" meant several things to the Legion's spokesmen: the right to select one's company; the right to choose one's own producer; the right to name one's claims adjuster; etc. As we have seen, however, historically there has been a pronounced limitation on the freedom of choice the veteran has had regarding his insurer. Furthermore, in the case at hand, the argument advanced by Mr. DeKruif regarding concurrent coverage is relevant here.

Questioning of Mr. White revealed that choice of adjusters is largely illusory but, as to selection of producer, there is some merit in the Legion's argument and much will depend on how well the DVA is able to discharge its added responsibility to counsel insureds and speedily adjust claims.

The DVA's Role as "Agent"

According to Mr. Farber the department, under the previous agreement, made a practice of double-checking on claims in excess of \$250. "We were doing the work on the old setup, anyway, to see that the State and the veteran got a fair shake. So actually, by eliminating outside adjusters, we thought that this was one of the best moves we made yet because this was better protection for the State and for the veteran"

In response to questions from Assemblyman Monagan, Mr. H. J. Johnson, Chief of the Division of Farm and Home Purchases, testified that his people had personally inspected losses of more than \$250 and also made their own estimate of the cost of repairs.

ASSEMBLYMAN MONAGAN * * * If I understand you correctly * * * what your office did was to review the adjustment made by somebody else, and if it looks satisfactory, it was okay?

MR. JOHNSON We, in effect, went through the adjustment process prior to the time we received the proof of loss. When the proof of loss was received and had been signed by our contract purchaser then, if the information we obtained from the factual inspection of the property—the estimates on repairing the damage—[looked correct] we also signed the proof of loss which was authority for the insurance company to go ahead and pay the loss.

ASSEMBLYMAN MONAGAN You mean to say [that] on a loss over \$250 somebody from the department went out and physically inspected the loss?

MR. JOHNSON I would say on 90 percent of them.

ASSEMBLYMAN MONAGAN So actually this is a duplication of effort?

MR. JOHNSON This was true. But we found this to be necessary because of the number of complaints that we were getting from our contract purchasers as to the kind of settlements they were getting on their claims. In fact, we had actual evidence in some instances where the repairs were not done satisfactorily at all.

ASSEMBLYMAN MONAGAN I would say that this is a rather serious charge, Mr. Johnson, and you ought to be ready to substantiate it with some facts and figures.

MR. JOHNSON: I can do this.

In response to further questions from the committee Mr. Johnson said that, as of the time of the hearing, the DVA had processed roughly 100 claims; that there were no complaints on settlements although some claimants indicated they would have preferred to deal with an insurance producer; that there had been no complaints about delay in service; that there had been no need to increase departmental staff, that, while the DVA does not have representatives in every community in the State, they are stationed in most metropolitan areas and insureds can telephone the department "collect" to ask for the services of a representative.

Assemblyman Monagan wondered whether the reason for the paucity of complaints wasn't due to the fact that just the department and the veteran were involved in the relationship now. Mr. Johnson wryly replied, "The veterans have never in the past failed to complain to us about anything. In fact, they take the position that, immediately when something goes wrong, ' * * ' this is the State's house and we have to bail them out of [their difficulty]."

Certificates of Insurance

Mr. White, in no uncertain terms, expressed doubt that paragraph 13 of the agreement adequately insures the veteran in the event the DVA errs in not executing a certificate of insurance for him

It protects the department and the department's interests and maybe that's all that the insurance company is willing to protect under this errors and omission clause. But what is the veteran going to do under a situation where he is compelled by this very agreement to take out full replacement value on his home and, by some error or omission, some clerk in the department doesn't send his name in or doesn't send the address of his home or doesn't send anything in with regard to his order for insurance and a loss occurs? If he has a total loss and only owes the department \$1,000 on his \$20,000 home is he protected? Or does the department merely collect its \$1,000 and the veteran be left with a loss of \$15,000 not covered by insurance?

In rebuttal Mr. Johnson pointed out that at the time the veteran applies for a Cal-Vet contract the amount of insurance is determined and this is stipulated along with the other details of the contract when the veteran signs.

In this instance, in the event that we should neglect to issue a certificate of insurance, [the buyer] would be covered for the amount that was indicated on the application. In the event of a renewal, should we neglect to issue a certificate—and I might say, to my knowledge, in [my] 16 years with the department that has never happened— * * * he would continue to be covered in the amount of coverage he had under the certificate that expired.

**Renegotiation*

The contract's provision for renegotiation of the agreement at the end of each 12-month period aroused the concern of Mr. White.

His question of whether or not this would, in effect, mean that the whole program would be up for competitive bidding by parties other than National American is dealt with in Attorney General's Opinion 61/220 and therefore needs no further treatment here. That ruling also answers Mr. White's question about whether rates can be raised retroactively.

Mr. White was disturbed over the fact that paragraph 18 gives *the company* the option of renegotiation "We know that it's going to be claimed that the department has the right to review the rate and I hope it does have that right. But under the terms of this contract, as I read it, the department has no right to lower the rate." There was no dispute over this point, perhaps to the witness' disappointment.

Mr. Johnson conceded that if National American wanted to raise rates at the time of renegotiation the contract could be terminated but there should be no confusion on the question of rate increases: the department can exercise a veto over rate increases or any other alterations in the contract. *The company does not have the right to unilaterally alter the provisions of the agreement.*

The committee questioned Mr. DeKruif on this matter:

ASSEMBLYMAN O'CONNELL In the event that National American and the department couldn't agree on a rate for a particular year after attempting negotiations pursuant to this paragraph 18, could either party cancel out under this contract?

MR. DEKRUIF Our cancellation provision is the same, Mr. O'Connell, as it was in the previous contract, and either the company or the department can cancel.

ASSEMBLYMAN O'CONNELL * * * Are there any negotiations pending between National American and the department now about any change in the rate for the next year?

MR. DEKRUIF No

The Monthly Report

Paragraph 22 of the agreement ("Should the report reflect a balance in favor of the department, the company shall remit the balance amount to the department within five days following receipt of the report") worried Mr. White.

We believe that it would take some time to get the report ready and send it down to the insurance company and then the company has five days to make the payment back to the Department of Veterans Affairs. Suppose the losses were paid out during the first five days of any particular month. Then we'd have a case of the paying-out of an amount—say, \$100,000—in excess of the amount that it has collected or it sets forth as the premiums and the department collects back from the company five days after the company gets the report the \$100,000 excess paid out.

Mr. White returned to this issue several times in his testimony, asserting it to be illegal and, if not illegal, improper and, if not improper, unbusinesslike. "From what source is that money paid to the insurance company?" he asked.

To answer this question, Mr. Johnson wrote the committee as follows:

Mr. White testified that should the losses in any one month exceed the premiums due the National American Insurance Company that month, the department would have to use its funds to pay these losses. This is untrue. The [company] deposits with the department in our trust account an amount estimated to cover all losses pending. This is based upon our initial notification to them of each loss *immediately that we are notified*. At the present time they maintain a balance with us. However, this could be increased by any amount within a day or two should the reported losses exceed this amount.¹⁴

The Federal Insurance Company Affair

In July 1961 a representative of Chubb & Son, Inc., expressed to the DVA its intention to cancel one of the risks carried by the Federal Insurance Company.¹⁵ This was a right which all 238 insurers signatory to the 1955 contract had. The right, however, was modified to the extent that the master contract guaranteed coverage to all Cal-Vet buyers—both good risks and bad. Thus it was in the nature of the circumstance that, as long as the 1955 agreement was in effect, all buyers would be assured of coverage by some one of the 238 companies. *Once the agreement expired, however, that commitment ceased to exist.*

¹⁴ Emphasis added.

¹⁵ The DVA claims the insured was cancelled because he had collected a total of \$4,599.06 in claims within a one-year period, the largest claim being for damage occasioned by earth movement.

The department informed Chubb & Son on July 28 that the remaining 364 insureds of Federal Insurance would also have their policies canceled, explaining, " . . . we feel that it is not fair to our present carrier [National American] to require them to assume risks that have been rejected by other companies, as they would be required to do under their agreement with the Department. Their rates were predicated on the basis that they would take all risks on an unselected basis." Chubb & Son retorted that they had no desire to cancel all policies under the Cal-Vet agreement but indicated they would comply with the department's decision. The DVA then sent form letters containing the misleading sentence, "The Federal Insurance Company has withdrawn from participation in our former Fire Insurance Agreement" to the 364 other policyholders and gave them the option of selecting between National American's 40¢ and 62¢ rates.

"It goes without saying," Mr. White said, "that numerous policies of the other companies in the 238 signatory company group are still outstanding and were written at the 48¢-per-\$100 rate. What has happened to the veteran in the Federal Insurance Company case? His policy has been canceled; he is now required to take out a policy in the National American Insurance Company for the full replacement value and is paying 62¢ per \$100 for the same kind of insurance that he was getting under the Federal Insurance Company program. If this can happen with one company, then it can happen with all . . ."

Asked to explain the matter, Mr. Johnson told the committee that the department had allowed companies to cancel policies in the past "if other coverage [was] available." He testified that in 1959 attempts to cancel undesired risks had reached such a proportion "that the California Association of Insurance Agents wrote a letter to all the companies explaining to them that, although they could cancel these certificates, . . . it was not in the spirit and intent of that agreement." He further stated that one company had wished to dump more than 7,000 risks but the department persuaded it not to.

Mr. Johnson contended that Chubb & Son canceled its undesirable risk "because the 'combine's' contract had expired.

The committee consultant posed the following questions to Chubb & Son on October 31 and received the indicated answers:

(1) *Was the cancellation of Mr. Riskin related, in any way, to the expiration of the agreement between the department and the 238 signatory companies?*

Ans. "No."

(2) *Does Federal Insurance consider the department's reaction to be unjust and/or arbitrary?*

Ans. "While the action of the Department could certainly be considered arbitrary, it did not unduly concern us because the account had been unprofitable. However, the Department's action may be considered unfair to the veterans insured with us since they were required to purchase new insurance at a higher rate or accept a \$100 deductible."¹⁶

(3) *Did Federal Insurance consider their collective insureds an "unprofitable account" in light of noncontinuance of the aforementioned agreement?*

Ans. "On the existing basis, the account was quite unprofitable to the Federal Insurance Company, as indicated by the figures shown below."

¹⁶ Emphasis added

(4) Was Federal Insurance earning an inadequate return (or even losing money) at the previous rate of 48 cents per \$100?

Ans. "Through May, 1960, our participation in the 1955-1960 contract produced earned premiums of \$12,335.94 and the incurred losses were \$69,823.09. The loss figure includes one fire loss of \$45,000."¹⁷

While the foregoing does not constitute *prima facie* evidence to support Mr. Johnson's allegation, it is quite apparent that Federal Insurance had reason enough to want to dispose of its Cal-Vet account. It would require more investigation than the affair warrants to establish beyond all doubt the intentions of the underwriter. What is clear, however, is that the DVA, regrettably, has no alternative but to follow its policy of compelling an insurer to divest himself of his good risks if he wants to part with the bad risks.

Homeowner's Policy

The reader will recall that some of the Legion's complainants were concerned with the omission of a homeowner's policy¹⁸ provision in the current agreement. Most of the complaints which came to the committee directly dealt with this matter (e.g., "if package deals result in savings to veterans, then denial of this advantage by placing the fire insurance with one agency seems to me to be harmful in the absence of an offer by that agency to provide a special rate on a comprehensive homeowners policy"). Moreover, in building his case about the increased cost under the new agreement, the Legion's spokesman referred to the absence of a homeowner's offer. Finally, as one might assume, the DVA, too, was the recipient of complaints along this line.

In view of these protests National American entered into discussions with the Department of Veterans Affairs and by the time of this committee's hearing Mr. Johnson was able to announce that a proposal had been submitted to his department.

In January the department mailed to Cal-Vet buyers a terse notice stating that a homeowner's policy could be obtained from National American and contented itself with listing the three addresses of the company's offices. Also in January the company sent material to veterans describing the new policy in some detail and explaining how it could be bought.

The mailings aroused a storm of protest. Although the brokers' and agents' associations had both declined to testify at the committee's public hearing producers became quite articulate over this issue. CAIA President Harry R. Schroeter, for example, condemned the department's mailing as "solicitation."

There is no evidence to indicate that the department gained any advantage or that it intended to promote or solicit additional insurance business for National American. But the DVA's mailing—however innocent—did take on the color of promotion and to that extent it was ill-advised. Apparently the motive in mailing the notice was, ironically, a misguided attempt by the Director of Veterans Affairs to forestall further criticism.

Be that as it may, at the direction of Governor Brown the department mailed notices in February to each Cal-Vet buyer advising him that "Fire and hazard insurance provided by the [department] covers your real property only. Insurance on personal property and other supplemental coverages which

¹⁷ The letter from Chubb & Son was signed by T. M. Holmes.

¹⁸ A homeowner's policy provides insurance against damage, destruction, theft, etc., of articles within and on the homeowner's property as well as the buildings. For that matter, such policies can go much farther to compensate the policyholder for living expenses away from his domicile, medical payments, and whatever. Because it is a "package" proposition it costs less than separate policies for each type of coverage the insured wants to have.

are felt necessary for complete protection may be obtained through the insurance agent or broker of your choice."

5. Conclusions

A. This committee finds that the current master fire and hazard agreement between the Department of Veterans Affairs and the National American Insurance Company is legal and was legally negotiated. However, the committee believes that the department should have made clear to all bidders that it would pursue a markedly different operational procedure in the event all insurance were placed with one underwriter.

B. The debate over the current agreement, notwithstanding some of the caustic charges that have been made, has, on the whole, served a useful purpose in opening up for public scrutiny a major program involving many millions of dollars.

C. The California Department of the American Legion has quite properly exercised its right to raise objections to a program which materially affects the veterans of this State but many of the assertions it has made are wholly unfounded and some are so inconsequential that the committee is convinced they were advanced only to harass and embarrass the Director of Veterans Affairs and his staff.

D. The Director of Veterans Affairs is to be commended for developing an insurance program which more adequately protects the interests of the State and, simultaneously, provides wider coverage than was otherwise possible at a lower premium to the Cal-Vet buyer.

E. In taking upon itself the job of broker/agent the department assumes the responsibility to provide service and counsel equal to the assistance a veteran formerly could obtain from his insurance producer. The Director of Veterans Affairs must be on the alert for those numbing symptoms (dilatatory action, imperious or condescending demeanor, terse or evasive replies to honest requests for information) to which some government employees are prone to succumb.

F. Although the department's understanding of the agreement's paragraph 13 appears well founded, it is recommended that the contract be amended at the next occasion for renegotiation so as to allay any doubt as to whether the veteran is automatically covered in the event the department fails to issue a certificate of insurance.

APPENDIX

OFFICE OF THE ATTORNEY GENERAL

STATE OF CALIFORNIA

STANLEY MOSK
ATTORNEY GENERAL

OPINION
of
STANLEY MOSK,
Attorney General,
V. Barlow Goff,
Deputy Attorney General

No. 61/220
FEBRUARY 27, 1962

The Honorable Thomas M. Rees, Chairman of the Assembly Interim Committee on Finance and Insurance, has requested the opinion of this office on the following questions which relate to the master fire and hazard insurance agreement negotiated between the Department of Veterans Affairs and a single insurance company on December 1, 1960.

1. It has been contended that not all parties were given the same specifications upon which to bid when the previous five-year contract came due for renewal last year (e.g., paragraph 23 of the agreement calls for the department to act as agent for the company and it is maintained that this provision was made known only to the company which was awarded the contract). Would it be legal for the department to do this?

2. Can the department act as the general agent of this private insurance company under the provisions of the contract and perform all the acts it is now performing (e.g., soliciting insurance, writing and issuing certificates, adjusting losses, paying losses and sending monthly reports with net checks to the company)?

3. If the department can so perform the acts set forth in the previous question can it do so without reimbursement for its expenses and the salaries of those performing the acts from the private insurance company?

4. Can the department, through its employees, transact insurance and countersign policies without being licensed under the provisions of the Insurance Code?

5. Can the department adjust losses without being licensed under the provisions of the Business and Professions Code?

6. Can the department legally require a purchaser to carry "full replacement value" insurance even if the purchaser owes only a small balance (e.g., one-tenth of the amount of the value of the home)?

7. Can the department require a purchaser to carry "all physical loss" insurance on property to the full replacement value regardless of where the property is located and regardless of the amount the veteran owes to the department on the property in question?

8. If the premium is changed (i.e., adjusted under the terms of paragraph 18 of the agreement) does this constitute a new contract and therefore require that it be opened to other bidders?

9. If the department and the company agree on an increase in the premium in a yearly adjustment does that increase apply to policies issued prior to the date of renegotiation or only apply to policies issued after that date?

10. Can policies and certificates issued under this contract of December 1, 1960, be issued without the payment of a commission to any resident agent countersigning the policies or certificates?

11. Is the agreement between the Department of Veterans Affairs and the National American Insurance Company in violation of any law of this State and, if so, should it be declared void?

The conclusions are as follows:

1. There is no requirement that the insurance specifications be advertised for formal bids. However, in this instance it is significant that the insurance companies which were signatories to the prior contract were contacted concerning a renewal policy and informed of the necessity for all physical loss coverage, and all companies except the company which was awarded the contract rejected such coverage.

2. The Department of Veterans Affairs is neither the general agent nor a soliciting agent under the existing master policy, but is the insured.

3. The Department of Veterans Affairs may maintain the necessary records, submit monthly reports to the company, adjust losses and perform the other functions under the existing master insurance policy without reimbursement for expenses and salaries of its employees.

4. The Department of Veterans Affairs is transacting insurance but there is no requirement that either the department or its employees be licensed under the Insurance Code provisions by reason of the performance of the master insurance policy.

5. The Department of Veterans Affairs is not required to be licensed under the Business and Professions Code by reason of the performance of the master insurance policy.

6 and 7. The Department of Veterans Affairs can legally require the purchaser to carry full replacement value insurance as well as all physical loss insurance naming the department as insured. It should be noted, however, that the *distribution of proceeds in the event of loss is not involved in the questions.*

8. If there is an adjustment of rates under the renegotiation provisions of the master policy, there is no requirement for new bids, for formal bids are not required by statute.

9. Adjusted rates under the renegotiation provision of the master policy are not retroactive to property already insured under a former schedule.

10. Certificates may be issued without payment of a commission.

11. In view of the conclusions reached herein as well as the conclusion of 38 Ops. Cal. Atty. Gen. 107, the master policy executed between the department and the insurance company is a valid contract enforceable in accordance with the terms and conditions thereof.

ANALYSIS

The Department of Veterans Affairs negotiated a five-year term master insurance policy with one insurance company on December 1, 1960. This insurance policy (hereinafter referred to as the master policy) provides all physical loss coverage for the property for which loans are made by the department to California veterans under the veterans farm and home loan program (Mil. and Vet. Code, §§ 984-989.1). In addition to such coverage, the master policy provides that the department is to issue certificates of coverage to individual purchasers, submit monthly reports on coverage and loss to the company, and adjust losses, including payment of losses from the premiums which are collected by the department for transmittal to the company with the monthly report. These additional provisions were modifications of those contained in the prior contract. (All statutory references are to the Military and Veterans Code unless otherwise stated.)

The following information has been furnished by the department:

Prior to December 1, 1960, and during the period of 1955-1960, an insurance contract had existed between the department and numerous insurance companies. When the terms of that contract had neared its expiration date, the department contacted representatives of the signatory companies with respect to a renewal contract. The signatory companies were informed that the coverage had to be in accordance with the 1955-1960 contract including all physical loss coverage providing for protection against losses from landslide and earth movement. In addition, a request was made for the term of the contract together with any other proposals that the insurance companies might wish to make.

The requirement of all physical loss coverage was objected to by all of the signatory companies except the company that ultimately executed the master policy.

The negotiation and effect of the master policy has stimulated the above questions which tend to fall into the following four basic areas of inquiry: (1) the negotiation of the master policy, (2) the insurable interest of the department, (3) performance by the department under the master policy, and (4) the interpretation and effect of the renegotiation provision therein. In order to facilitate the organization and discussion herein, the questions will be considered under these general headings with parenthetical reference to the particular question number involved.

I. Negotiation of the Master Policy

It previously has been concluded by this office that the Director of Veterans Affairs was responsible for negotiating the master insurance policy discussed above, including all of the terms and conditions thereof [38 Ops. Cal. Atty. Gen. 107] and therefore it is not the authority to negotiate the master policy, but the method in which the negotiations were carried out that is now in issue.

The statutory provisions relative to the negotiation and placement of insurance covering the department's property which is held under the veterans farm and home loan program, are extremely broad in scope and, generally speaking, give considerable discretion to the department without prescribing

a definite procedure to be followed in these matters.¹ Thus, there are no provisions requiring the insurance contract specifications to be advertised for formal bids² nor are there provisions that generally restrict the department in the method of procuring insurance other than Government Code Section 1090.1, which prohibits state officers or employees from accepting commissions for the placement of insurance on behalf of the State and is inapplicable herein.

It is significant that, although no statutory requirements exist, the department did contact the signatories under the former contract and informed them of the necessity for all physical loss coverage which, as previously noted, was rejected by all but the company to whom the contract was awarded. Therefore, the negotiations were conducted within the applicable laws and it is concluded that under the facts stated, the contract negotiations were valid.

II. Insurance Interest (Questions 6 and 7)

The extent of the department's interest in the property insured under the master policy requires a brief summary of the farm and home purchase provisions (§§ 984-989.1). After the veteran selects his farm or home and notifies the department accordingly, the department may purchase the home or contract for the purchase of the dwelling or improvements and then enter into a contract with the veteran providing for payments by monthly installments over a period of years. The courts have indicated that under such an arrangement the State has the legal title to the property in the nature of a security interest while the purchaser has an equitable interest to the extent of his investment [*Veterans' Welfare Bd. v. Jordan*, 189 Cal. 124, 139; *Esley v. Moban*, 31 Cal. 2d 637, 644].

It is fundamental that several persons, including the vendor, may have separate insurable interests in the same property [*Alexander v. Security First National Bank*, 7 Cal. 2d 718, 723; *White v. Gilman*, 138 Cal. 375] and it is commonplace in conventional land contracts, as in the case of contracts between the department and the veteran, for the contract to require the purchaser to pay the premiums for insurance benefiting the vendor.³ In addition, this procedure was clearly authorized by the Legislature by those enactments which grant discretion to the department to designate the amount, companies and conditions of insurance (§§ 987.2, 987.4; 38 Ops Cal. Atty. Gen. 107, 109) and although the proceeds of the insurance would be apportioned according to the respective interests of the parties in the event of a loss, the above-cited authorities indicate that a provision requiring full replacement insurance is valid.

¹ § 987.2 provides in part "Insurance shall be in the amount, with the insurance companies, and under the conditions specified by the department." § 987.4 provides in part "The department shall be the sole judge of (b) the amount of insurance to be placed upon the buildings fences other permanent improvements, and crops and the amount necessary to be paid for the premiums for such insurance." Insurance Code §§ 1813.91 and 1813.96 provide as follows: "Admitted insurers are hereby expressly authorized to enter into agreements with the Department of Veterans Affairs with respect to the furnishing of insurance covering property being purchased from such department pursuant to Chapter 3, Division 4 of the Military and Veterans Code or the Veterans' Farm and Home Purchase Act of 1943, at special rates and forms for such insurance as are determined by the Director of Veterans Affairs to be reasonable" (§ 1813.91). "The use of such rates and forms by insurers pursuant to such agreements is hereby expressly permitted, and the provisions of Section 1832 are not applicable thereto." (§ 1813.96). Government Code 11007.7 provides in part "The procurement of insurance or official bonds by any state agency shall be subject to approval of the Department of Finance. This section shall not apply to (c) insurance procured by the Department of Veterans Affairs under Division 4 of the Military and Veterans Code."

² See 38 Ops Cal. Atty. Gen. 92 concluding that competitive bidding on insurance contracts covering local public agencies is not required under general law.

³ See *Lack v. Western Loan & Bldg. Co.*, 134 F. 2d 1017 and *Kaplee v. Piper*, 3 N.Y. 2d 179, 143 N.E. 2d 919, involving distribution of proceeds under provision requiring the purchaser to procure insurance for vendor's benefit. See, also, Note, 64 A.L.R. 2d 1402, 1416, 3 American Law of Property, § 11.31, n. 17 (1952).

The department's rule requires that fire insurance be carried at least sufficient to cover the department's investment, to be procured from a company signatory to the agreement with the department.⁴ The coverage required under the instant contract goes beyond the technical meaning of "fire insurance" set forth in § 102 of the Insurance Code and also, as above pointed out, requires coverage of full replacement cost instead of merely the balance due on the department's loan.

However, although superficial reading may convey a contrary impression, careful analysis will show that the rule (12 Cal. Adm. Code § 309, *supra*) leaves to the department's judgment the amount necessary to protect its investment and that the rule appears to indicate minimum rather than maximum requirements as to the insurance. This being the case, we cannot say that the requirement of "all physical loss" insurance—which includes fire insurance—and of full replacement value coverage under a policy with a high limit coinsurance clause, violates the rule. The rule should be amended, of course, to state more accurately and clearly the department's requirements.

III. Performance by the Department Under the Master Insurance Contract (Questions 2, 3, 4, 5, and 10)

This series of questions concerns the authority of the department to perform the functions of issuing certificates of insurance, paying losses to the veterans and transmitting monthly coverage reports to the company together with the premiums collected from which there are deducted the losses paid, all as provided in the master policy.

It is suggested in question 2 that the department is soliciting insurance and, further, that the performance of the above-mentioned functions by the department renders it a general agent of the insurance company. Apparently the question presumes that solicitation results from negotiating the master policy and then requiring the purchaser to carry full replacement insurance, while the existence of a general agency is based upon the issuance of certificates to the purchaser and the filing of monthly reports with the company.

The question overlooks the critical fact that the department, the legal owner of the property, is insured under the master policy and, in accordance with the applicable statutes previously cited as well as the land contract provisions, has required the purchaser to pay the premiums upon the insurance which is placed with a designated company. Considered in this context, and particularly in light of §§ 1853.95 and 1853.96 which permits wide latitude in the form of the master policy, the department is attempting to protect its interests as an insured and, therefore, is not soliciting insurance.

Furthermore, the department is not a general agent by reason of the performance of the above functions under the master policy, for a general agent in strict legal phraseology is one having the discretionary powers of his principal including the powers of accepting or rejecting risks.⁵ Again, under the master policy the relationship between the department and the company is essentially that of insured and insurer. Coverage is automatic, regardless of in-

⁴ Cal. Adm. Code, Title 12, § 309 provides as follows: "All properties purchased by the department are required to be covered by fire insurance which, in the judgment of the department, is sufficient to protect the department's investment therein. The policy covering the property must be issued by one of a group of insurance companies which is signatory to an agreement with the department. It is the responsibility of the purchaser, at the time of purchase and at the time of renewal of insurance, to determine that the insurance covering the property is adequate for his protection."

⁵ See *Gronin v. Coyle*, 6 Cal. App. 2d 203, 135 P.2d 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

advertence in failing to issue a certificate, and is effective upon acquisition of the property during the term of the agreement.

It is concluded that the department is acting neither as a soliciting agent nor general agent and, since the functions described are being performed primarily for the protection of the department's interests, there is no requirement that the department be reimbursed or compensated as suggested in question 3.

Similarly, the department is "transacting" insurance as the insured,⁶ by executing the master policy, negotiating a land contract requiring the purchaser to carry the insurance naming the department as beneficiary and issuing certificates of coverage which denote the amount of insurance, premium, expiration date and a brief restatement of the terms and conditions as provided in the master policy. Since the department is the insured and has broad powers relating to the insurance, it can do this. In short, the certificate represents an exercise of that authority expressly granted by §§ 987.2 and 987.4(b) and the land contract. In response to question 4, therefore, there is no necessity for the department to be licensed under the Insurance Code in order to perform these functions.

Question 5 asks whether or not the department can adjust losses without a license under the Business and Professions Code, presumably referring to the Private Investigator and Adjuster Act, §§ 7500 *et seq.* of the Business and Professions Code.

The employees of the department are performing functions which the department has assumed under a contract which the statutes give it power to make. Consequently they are within the scope of their official duty and the licensing provisions by their express terms would not be applicable.⁷

The final question (question No. 10) under this general heading is whether or not insurance certificates can be issued to a purchaser without payment of a commission to a resident agent countersigning the certificates. As previously noted, §§ 1853.95-1853.96 indicate that the form of the insurance policy covering the department need not conform to the standard form, provided the form used is reasonable. The provision in the master policy providing for issuance of the certificates by the department does not require that they be signed by local agents nor is there any requirement that a commission be paid. Since the purpose of the certificates is both to inform the purchaser of the extent and cost of coverage and to provide records for the use of the department and the company, such a provision authorizing their use without payment of a commission is clearly reasonable within the meaning of the above sections.

⁶ § 35 of the Insurance Code provides as follows:

"Transact" as applied to insurance includes any of the following:

"(a) Solicitation

"(b) Negotiations preliminary to execution

"(c) Execution of a contract of insurance

"(d) Transaction of matters subsequent to execution of the contract and arising out of it."

⁷ § 7522 of the Business and Professions Code provides in part as follows:

"This chapter does not apply to

"* * *

"(b) An officer or employee of the United States of America, or of this State or a political subdivision thereof, while such officer or employee is engaged in the performance of his official duties."

IV. Interpretation and Effect of the Renegotiation Provisions

The effect of paragraph 18 of the master policy⁸ is the subject of inquiry in questions 8 and 9, first as to whether a new premium rate would constitute a new contract and require that it be opened to other bidders and secondly, whether rate changes apply retroactively.

It has previously been noted that there is no formal bid procedure required in negotiating the terms and conditions of the master policy and, therefore, even if the rates were renegotiated and a new contract were found to exist, there would be no legal obligation to advertise for formal bids. It is concluded in answer to question 8 that there is no requirement to advertise for bids.

Finally, question 9 is determined upon the basis of the intent of the parties as expressed in the master policy as to whether the renegotiation provision applies retroactively, to certificates issued in the previous years. Paragraph 18 of the master policy does not expressly provide that the rates applied to property insured under a previous schedule, as evidenced by the issued certificate, are to be altered in accordance with the renegotiated rates. Moreover, paragraph 12 of the master policy suggests that the rate on property covered by certificate is not subject to change. That paragraph reads as follows:

"Upon expiration of this agreement and the Master Policy, the certificates or other evidences of insurance issued under said Master Policy shall remain in full force and effect until the date of expiration as shown in such certificates or other evidences of insurance."

Thus, it is concluded that the parties to the master policy did not intend that renegotiated rates would apply retroactively, a construction which recently was adopted following the reduction in rates under the rate negotiation made on December 1, 1961.

In view of the conclusions reached herein as well as the conclusion of 38 Ops. Cal. Atty. Gen. 107, the master policy executed between the department and the insurance company on December 1, 1960, is a valid contract, enforceable in accordance with the terms and conditions thereof, as to loans made or insurance commencing after the date thereof.

⁸ Paragraph 18 of the master policy provides as follows:

"At the end of each twelve-month period of this agreement, the company shall have the option of reviewing its experience under this agreement, and all rates shall be subject to renegotiation and revision by agreement of the parties hereto."

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ASSEMBLY INTERIM COMMITTEE REPORTS
1961-1963

ASSEMBLY INTERIM COMMITTEE
on
FINANCE AND INSURANCE

FINAL REPORT

THOMAS M REES, *Chairman*

RONALD BROOKS CAMERON, *Vice Chairman*

PHILLIP BURTON

JACK T CASEY

ROBERT W. CROWN

RICHARD T HANNA

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January 1963

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OF THE STATE OF CALIFORNIA

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LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, January 31, 1963

*Honorable Speaker of the Assembly
Honorable Members of the Assembly
Assembly Chamber, State Capitol
Sacramento, California*

In accordance with the provisions of House Resolution 361 (g) of the 1961 Regular Session, your Committee on Finance and Insurance hereby submits its Final Report covering its activities during the 1961-1963 interim.

On March 27, 1962, your committee published a preliminary report on three studies which it had concluded. These reports dealt with fire insurance, land sale contracts, and Cal-Vet insurance. That report is hereby incorporated by reference into this report.

In approving this report, Assemblyman Levering wishes it to be noted that he dissents on subsections 2 and 3 of the conclusions section in the report on prepaid health plans; subsections 1 and 3 of the conclusions section in the report on check sellers and cashers.

While the Committee on Finance and Insurance is obligated to many persons and organizations for the assistance rendered in the inquiries pursued this past interim, we should like especially to express our appreciation to the Institute of Industrial Relations, University of California at Los Angeles, for the conference it sponsored on November 29 and 30, 1962, which helped immeasurably to crystallize our study of prepaid, direct service health plans.

Respectfully submitted,

THOMAS M. REES, *Chairman*
RONALD BROOKS CAMERON, *Vice Chairman*

PHILLIP BURTON
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LETTERS OF DISSENT

ASSEMBLY, CALIFORNIA LEGISLATURE

January 15, 1963

HON. THOMAS M. REES, *Chairman*
Assembly Finance and Insurance Committee
State Capitol, Sacramento, California

DEAR MR. REES I have read the report of the Finance and Insurance Committee relative to check sellers and cashers and the section on prepaid health plans. In each case, while I approve of the report on the whole, I have a minor objection which I would like to set forth as part of the report

(1) In regard to the section on check sellers and cashers, I do not approve of paragraph 3 in the conclusions insofar as it implies the American Express Company should be placed under the control of the Commissioner of Corporations. It is my understanding that the said company is under the regulation of the Superintendent of Banks and that any competitive advantage enjoyed by the company could be eliminated by rules promulgated by the Superintendent of Banks

(2) In regard to the section of the report on prepaid health plans, in the body of the report there is a suggestion [p 34] that health plans developed through collective bargaining should be exempted from the proposed regulation. I strenuously object to this suggestion because it places labor organizations in a privileged classification which is abhorrent to the concept of equality before the law. Whenever regulation of any type is suggested, those who are to be regulated naturally seek to escape this control by government. Therefore, it should be no surprise that Mr. Ted Ellsworth, speaking on behalf of a labor union, argues that "any organization that contracts for service for its own members should be allowed to do so." This same argument could be made for the individual. The committee report goes on to state somewhat gratuitously, "that the right to arrive at contracts freely found no foes on the committee. . . ." This is illogical because, of course, the whole basis of the report is correctly based on the premise that regulation of contracts is justified in order to avoid fraud and abuse of people in an area as vital as their health. There is no reason at all for a labor union to escape this regulation with the bland assumption that somehow or other an organization is better qualified to negotiate than any individual no matter how intelligent or well qualified such individual may be. It would be fatal to any control of health insurance or health plans to exempt labor unions from such regulation. In the future it is very probable and quite understandable that labor unions will be even more active in negotiating this particular kind of contract.

Respectfully submitted.

HOWARD J. THELIN

ASSEMBLY, CALIFORNIA LEGISLATURE

January 24, 1963

HON THOMAS M. REES, *Chairman*
Assembly Interim Committee on
Finance and Insurance

DEAR TOM: The business of check sellers and cashiers is a private business relationship based on profit to both the licensee and the agent, and both are subject to risks. The State should not in my opinion enter or become a part of a contractual relationship in which the risks involved should be covered by bonding or other means of security, and where the State as the third party makes no investigation of agents that are selected by, and contracted with, the licensee.

In plain words, the State should not become a "collection agency" for any private business, based on the principle that the business is "clothed with the public interest." Most private businesses to some degree are "clothed with the public interest," but on the above-mentioned basis, I dissent on the subsections 1, 2, 3, 4, 6, and 7 of the report.

Sincerely,

W. BYRON RUMFORD

January 24, 1963

HON. THOMAS REES
State Capitol, Sacramento, California

DEAR TOM I am returning my signed agreement with the report of the Finance and Insurance Committee.

In regard to the conclusions under the subject, Corporate Rights of Stockholders, several additional comments would appear to be in order

The Standard Motels-Hacienda hearing brought out the interesting fact that, even though present statutes require certain acts on the part of management to keep shareholders informed, there does not seem to be sufficient authority vested in either the Commissioner of Corporations or in the Department of Justice to enforce the law. I agree that this condition should be corrected by legislation. I also agree that this is a matter which should approximately be placed under the jurisdiction of the Department of Justice rather than the Corporations Commissioner

I personally believe that, when promoters of a corporation receive promotional stock in a new enterprise as a part of their compensation and when they pay in no money or tangibly valuable assets for this stock, that they should not be permitted to vote that stock until and unless they have fulfilled the conditions for releasing the stock from escrow. Otherwise the promoters have a built-in operating control and can effectively freeze out the stockholders who have put in all of the real, investment money

I fully agree that the committee should give full consideration to the fact that only a minute number of corporations are guilty of violation of the principles of adequate disclosure of information to stockholders. It is properly set forth that harsh legislation which could damage innocent management must be avoided.

I agree to the rest of the report without specific comment

Sincerely,

BRUCE V. REAGAN

**CORPORATE RIGHTS
OF
STOCKHOLDERS**

It is a well-established concept of law that the directors and managers of a corporation must promote the interests of its shareholders as well as the corporation, *per se*. The statutes and case law of California hold that a corporation's officers must, as fiduciaries, act in the utmost good faith and are responsible for dereliction of their stewardship.¹

The Assembly Committee on Finance and Insurance has a historic interest in the problems of investors. For that reason Chairman Rees, taking note of what had become a virtual crescendo of complaints against a group of four California corporations, ordered an investigation into the circumstances of that matter and the general state of the law.

Before discussing the particulars of that inquiry, it will be useful to survey the setting.

¹ Cf. *Wulfsen v. Dalton*, 24 C 2d 878 (1944).

I. Introduction ²

Since the great managerial revolution took place in the United States we have been confronted with the fact of widely dispersed ownership of corporations through the possession of stock shares in small amounts by millions of people—many of them wage earners. As a *generality* it may be observed that corporate ownership consists of a split base, a few holders of large blocs of stock whose financial interest in the affairs of the corporation impels them to work in concert with one another to make decisions (e.g., naming the board of directors and management) for the entire corporation versus a large number of relatively small stockholders. The former may own a *majority* of the shares and direct the destiny of the corporation unchallenged or they may even own a *minority* of the shares but, because of the very leverage inherent in preponderant interests, they can outmaneuver the more casually interested (or, better, less informed) majority. In their celebrated study of this phenomenon, Berle and Means commented:

the usual stockholder has little power over the affairs of the enterprise and his vote is rarely capable of being used as an instrument of democratic control. The separation of ownership and control has become virtually complete. The bulk of the owners have in fact almost no control over the enterprise, while those in control hold only a negligible proportion of the total ownership.³

If it is accepted that publicly owned corporations ought to be governed in the same manner as political democracies, then two fundamental principles follow:

First, **shareholders must be kept apprised of what is going on in their company.** An investor has the right to make an informed judgment as to the use of his money, he has an interest in his investment which he cannot intelligently protect if he lacks adequate news as to success or failure of management's plans. To this end, California law provides that shareholders shall be provided annual financial reports unless by-laws provide otherwise.⁴

Even the exception here underscores the second principle—that **shareholders must be periodically given the opportunity to express their sentiments on the operation of their company and membership on their board of directors**—since a voice in the formulation and revision of the ground rules of the corporation is implied. The cruciality of this principle is so obvious as to require no elaboration. Again, state law mandates that corporations afford stockholders an opportunity to make themselves heard.⁵

The crash of 1929 prompted the federal government and the state legislatures to recognize the altered state of affairs and a drive got underway to re-write the "rules of the game" to insure that small, less-informed investors

² This discussion is based, to a significant degree, on *Dealings of Directors and Officers With Their Corporation and Its Shareholders* by Carl W. Barrett, and *Shareholders' Actions Against Corporations* by Hartley Fleishman in *Advising California Business Enterprises*, Berkeley (1918).

³ Adolph A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property*, (New York, 1932) p. 89.

⁴ Corporations Code § 3006 ("The board of directors of every stock corporation shall cause an annual report to be sent to the shareholders not later than 120 days after the close of the fiscal or calendar year, unless by-laws expressly dispense with such report.") Italics added. §§ 3007-3010 stipulate what is to appear in the annual report.

⁵ Corporations Code § 2200 et seq. § 2200 states: "An annual meeting of shareholders shall be held at 11 o'clock in the morning on the first Tuesday of April in each year at the principal office of the corporation, unless a different time or place is provided in the by-laws."

were adequately protected. The most outstanding product of this legislative ferment was the establishment of the federal Securities and Exchange Commission

The laxity of state laws led Congress in the 1930's to adopt legislation providing more adequate protection to investors in those areas where state statutes and the common law had proved largely ineffective. Under this legislation, a higher standard of corporate disclosure is imposed upon corporations with shares listed on a national securities exchange, public utility holding companies and their subsidiaries, and investment companies. These categories of corporations are now required to file with the Securities and Exchange Commission annual and other reports and to keep the information up to date.⁶

One device that found wider acceptance during this period was that of cumulative voting which has been mandatory in California since 1879 [Currently found in Corporations Code §2235]. It may be said that this provision of the law is designed to make it possible for small shareholders to name *their* spokesman (or, if feasible, *spokesmen*) to the corporation's board of directors. The device permits the shareholder to concentrate all his voting power (determined by the amount of shares he owns) on voting for *just one* candidate for the board five times rather than diluting it by voting for five—assuming that to be the number of directors.

But, of course, there must at least be a meeting. If the management does not see fit to comply with §2200, the law provides that shareholders may take the initiative.⁷ But there's a formidable obstacle. **The group must number at least one-fifth of the total voting power in the corporation!** While this qualification was obviously designed to forestall capricious harassment of management, it should require no great exercise of the imagination to see that it raises an insurmountable hurdle to disorganized dissidents of limited means who may want to act promptly to protect their investment in the face of dissipation of a company's assets.

It was to meet this contingency that Assemblyman Charles B. Garrigus introduced Assembly Bill 2836 at the 1961 Regular Session of the Legislature. This proposal provided that any "publicly held" company⁸ not subject to regulation by the Securities and Exchange Commission would be obliged, subject to the discretion of the Corporations Commissioner, to render quarterly and annual reports to shareholders as well as conduct annual meetings. Violation of this law would have been a misdemeanor and the commissioner could seek a court injunction to force compliance.⁹

Although A.B. 2836 was not opposed in committee hearing, it was defeated on the floor of the Assembly on June 6. The bill was criticized by the California Bar Association, the California Manufacturers Association and the Investment Bankers Association. Most of the criticism apparently was concerned with definitions and scope as well as some misgiving about empowering a state official to act in an area traditionally left to attorneys in private practice.

⁶ Norman D. Lattin and Richard W. Jennings, "cases and materials on Corporations," (Chicago, 1959) p. 536. Emphasis added.

⁷ Corporations Code §2202.

⁸ Defined as any company with 100 or more shareholders, beneficiaries, or members of record. Banks, trust companies, savings and loan associations, cooperative corporations, insurance companies and industrial loan companies were excluded.

⁹ This digest does not pretend to cover every feature of the bill.

A legislative struggle is seldom waged over an anticipated difficulty or a fancied injustice. Before an answer can be found there must first be a demonstration of a problem.

II. The Hacienda Motels

In 1947 articles of incorporation for Standard Motels, Inc. were filed with the California Secretary of State and "The Hacienda Affair" was born. By December, 1952, the promoters (Warren Bayley, Chairman of the Board and "Chief Executive Officer," and Rupert E. Wilson, President) had sold enough stock and raised enough money to construct and open for business the Fresno Hacienda Motel. Apparently the enterprise was an instant success and all indications are that the motel, which includes a restaurant and convention hall, has made profits for the corporation ever since. Deducing that "one good turn deserves another," Bayley and Wilson successively built motels in Bakersfield, Indio and Las Vegas. *In each case new corporations were formed, in other words, those persons owning stock in Standard could expect to profit exclusively from the Fresno Hacienda, and so on.*¹⁰ Despite this fact, Messrs. Bayley and Wilson conceived the grand idea of having the Fresno operation "mother" the others. In the light of grievances registered by investors there is grave doubt that this scheme would have won the approval of the public shareholders.

Despite the seeming success of the four motels, complaints about inability to obtain concrete information from the officers began first to trickle and ultimately to pour in on the Division of Corporations in 1960, '61 and '62. The complaints followed a strikingly uniform pattern although the motels were doing good business, the price of stock—bought at \$1 per share—was sagging to as low as 20¢, requests for information were met with evasion or procrastination if they were answered at all. Moreover, many investors were surprised to learn that the brokerage firm of Bayley and Wilson would not repurchase stock at par value despite "what the salesman said."

Although the exercise is somewhat tedious, a perusal of the following exchange of correspondence provides a far more vivid illustration than a cap-sulized summary of the exasperating attempts made by so many investors to obtain information upon which to make a judgment.

June 27, 1961

Mr. R. E. Wilson, President
Hacienda Motels
333 S. Glasgow Avenue
Inglewood, California

Dear Mr. Wilson:

The last communication received by me, and issued from your office regarding Las Vegas Hacienda, Inc. stock was dated May 16, 1960. I have checked with other stockholders and found this to be true in their cases, also. Therefore, I am requesting the most recent report issued by the Board and the current financial statement.¹¹

I will appreciate your immediate response to this request, as well as information on the necessary steps to dispose of this stock.

Very truly yours,

Donald E. Sheeler
617 Strub Avenue
Whittier, California

¹⁰ At this committee's public hearing on October 17, 1962, Bayley confessed—to a chorus of guffaws from shareholders in attendance—that by "oversight" an interest of ten percent in each of the other three corporations was not listed on the books of Standard Motels.

¹¹ Emphasis added.

ASSEMBLY INTERIM COMMITTEE REPORT

Hacienda Hotels-Motels
Main Office—133 South Glasgow Avenue, Inglewood 1, California

Mr Donald E Sheeler

June 28, 1961

Dear Mr Sheeler

I am real sorry that up to date we have not sent out a report or financial figures on the Las Vegas Hacienda but it is expected that financial figures and other information will be sent to all stockholders certain in the near future. The information should be very encouraging and enlightening.¹²

Yours very truly,

LAS VEGAS HACIENDA, INC
R E Wilson, President

July 3, 1961

Mr R E Wilson, President
Hacienda Motels

Dear Mr Wilson

Your letter of June 28th has been received and it is noted that a report on Las Vegas Hacienda is expected in the near future. However, please permit me to call your attention to the three requests, again, which were included in my letter of June 27, 1961.

I would appreciate a copy of the latest report issued by the Board, the most current financial statement and the necessary steps to dispose of the Las Vegas Hacienda stock. My current interest is not an expected report or the future. Your immediate response is requested.

Very truly yours,

Donald E. Sheeler

July 12, 1961

Mr R E Wilson, President
Hacienda Hotels-Motels

Dear Mr Wilson

Please refer to my letters of June 27th and July 3, 1961, in which I asked for certain information concerning the Las Vegas operation. To date, I have received nothing and it is believed two weeks is more than a reasonable period to wait for the requested information.

A letter, dated May 16, 1960, from Warren Bayley, stated a report was being prepared as of November 1959 and this would be forwarded for the information of the shareowners.¹³ This report, or subsequent reports, have never been received and I question the reason for failing to provide an annual report when required and requested.

Your immediate response is requested.

Very truly yours,

Donald E. Sheeler

¹² Emphasis added

¹³ Emphasis added

July 24, 1961

Mr. R. E. Wilson, President
Hacienda Hotels-Motels

Dear Mr. Wilson:

It has become apparent that you do not intend to acknowledge my letters or provide the information requested in recent letters. I am disappointed in the fact that an executive of a large organization refuses to extend the courtesy of answering a reasonable request.

It is learned that other stockholders have also been ignored and I have therefore contacted the Division of Corporations for the State of California. I would like to call your attention to Section 3003 of the Corporations Code. You will find that you are required to furnish annual reports to shareholders, as well as permitting the examination of books and records.¹⁴

I believe you will find that reasonable notice has been given and your response by return mail is requested.

Very truly yours,

Donald E. Sheeler

July 27, 1961

Mr. Donald E. Sheeler

Dear Mr. Sheeler:

I have received your letters of July 12 and July 24.

On June 27th, you wrote us and I enclosed a thermo-fax copy of our reply. Because I had sent this reply to you, I did not think it was necessary to reply to your letter of the 12th and 24th of July.¹⁵

You can be assured that just as soon as the information is available, it will be sent to all stockholders.

Yours very truly,

LAS VEGAS HACIENDA, INC
R. E. Wilson, President

February 13, 1962

Mr. R. E. Wilson, President
Hacienda Motels

Dear Mr. Wilson:

Well, Mr. Wilson, last June I requested the most recent report and current financial statement of the Las Vegas Hacienda. You stated this information would be issued in the near future and "painted" a very encouraging and enlightening picture. Today I'm still awaiting this encouraging information.

Mr. Wilson, once more I'm asking for the information which I originally requested:

- 1 The latest report issued by the Board
- 2 The most current financial statement
- 3 The necessary steps to dispose of the Las Vegas Hacienda stock

Do you, or do you not intend to send it?

Very truly yours,

Donald E. Sheeler

¹⁴ §3003 is concerned exclusively with the shareholder's right of examination. This does not, however, diminish Mr. Sheeler's right to demand a report.

¹⁵ Emphasis added.

March 6, 1962

Mr. R. E. Wilson, President
Hacienda Motels

Dear Mr. Wilson:

Please refer to my letter of February 13, 1962 in which I asked several questions.
May I have the courtesy of your answer?

Very truly yours,

Donald E. Sheeler

May 22, 1962

Mr. Warren Bayley
Hacienda Las Vegas Hotel
Las Vegas, Nevada

Dear Mr. Bayley:

I am writing to you personally since I have been unable to get any response to my questions from Mr. Wilson in Inglewood. I appreciate that you have more important considerations but your letters in the past have indicated a sincere interest in shareholders and this is important to me.

Our purchase of 300 shares of Las Vegas Hacienda in 1955 was small in proportion to the whole operation and most likely in your eyes this is still small. However, as a teacher and to our family this represents a fair amount of money. At present we are preparing to send two youngsters to college and are drawing in our fences, so to speak, to make the necessary arrangements. We understand the long range possibilities of this stock but the money is of more importance to us now.

Your consideration in advising how we may sell our shares and what we might realize from the sale will be sincerely appreciated.

Very truly yours,

Donald E. Sheeler

HACIENDA

On the Fabulous Strip—Las Vegas—Nevada

May 22, 1962

Dear Mr. Sheeler:

Mr. Bayley is presently in Washington, D. C. so I am taking the opportunity of answering your recent letter.

We are certainly pleased that you are one of our share holders.

We understand during Mr. Bayley's last visit here that a letter to all stock holders is in the offing.

When Mr. Bayley returns I will certainly give him your letter.

Sincerely,

Dick Taylor
General Manager

On October 3 Mr. Sheeler wrote the committee's consultant enclosing the foregoing correspondence. He reported that he still had not received a reply from Mr. Bayley. Since it began its investigation of this affair—particularly subsequent to the public hearing—the committee has received innumerable telephone calls and approximately 80 letters. As indicated previously, the letters, in varying shades of grammar, state much the same complaints. The Division of Corporations, in a report prepared for the committee, estimates that there are 150 letters in its files. It also states that Standard Motels has

not held a shareholders' meeting since March 6, 1954;¹⁶ the Bakersfield, Indio and Las Vegas corporations have never held meetings at all.

It was in the light of the evasive and obviously disingenuous treatment being accorded people who had in good faith bought stock in the several Hacienda corporations that Chairman Rees determined that a public hearing was in the public interest.

III. The Hearing

On October 17, 1962, the committee convened in public hearing at the State Building in Los Angeles.

Extent of Public Stock Sale

Commissioner of Corporations John G. Sobieski summarized the extent of public subscription to Hacienda shares as follows: Standard (Fresno) Motels—\$3,000,000; Bakersfield Hacienda—\$1,350,000; Indio Hacienda—in excess of \$1,000,000; Las Vegas Hacienda—\$1,320,000. Since there is substantially overlapping ownership by the public, it is impossible to determine from the available information the exact number of persons who were divested of \$6,350,000 but the Division of Corporations estimates the total to be 12,000. In each of the corporations the shares owned by the public exceeds the number held by the controlling interests. However, as might be deduced from the discussion in Section I (*supra*), given the dispersal of shareholders¹⁷ and barring a superlative proxy campaign by dissidents, it is not likely that Mr. Bayley and his associates¹⁸ are in imminent danger of losing their control.

Action Against Broker's License of Wilson & Bayley

On February 28, 1961, the Division of Corporations initiated action against the brokerage license of Wilson & Bayley, the instrument through which the promoters raised public funds for their motels. Supervising Deputy Commissioner Irving F. Fields told the committee the division's aims and the outcome:

We knew that Wilson and Bayley, which was a brokerage concern and was licensed to do business as a brokerage concern, was primarily handling the Hacienda securities and no other securities. For several months we discussed this matter to determine whether or not these individuals should be entitled to engage in the business of brokerage concerns in that they were not acting in a capacity fair to the shareholders of corporations which they [controlled]. After much deliberation, we determined that it was better to get these people out of business than permit them

¹⁶ A meeting was attempted on November 26, 1953 but had to be adjourned for lack of a quorum. While this might suggest lack of interest on the part of investors it should be noted that it has only been since 1959 that public owners have had cause for apprehension.

¹⁷ The following letter from a lady in Elkhart, Indiana, not only demonstrates the dispersal of shareholders but evinces as well the degree of investment sophistication possessed by a number of investors. Dear Sir: I am also a shareholder in this Hacienda Motel Corp. I have been trying to get back my money of \$650 a Mr. Richard W. Matthes talked me into buying 50% of shares he built it up so he said to invest my money in Hacienda as it paid 8 to 10 per cent interest instead of leaving it in a bank for 1 or 4 per cent interest and I would start to get 9 per cent after 10 days so far I did not even get a penny. Besides, I asked for a refund in May or June 62 as I needed the money very badly as my Sister passed away and my mother who is 93 yrs old is in the Hospital very ill and may go any day now. She didn't have anything I have to help pay bills of hers. I am 68 and live on a very small Soc. Sec. of \$54 a month. I wrote to Mr. Matthes and Mr. Bayley but did no good he said they were building some more Motels and all the money was tied up but would start coming in soon and would pay div. soon but I have not heard from them since. I have all the letters and papers from Hacienda so there any chance of me getting my money. This had it since May 4, 1959 I just don't know what to do.

¹⁸ As of September 1960 the officers of Indio Hacienda were Warren Bayley, chairman of the board, Rupert E. Wilson, president and director, John G. Rankovic, vice president and director, Leroy S. Curtis, vice president and director, John A. Mendors, secretary-treasurer and director, Melvin S. Crum, director, and Charles R. Bruckman, director. It is believed these gentlemen constitute the boards of directors of the other corporations as well.

to engage in business, even though it might in some way have a detrimental effect on the Hacienda stock which was outstanding.

Also, I might say, we thought probably, if we could put this kind of pressure on the brokerage concern, we might get them to comply with the law in furnishing annual reports and holding annual meetings.

Well, the result was that we did not exert any pressure and we were not able to get the annual reports and the annual meetings. The accusation was prepared and served [but] before the date could be set—these things take a considerable length of time because of certain procedures for getting a hearing officer—the time for renewal came about and they did not file an application for renewal. Consequently, the accusation was no longer effective.

In his appearance before the committee Warren Bayley took occasion to comment on this affair:

MR BAYLEY I do not believe, speaking of Wilson and Bayley as a brokerage company, that an action was brought against Wilson and Bayley. It is my understanding that an action was brought against one of the salesmen when he wished to renew his license and this caused an awful lot of investigation by the Commissioner of Corporations' office, all of which, when it got down to it, came to nothing because I don't believe they found anything. If they had, they would have told us or brought some proceedings, I do suppose.

CHAIRMAN REES They did. It was the affidavit that I was quoting from.

MR BAYLEY Against the company?

CHAIRMAN REES Yes.

MR BAYLEY I am not familiar with it.

Mr. Fields was able to rebut Mr. Bayley's contention, pointing out that while an agent (John Rankaitis) was mentioned in the accusation, the action was against Bayley, doing business as Bayley, and the division was given a statement, signed by Warren Bayley, on March 3, 1961, in which the accused expressed a demand for a hearing.

Failure to Hold Annual Meetings

Committee members were little more successful in obtaining concrete, unequivocal answers from Mr. Bayley than were investors. At several junctures during the questioning of that gentleman attempts were made to discover why there have been no annual meetings of Hacienda shareholders. The following exchange is the closest anyone came to getting an explanation:

CHAIRMAN REES You say that there have been no stockholder meetings held of the Las Vegas Hacienda nor of the Bakersfield Hacienda, nor of Indio Hacienda. Now, why is that—even though it is mentioned in the code that there should be [meetings]?

MR BAYLEY I endeavored to give you some idea of the problems that we had in Las Vegas. These problems, even as of today, are not all solved for the simple reason that our agreement of purchase that we entered into with the insurance company has not been carried out on their part. We didn't know whether this concern was going to live into '59.

CHAIRMAN REES So because of this one underwriting you have never called an annual meeting? You have never had a report going out to your stockholders?

MR BAYLEY No. This was not—I didn't bring that from the standpoint of the—of the reports, yes. This is the reason and now our reports are flowing and slowing well. However, coming back to the stockholders' meetings upon the thing this was the question of the hours in the day. We were being attacked on the one hand, we couldn't get the deed to the property. On the second hand, we were being attacked from the airplane end of it and we finally lost our case, having taken it completely to the United States Supreme Court. We lost it on the tenth of September.

¹⁹ Emphasis added.

²⁰ The matter of the airplanes will be discussed below.

CHAIRMAN REES You didn't feel the stockholders would understand your problems and they might cause a lot of trouble—or what?

MR. BAYLEY "Didn't feel the stockholders would—", no, it was a—I haven't yet had it confirmed

Mr. Rees, although sidetracked by the witness' meanderings, returned to the point when Mr. Bayley touched on management's decision to switch from a 40-year to a 25-year depreciation schedule for Fresno Hacienda which, of course, reduced the amount of funds available for dividends

CHAIRMAN REES Shouldn't the stockholders be asked about this decision?

MR. BAYLEY Well I referred that to our attorney who, I believe, says that this is the duty of the board of directors

CHAIRMAN REES Instead of saying, "should we go to a meeting of the stockholders once a year and explain the plans that we have for Standard Motels, Incorporated," [you seem to say,] "Let's go to our attorney and find out if we can just go to our board of directors?"

MR. BAYLEY Well, I believe it is the duty of the board of directors, and this is what they are there for. I am real sure that when Mr. Blough raised the price of steel, he didn't go to every one of the stockholders of US Steel. I think this was something for the board of directors to do. It is in the normal business of the board of directors.

CHAIRMAN REES US Steel, though, has a stockholders' meeting every year, and if anyone wishes to form a protective association they can, at the stockholders' meeting give intention of that and ask questions of management.

MR. BAYLEY Right. They can. And so can they in this, because there are our annual stockholders' meetings—we will have them all the way down the line from now on. [Laughter.] But we—I don't see where it is so funny, but evidently—if it is a joke, good.²¹

The current counsel for the Hacienda Corporations,²² John E. Anderson, told the committee that his firm felt that Mr. Bayley has not fulfilled his responsibilities. "We advised him of that. We will continue to advise him of that, and we hope to get him to agree that this should be done. I think he has already set the date for the next stockholders' meeting." Turning to that gentleman Mr. Anderson inquired, "Mr. Bayley, would you like to name the date so that some of these people here can be advised of it?" [Silence.] We will follow it up in writing."

Intercorporate Loans

The Las Vegas Hacienda opened for business in March of 1956 but was soon in distress because, according to Bayley, its gambling casino (the "Lady Luck") could not operate for lack of a license from the Nevada Gaming Control Board. As the gentleman put it, "... running a hotel in Las Vegas without a casino—being the nature of the town—you cannot get any business." Mr. Bayley told the committee that he formed Casino Operations, Inc.,²³ when, after seven months delay, another party was unable to obtain a gambling license, and opened the casino. Later, because "We were the last hotel out on the strip and we had no clientele to draw from whatsoever" in the winter, Mr. Bayley and his associates conceived the idea of purchasing a fleet of air-

²¹ Emphasis added.

²² Mr. Bayley's frequent references to the advice of "counsel" as the basis for his actions and inactions were not directed at Mr. Anderson. This gentleman only lately became the attorney for the corporation.

²³ Mr. Bayley stated that he owns 82 percent of Casino Operations because. At the time this transaction went through there was a rule in the Gaming Control Board that no more than 50 people could participate on a license.

planes to fly customers to Las Vegas on what has become the celebrated "Hacienda Champagne Tour" ²⁴

Investigations by Division of Corporations personnel indicate that funds to support these ventures came from the other Hacienda corporations. A report rendered by their auditor on April 14, 1961, itemizes nearly 40 questionable, inadequately explained or indecipherable loans, negotiations, etc. Samples are:

1 "In the Board minutes of 6/22/56, Mr. Bayley, an officer, stated that the Wallace Moir Company had been able to secure a \$1,000,000 loan commitment on Fresno Hacienda (Standard Motels, Inc.) subject to a 1% commission fee payable to Wallace Moir Company. He also stated this matter of borrowing \$1,000,000 was brought before the stockholders' meeting of 1954 and approved at that meeting. However, the minutes of the stockholders meeting on March 6, 1954, did not mention such approval."

2 [Re Las Vegas Hacienda] "The Board minutes of 3/25/56 contained a certificate of Mr. Wilson as an excerpt from minutes, resolved that corporation guarantee repayment of an amount not exceeding \$100,000.00 by Jacob Kozloff to the Bank of Nevada. (Minutes referred to [were] not in the minute book.) A similar certificate was in Standard's minute book."

3 "On 1/15/58, the Board authorized borrowings of not to exceed \$350,000.00 from the Bank of Nevada. At this meeting, the names of directors present included Mendoza, Rankatis and Chester Houser, in a letter dated 7/12/56 from Attorney DeSautis to Bamer, it stated that these directors had resigned on 7/11/56 as the liquor license ordinance of the locality requires that at least 50% of the directors be local residents. This left Wilson and Bayley as the only remaining directors. David Zenoff and Jack Kozloff, local residents, were elected as directors which satisfied the ordinance requirement. Soon thereafter these two directors resigned and their resignations dated 8/7/56 were in the minute book" ²⁵

The record needs no belaboring. Mr. Bayley conceded under questioning that more than \$1,000,000 was siphoned from Standard Motels for the benefit of the other corporations. This, of course, was in line with his concept of the Fresno Hacienda being a "mother hen" to the younger corporations. Yet this is a philosophy which apparently was evolved without consulting shareholders whose financial interests palpably were at stake. While there is no law against corporations lending money to individuals or other corporations and this committee hardly would recommend such a prohibition, it is unthinkable that a corporation's management would embark upon such a course undertaken by Messrs. Bayley and Wilson without at least informing shareholders of a policy which very possibly would directly collide with their expectations of profits.

An ironic postscript to this discussion is provided by a statement purportedly mailed to all Hacienda investors on June 1, 1962, in which Warren Bayley disclosed that since June of 1959 "your company" had been attempting to consolidate all the corporations into one entity with the object of expanding into a nationwide chain. In part this statement says:

Negotiations were completed in the first part of 1960 with an eventual expansion program of fifty additional Haciendas. Van Alstyne, Noel & Company were the prime underwriters but, after months of effort, found it impossible to get other brokers to participate because one of our hotels is located in Las Vegas, Nevada. Repeated efforts have been made since that time to combine just the California Haciendas into this program but to no avail. Now that entire project has been abandoned, we feel free to pass this and other information on to you without fear of breaking Federal regulations ²⁶

²⁴ Participants in the "champagne tour" enjoy entertainments at the New Frontier Hotel as part of the "package." This hotel is 92 percent owned by Mr. Bayley. He solemnly assured the committee that air tourists are sent to the New Frontier for room accommodations only when the Las Vegas Hacienda is full.

²⁵ Emphasis added.

²⁶ Emphasis added. Commissioner Subeski told the committee that, as a former attorney for the Securities and Exchange Commission, he knew of no regulation which would prohibit a company from furnishing annual reports to its shareholders even though it is negotiating with underwriters.

Hacienda Shareholders' Association

On March 16, 1961, a group of roughly 30 dissatisfied holders of stock in the sundry Hacienda corporations met in Sacramento to see what action they could take to protect their interests. As a result, the Hacienda Shareholders Association was born²⁷ with Donald L. Courtright, who owns and operates a dental laboratory, as its president. With the Herculean task of removing the present directors of the Haciendas as its principal objective, the association obviously had to win the cooperation and financial assistance of the great bulk of the other public stockholders, yet, with only a scant list of 40 names to begin with, the insurgents faced quite a dilemma. With the current management manifesting bald distrust and intransigence,²⁸ the association has been compelled to undertake the arduous, intricate and expensive course of court action. Legal counsel was retained early in the going and a permit to form a protective association was sought from the Corporations Commissioner.²⁹ The aforementioned dilemma consists of the fact that *the small number of dissidents—none of whom are particularly affluent—incurred substantial costs at the very outset in their effort to reach similarly-minded shareholders so that the funds to pay those very costs, as well as costs subsequently to arise, could be defrayed!*

It has been asserted that recourse now available under the law is substantially adequate. Counsel for the Investment Bankers Association of America, California Group, has pointed out that when a corporation fails to render the report on its financial condition shareholders representing at least ten percent of the stock can petition for such a statement and, *failing that*, can obtain a court judgment awarding \$10 for each day—and to each shareholder—that such failure continues, **up to a maximum of \$1,000.**³⁰ Counsel suggests that "consideration might well be given to applying the somewhat more rigorous sanctions which presently apply to [this] failure to furnish financial statements to the failure to hold annual meetings."³¹

Attorney Richard Clements, counsel for the Hacienda Shareholders' Association, points out, however, that the preceding course goes wide of the mark in that it merely provides for a penalty—it does not compel compliance with the law even though it makes noncompliance expensive. There are further objections. (1) as we have seen, getting ten percent of the aggrieved stockholders together usually is an expensive and time-consuming task; (2) attorney's fees for the plaintiff must be paid from the maximum penalty of \$1,000; (3) judicial proceedings can be protracted by agile attorneys for the defendant, (4) *defendant corporation's directors may very well find it to be in their interest to pay the penalty—even repeatedly—rather than comply with the law and risk losing control of the corporation*

Problems With Other Corporations

While it would be correct to assume that this committee's primary interest has been in the Hacienda corporations, it is quite clear that problems of disregard for public shareholders' rights are not confined to this case—although it is the most egregious example in recent California history.

²⁷ Formal incorporation followed on August 11, 1961.

²⁸ On March 21, 1961, a tape recorder which association representatives were using to transcribe the names of other shareholders on the corporations' books was smashed by Mr. Bayley who also saw fit to forcibly eject the insurgents from the Inglewood office.

²⁹ The permit was granted on November 17, 1961.

³⁰ Corporations Code §10115.

³¹ Letter from Philip J. Gregory to Thomas M. Rees, November 1, 1962.

Mr. Fields, who has been with the Division of Corporations for 15 years, filed with the committee 10 other instances of failure to comply with Corporations Code §§2200 and 3006. He notes that the companies cited did not constitute the entire record but were only those firms which he and his associates could readily recall (This record does not go back beyond 1955.)

Mr. Fields reports that "... usually the failure to furnish annual reports or furnish information indicates in a substantial number of cases that the company is in a bad financial condition and is in imminent danger of bankruptcy." In these cases, the sole sanction presently available to the division—refusal to permit further sales of stock—is useless. On one occasion, counsel for a corporation said that the firm was involved in a bankruptcy proceeding and a report would be furnished shareholders when the company was released from jurisdiction of the court. Mr. Fields logically points out that "The interest of the shareholders is such that they should have been advised of the proceeding by an annual report or an interim report so that they could protect their interest in the proceedings. **As shareholders they would not be listed as creditors and would not receive notice from the Bankruptcy Court of the action pending.**"³²

The firms which Mr. Fields cites are:

1. Automation Engineering Corporation
2. Fremont Valley Development Corporation
3. Pacific Fasteners Corporation
4. Precision Craft Electronics
5. Holloway Outdoor Advertising, Inc.
6. Matson Electronics Corporation
7. Cardinal Instrumentation Corporation
8. Green Dollar Nurseries
9. Woolstone, Inc.
10. Delamart, Inc.

IV. Conclusions

As inferred earlier, members of this committee over the years have participated in investigations of various investment frauds and are therefore wary of indifference both to the letter of the law and to the concept of full disclosure and honorable business dealings. **The committee is concerned only where the law is demonstrated to be ineffectual by virtue of its flaunting and the fact that tens of thousands of varied corporations sell stock and deal with shareholders in California in full and even zealous compliance with the requirements of the law is itself eloquent testimonial to the fact that only a comparatively infinitesimal fraction of businessmen warrant legislative concern.**

1. The fact of overwhelming compliance with the law is proof that legislation ought to be built on the concept of action against lawbreakers rather than on the rationale of requiring compliance only of real or suspected malefactors. In either case the "shotgun" approach is rejected, but the alternative "rifle" approach of pinpointing misdeeds is best advanced by establishing a mechanism for specific action against specific violators rather than promulgat-

³² Emphasis added

ing rules for application to great numbers of corporations, then providing for exemptions to "winnow out" the companies which pose no problem.

2. Testimony and documentation taken by the committee in its investigation points up the need for enabling legislation to permit initiative and intervention by government attorneys to secure compliance with the Corporations Code. The concept of placing the burden wholly on aggrieved investors to secure their rights by acting in concert through the courts has been made an anachronism by the revolution in stock investment which finds small, frequently unsophisticated investors widely dispersed and unable to organize swiftly enough to protect their interests.

3. Since there is now a Business Law Division within the Department of Justice concerned with problems of violations across the board, so to speak; since this agency has developed a capable staff possessing the necessary expertise; and, finally, since there already exists the precedent for initiative by the Attorney General in matters of corporate law under Corporations Code §4690, this committee recommends that the Department of Justice be entrusted with the responsibility of intervening in actions to secure the established rights of corporate shareholders. On the basis of the record, we are confident that the department will not be a party to harassment; that it will take action only where it is clearly demonstrated that complainants have a true and meritorious cause of action.

4. Inasmuch as the consequence of an action brought under Corporations Code §4690 is now confined to dissolution of a corporation and since this would constitute a Draconian solution to the problems dealt with in this report, there is a need for less drastic remedies for the causes cited in that section.⁸³

5. The Committee on Finance and Insurance favors legislation specifying the discretionary power of the Attorney General to initiate proceedings in behalf of the public in the event of the abuse of corporate privileges, some examples of which would be.

a. Non-compliance with any provision of the Corporations Code, articles of incorporation or by-laws of the corporation.

b. Conducting business activities in violation of the Penal, Civil, Financial, Insurance, or Business and Professions Codes.

c. Conducting business with insufficient capitalization.⁸⁴

6. The relief which the Attorney General should be empowered to seek for the aforementioned violations should include.

a. Order of the court to perform duties prescribed by the Corporations Code, articles of incorporation, or by-laws of the corporation.

b. Permanent injunction against illegal conduct (i.e., violations forming the basis of the complaint).

c. Removal of one or all corporate officers and their replacement by officers approved by the court.

d. Removal of one or all corporate directors and their replacement by directors approved by the court.

e. Dissolution of the corporation.

⁸³ The criteria are "(a) The corporation has seriously offended against any provision of the statutes regulating corporation, (b) The corporation fraudulently has abused or usurped corporate privileges or powers, (c) The corporation has violated any provision of law by any act or default which under the law is a ground of forfeiture of corporate existence."

⁸⁴ In those cases where minimum capitalization is not specified by law the determination is to be made by the trial court.

7. Finally, the committee recommends enactment of legislation stipulating that failure of a corporation to make application for a permit to sell securities under the Corporate Securities Law more than 120 days after filing articles of incorporation with the Secretary of State shall constitute grounds for the dissolution of the corporation upon suit by the Attorney General.³⁵

While there is a body of historic legal precedent which grants powers to the Attorney General as a *parens patriae*, the committee deems it necessary to expressly set forth and augment these powers. Legislation to implement the foregoing findings is included in the appendix to this report.

³⁵ Cf. Revenue and Taxation Code 23571.

PREPAID HEALTH PLANS

It might be said that the Finance and Insurance Committee's investigation of the nature, status, extent and *modus operandi* of direct service, prepaid health plans began in earnest when Assemblyman Ronald Brooks Cameron reported on his one-man subcommittee's study of health insurance on December 5, 1960. He disclosed

Complaints have come to this committee which indicate that there is a certain amount of misrepresentation, and in some cases, doubt as to whether or not some of the health plans can deliver what they promise. In 1959, the National Health Plan in Los Angeles contracted for hospitalization for a consumer group, but had no way of delivering such services. If there is dissatisfaction or a complaint concerning such a health plan policy there does not exist any agency that has power to act and the buyer's only recourse is through legal action.¹

Mr. Cameron noted that there was some sentiment for placing health plans under the jurisdiction of either the Department of Insurance or a new government agency.

Three months after the Cameron report was made public, freshman Assemblyman John T. Knox introduced Assembly Bill 2083. A causal connection between these two events should not be inferred as the purpose of the Knox bill lay in another direction.² A.B. 2083, in substance, would have required every nonprofit organization whose purpose is to distribute the cost of health services by means of aleatory contracts to file various schedules of rates and services with the Insurance Commissioner for his approval. The bill specified that the commissioner should not approve any rates which he found to be excessive or discriminatory.³ A.B. 2083 was considered and discussed in several hearings of the Health Insurance Subcommittee and finally, because of vigorous opposition, was set aside for interim study.

This measure, then, in addition to the Cameron report, laid the foundation for a thorough inquiry into health plans in the 1961-1962 interim.

Before discussing the findings of that investigation, however, some attention should be given to the history of health plans, their role in voluntary coverage today and their legal position.

¹ *Assembly Interim Committee Reports*, Vol. 35, No. 24 (1960) p. 118.

² The precursor of the Knox proposal was Senate Bill 100 (Randolph Collier) of the 1959 Regular Session. The Collier bill failed to win the approval of the Senate Committee on Insurance and Financial Institutions.

³ These tests are apparently borrowed from the McBride-Grumsky Act (Insurance Code §§1850-1860.3) which governs the rates of insurers. This act modifies "discriminatory" by preceding it with "unfairly" and also adds the criterion of "unreasonable" (i.e., too low).

I. The Growth of Health Plans in California ⁴

*Healing is a matter of time, but it is
sometimes also a matter of opportunity*

HIPPOCRATES

The origin of prepaid health plans in California has been traced back as far as a century ago when fraternal organizations, assorted nationality groups and certain labor unions promoted burial societies to meet mortuary expenses. The validity of cost-spreading as a principle to be applied to the recurring financial burdens of medical care gradually became apparent over the decades and this prompted the burial societies to add sickness benefits.

One of the oldest health plans still in existence is the French Hospital Association (*Societe Francaise de Bienfaisance Mutuelle de Los Angeles*) which was founded in 1860 as a "mutually benevolent, protective association" and built its first hospital in 1869.⁵

Impetus to development of medical and hospitalization indemnification arrangements has been attributed to the enactment, in 1911, of the Workmen's Compensation Act. And during the Progressive Era the Legislature, acting in concert with Governor Hiram Johnson, adopted and referred to the electorate a constitutional amendment to establish a system of state medicine to be financed through taxation. It was rejected in the 1918 election.

Although growth during this period was markedly gradual, by 1930, excluding railroad workers, nearly 50,000 employees were participating in group plans by which they secured medical service for *non-industrial injuries* and ordinary illness in return for payroll deductions.⁶ According to Murray Klutch

These figures excluded perhaps an equal number of persons covered by the steam railroads of this State. Out of a total population of 5.7 million in 1930, of whom approximately 2.4 million were gainfully employed, an estimated minuscule of 100,000 persons in California therefore had some form of prepaid health coverage.⁷

1930, then, provides a useful "bench mark" by which to measure progress in health plan development for, as opposed to the hesitant growth in the first 70 years, health plans have fairly burgeoned since the Great Depression. As Mr. Klutch observes,

the unemployment and wage reductions of the thirties, the clamor for compulsory health insurance, and the awakening realization by the medical profession that the costs of medical care could no longer be met solely through the provision of charitable services or reduced fees led to the wide recognition that new methods had to be found to finance the costs of medical care. This unrest and acceptance of social change gave rise to the development in the late thirties and early forties of hospital and surgical prepayment programs sponsored by hospital associations and state and county medical societies.⁸

The Hospital Service of California (Blue Cross) was spawned in 1936 through the leadership of the Alameda County Medical Society. The Kaiser

⁴ This section leans very heavily on a paper delivered by Murray Klutch, Director of Research for the California Medical Association, at the Conference on Regulation of Prepaid Health Plans at the University of California, Los Angeles, on November 29, 1962. The Committee is greatly indebted to Mr. Klutch for permission to quote from his paper extensively.

⁵ Letter from Ronald J. Daver, administrator, to Assemblyman Rees May 11, 1962.

⁶ Pierce Williams, *The Purchase of Medical Care Through Fixed Periodic Payment* (New York, 1912) p. 94.

⁷ *Op. cit.*

⁸ *Op. cit.*

Foundation Health Plan may be said to have gotten underway in earnest in 1938 when the Kaiser organization, which had established an *ad hoc* medical facility while building an aqueduct in the California desert early in the thirties, undertook the construction of Grand Coulee Dam in Washington. The first Blue Shield plan in America was launched in February 1939 by the California Medical Association when it established California Physicians' Service.⁹ The precursor of subsequent forms of medical groups was Ross-Loos which was formed in 1929.

During the war years of the forties, when ceilings were imposed by the federal government on price and wage increases, labor conceived the idea of pressing for "fringe benefits" in contracts with managements. Thus, the now-extensive health and welfare funds were born and they constitute today a significant share of health plans in existence. As a side note it may be observed here that the spurt of medical- and management-inspired plans in the late thirties, capped by the emergence of health and welfare plans produced through collective bargaining largely inspired Governor Earl Warren's advocacy, in the postwar period, of a comprehensive prepaid health program for all Californians.¹⁰ Although Governor Warren's proposal failed, it produced the byproduct of an Unemployment Compensation-Disability program¹¹ (disability insurance) which plays a major role today by covering roughly 4,000,000 employees. The UCD program has been cited as a major reason for the fact that the percentage of Californians covered by Blue Cross health insurance and the assorted plans falls short of the national percentage.

A fairly recent phenomenon (i.e., in the past six years or so) has been the emergence of health plans which have been primarily concerned with selling to the public-at-large through advertising in mass media and house-to-house canvassing which the older plans have not found necessary. This type of plan evidently has capitalized on the widespread discussion of health insurance for the aged which has been in the forum of public debate since the passage by Congress of the Kerr-Mills Act and the drive to enact President Kennedy's "medicare" program.

II. Health Plan Coverage Today

According to the most recent and authoritative survey of health plans in California—that of the California Medical Association¹²—the number of persons covered by some type of health service (i.e., Blue Cross, California Physicians' Service, and "miscellaneous plans") lies somewhere between 4,000,000 and 4,250,000. Insurance companies, on the other hand, provide coverage for roughly 6,500,000 Californians. Since Blue Cross (i.e., the Hospital Service of California and the Hospital Service of Southern California) is technically insurance,¹³ however, and since this report does not deal with insurers, Blue Cross' estimated 2,090,000 insureds should be added to the insurance category, thereby reducing the larger figure for health service-covered Californians to 2,160,000. *Keeping in mind that these figures are approximations*, the percentage of the population covered by health plans today would be 13.7

⁹ The unveiling of Blue Cross and Blue Shield in this period quite likely has some connection with the strong, though loose, vote given in 1936 to a proposition similar to that of 1918.

¹⁰ It has been frequently noted that one defect in employee-oriented plans is the tendency to isolate from coverage persons not in the labor market (e.g., retired persons who have never enjoyed coverage).

¹¹ UCD provides benefits for sickness and injuries sustained by the unemployed as well as indemnification for wage loss.

¹² Bureau of Research and Planning, California Medical Association, *A Study of the Financing and Provision of Medical Care in California* (San Francisco, 1962), p. 1.

¹³ Insurance Code §§11491-11517.

The great bulk of people enrolled in health plans or insured by disability carriers obtain their coverage through group plans—and these by virtue of their employment. A study made by the Division of Labor Statistics and Research, Department of Industrial Relations of 200 group plans in 1957 provides one index to the major carriers.

CARRIER/PLAN	PERCENT OF EMPLOYEES
Insurance companies	65
Blue Cross	16
Kaiser Foundation Health Plan	13
California Physicians' Service	2
Blue Cross and C.P.S. jointly	1
Direct payment or partial payment by plan	1
Other combinations of carriers	2
	100

Since the preceding survey only covers workers whose plans stem from collective bargaining agreements, it would be erroneous to assume the same breakdown would obtain for other employees. For example, proportions of State employees' options, as of January 1, 1962, were:¹⁴

CARRIER/PLAN	PERCENT OF EMPLOYEES
Insurance companies	33.6
California State Employees' Assn.—C.P.S.	31.1
Kaiser Foundation Health Plan	14.6
Blue Cross—C.P.S.	13.2
Ross-Loom Medical Group	1.6
Physicians and Surgeons Assn.	1.3
Foundations	1.1
Other	3.5
	100

While it is not complete, the list of existing plans appearing in the CMA Report is the most comprehensive extant. Among the 53 plans are sprinkled the names of many evincing a union collocation (e.g., Amalgamated Meat Cutters and Butcher Workmen, Local 563; ILGWU Panel Plan; Teamsters Local 94 Health and Welfare Plan) illustrating CMA's conclusion that "The most common method by which these plans are financed is through Health and Welfare Funds."

Confusion can easily arise as to the primary source of funds used to finance these benefits. It might be interpreted as coming from the employer, however, since collective bargaining has been centered in fringe benefits in recent years in lieu of wages, it might also be considered as an employee contribution.¹⁵

Be that as it may, of the 40 plans responding to CMA's query, it is definitely established that in 20 percent of the plans the major financial contribution comes from the individual member. If the contention of labor is accepted and the welfare fund plans are thrown in, the percentage of "member as major source of financing" goes up to 60.

To summarize: 13.7 percent of Californians are covered by health plans; the vast majority are members of a group arrangement, the preponderance of group plans are established on the basis of employment (and usually constitute a "fringe benefit" of the job), and in most cases, the employee makes a contribution—if not the major share—toward the cost of coverage.

¹⁴ Source: California Physicians' Service, Research Department.

¹⁵ CMA Report, p. 37.

As to the relationship between plan and practitioner, CMA concluded.

The estimated number of physicians who participate in providing service in these various plans is approximately 3,500 to 4,000. Many of these physicians are primarily engaged in individual or partnership types of private practice and are usually remunerated on a fee-for-service basis. The most common remuneration for participating physicians in group practice is on a salary basis. Salaried physicians include those physicians who are members of medical groups. Generally, when a medical group participates in such a prepayment program, it is remunerated on the basis of capitation payment. This capitation payment may be based on (1) the number of persons enrolled in the plan, or (2) number of persons actually treated by the group. In some of these plans, provision is made to cover payment for services rendered by non-participating physicians. The payments may be based upon a schedule of indemnities, the physician's usual and customary fees, or on a predetermined fee-for-service basis.¹⁶

In closing this section it might be well to take note of certain conclusions reached by the American Medical Association's Commission on Medical Care Plans, as published in the AMA's *Journal* in January, 1959

1. Closed panel, direct service, plans have not replaced other forms of medical care plans, but have stimulated some of the other plans to increase their coverage.

2. Lay administrators, solely, direct the activities of a small percentage of plans. *Administrators who do not realize the limitations of their medical knowledge may interfere with the proper performance of a plan and lower the quality and quantity of medical care rendered.*

3. It is increasingly evident that a trend is developing among some sponsors of plans and among some plans to require as a condition for enrollment that each member of a group be given a choice of more than one plan in the community.

III. Legal Status of Health Plans

From the standpoint of State regulation, health plans exist in a vacuum. It is true that all plans known to this committee are incorporated under the General Nonprofit Corporation Law¹⁷ but its provisions for regulation and surveillance are more illusory than real, especially since the Supreme Court has held that the language of §9201—which is concerned specifically with health service organizations—"is permissive and not mandatory."¹⁸

A similarity between health plan coverage and disability insurance has been seen and this obviously accounts for this committee's interest in the matter. For years health plans have performed many of the services, and operated in much the same manner, as insurers, yet they have not been obliged to comply with the many provisions of the Insurance Code nor with the regulations and orders of the Insurance Commissioner.

In 1946 the issue came to a head when the Insurance Commissioner, Maynard Garrison, attempted to impose his authority on the largest health plan, CPS, and was, in turn, the object of a suit. In a legal milestone, Associate Justice Edmonds, in behalf of the California Supreme Court, observed that "it is a matter of common knowledge that there is great social need for adequate medical benefits at a cost which the average wage earner can afford to pay."¹⁹ Then, turning to the point in dispute, the Court said:

¹⁶ CMA Report, p. 10.

¹⁷ *Corporations Code* §§9000-9502.

¹⁸ *Complete Service Bureau v. San Diego County Medical Society*, 43 C.2d 261 (1954).

¹⁹ *California Physicians' Service v. Garrison*, 28 C.2d 801.

The business of [CPS] lacks one essential element necessary to bring it within the scope of the insurance laws, for clearly it assumes no risk. Under the provisions of the contracts or group agreements, it is a mere agent or distributor of funds. It does not promise the beneficiary members that it will provide medical care, on the contrary, "the services which are offered to beneficiary members of CPS are offered personally to said members by the professional members of CPS." *The professional member is compensated for his services solely from the fund created by the monthly dues of the beneficiary members.* Stated in terms of insurance, *all risk is assumed by the physicians, not by the corporation*, hence the only effect of requiring compliance with regulatory statutes would be to compel the acquisition of reserves contrary to the established method of operation.²⁰

The court, then, has laid great stress on the question of whether the plan (or any such plan)—*as such*—assumes any hazard or risk. But the court found a "more compelling" reason for determining CPS not to be insurance.

The question, more broadly, is whether, looking at the plan of operation as a whole, "service" rather than "indemnity" is its principal object and purpose. Certainly the objects and purposes of the corporation organized and maintained by the California physicians have a wide scope in the field of social service. Probably there is no more impelling need than that of adequate medical care on a voluntary, low-cost basis for persons of small income. The medical profession unitedly is endeavoring to meet that need. Unquestionably this is "service" of a high order and not "indemnity."²¹

Before passing on, an observation of Chief Justice Gibson who concurred in the opinion solely on the basis of legislative intent, should be noted.

The true test is not the character of the consideration agreed to be furnished, but whether or not the contract is aleatory in nature. A contract still partakes of the nature of insurance, whether the consideration agreed to be furnished is money, property or services, if the agreement is aleatory and the duty to furnish such consideration is dependent upon chance or the happening of some fortuitous event. In the present case, the agreement is to make payments to member doctors for medical services to the beneficial members, and the duty to make such payments is obviously dependent upon chance or the happening of a fortuitous event, since the necessity for the services, and also for the agreed payment, is dependent upon the members' sickness or accidental injury.²²

In its 1941 regular session the Legislature enacted §593a of the Civil Code which subsequently was transferred to the Corporations Code as §9201 (*supra*). This eventually gave rise to a dispute for, as we have seen, §9201 is specifically addressed to nonprofit health plans. The San Diego Medical Society contended that the enactment of §9201 constituted legislative intent that *all* health plans be incorporated under the provisions of that section. Specifically, the society asserted that Complete Service Bureau²³ was engaging in the lay practice of medicine [because the physicians practiced medicine as a corporation as opposed to the method of operation utilized by CPS], that CSB was engaging in fee-splitting [because a lay administrator directly and indirectly profited from the corporation's revenue]; that "commercialization" of medicine was part and parcel of CSB's plan of operation [because it solicited memberships from the general public], and that CSB's advertising was misleading.

The issue eventually went before the Supreme Court and the conclusions reached by that body have been crucial to those health plans which deal with the public-at-large. On July 9, 1954 the court, in a 5-2 decision, sustained

²⁰ *Ibid.*, p. 807. Emphasis added.

²¹ *Ibid.*, p. 809. Emphasis added.

²² *Ibid.*, p. 811.

²³ Subsequently renamed San Diego Health Association.

the lower court's ruling in favor of CSB.²⁴ *First*, the contention that all health plans must incorporate under §9201 was rejected. *Second*, the court was satisfied that CSB's doctors were not interfered with in their practice by CSB's lay people. *Third*, the bureau's arrangement with its administrator to provide a percentage of each member's fee was upheld on the basis of allowable cost for operation and overhead. *Fourth*, the court ruled that CSB had not violated the hallowed ban of the medical profession against "cappers" or "steerers" (i.e., persons retained by doctors to refer patients to their offices) because its advertisements and solicitations promoted the organization and not its physicians. As to the charge of misleading advertising, the court reviewed each exhibit and found against San Diego Medical Society in each instance.

The general statements made relative advertising assurances of Complete Service Bureau seem somewhat tortured, yet it is impossible to comment on the points in controversy without having the particulars at hand. Let it suffice for the purpose of this report to note that the Complete Service Bureau case has constituted "the law" for health plans selling to the general public since 1954.

IV. The Committee's Investigation

To conduct the inquiry into health plans (as well as certain other related matters) Chairman Rees appointed a Subcommittee on Prepaid Medical Care with Assemblyman Ronald Brooks Cameron as chairman and Assemblymen John T. Knox, Robert T. Monagan, John A. O'Connell and Howard J. Thelin as members. The subcommittee conducted two public hearings.²⁵ With respect to health plans, the primary interest of the subcommittee has been in those plans who emphasize public solicitation but, as we shall see, there have been other matters (which would affect all health plans) of concern.

In the interest of brevity we shall cite several cases which have come to the committee's attention in the course of its investigation. In different ways these cases show in what respects the activities of health plans have aroused concern. The names of the complainants and of the plans are withheld lest the presumption arise that the plan is hereby indicated or condemned by the committee. **The committee's interest is primarily with the problems indicated below rather than with the merits or demerits of specific plans.** It should also be pointed out that the committee does not necessarily accept or agree with the viewpoint of the complainant, it is important to note what assurances, guarantees and illusions given or fostered by those soliciting memberships animate the consumer to choose a particular plan as well as the subsequent experiences which occasion disaffection.

A. One 55-year-old widow who is a diabetic committed herself to a membership agreement in one health plan on the salesman's verbal assurance that, among other things, she would be entitled to free medicine for her condition. (She subsequently discovered this was not so.) The conditional sale contract she signed categorically refers to the health plan as an "insurance company," alludes to "insurance" thrice, and the line on which her signature appears is

²⁴ For citation see footnote #18.

²⁵ The hearings took place on January 29 (in the Los Angeles State Building) and November 10, 1962 (at the Student Union on the campus of the University of California at Los Angeles). Assemblymen Burton and Rees sat with the subcommittee in January and Assemblymen Levinger and Mills—the latter at the special invitation of Mr. Rees—participated in the November hearing.

designated "insured" ²⁶ Evidently more in ignorance than in guile, the salesman executed an agreement which called for the complainant to pay \$940 in one cash installment for one year's coverage.

B A lady was solicited for membership in one plan by a salesman who had general brochures on his person but did not "happen" to have a copy of the membership agreement. Although told that she would be entitled to 31 days' hospitalization at no charge, this lady declined to commit herself until she saw an agreement. When she did, she discovered that the standard provision on hospitalization was an allowance of \$18 per day.

C. A man reports that, within a few months of purchasing one year's coverage in a plan, it went defunct. In the interval his wife had given birth to a baby and \$156 of benefits to which they were entitled under their membership was not available. (The name of the principal in this plan, an osteopath, recurs in conjunction with two other plans known to the committee at this time.)

D. A 69-year-old retired woman who found her converted Blue Cross benefits inadequate to her needs made a sizable down payment on a year's coverage in one health plan on the strength of television advertisements and salesman's explanation of coverage. This party claims she was told that an X ray of her gastrointestinal tract would cost "from \$7 to \$10." She called the office of the doctor assigned her and was advised the X-ray would cost \$15. Following the X-ray she was asked to pay \$25.00; in response to her query the receptionist explained that the fee was \$35—"with \$15 off."

E An insurance agent who was excited about the sales possibilities of a new Los Angeles-domiciled plan, but worried about the absence of regulation, called this committee to learn something of the plan's reputation. Told that the name was unfamiliar, the agent volunteered to learn what he could of it and "report back." Two days later the agent related that he had attended an indoctrination session for prospective salesmen, that the sales people were told to assure customers they would be entitled to "full coverage" despite the fact that the plan provides only 20 percent of hospitalization costs and 50 percent of surgery expenses.

F. A 70-year-old gentleman paid \$190 for one year's membership in a health plan. Thirteen months later he underwent surgery and hospitalization, in connection with a prostate gland difficulty, for which he was billed in excess of \$900. Although he was not at that time eligible for the full surgical benefits offered by the plan (i.e., coverage for pre-existing conditions without qualification), he was supposedly entitled to "some" allowance on the cost of the surgery. Before the complainant could establish what this meant, the participating medical group which treated him withdrew from the health plan and he was transferred to another. ²⁷ Efforts by the complainant to establish with the plan's "director" the discount to which he was entitled merely resulted in his being referred back to the disaffected medical group's administrator.

G A lady who was subsisting on \$69 monthly UCD benefits as a result of a nervous breakdown following the demise of her husband responded to

²⁶ The committee has discovered that whatever mixed sentiments exist on the part of the public toward insurance companies, there is a confidence continually expressed in the *stability and ability to pay* of insurers.

²⁷ Although the logic to physicians is plain, it is baffling and exasperating to the complainant that he would have to undergo—and pay for in full—the same series of tests administered him by the original physician. Because his condition was now demonstrably "pre-existing" the complainant was entitled to no benefit from the health plan.

a newspaper ad offering to furnish descriptive literature on a health plan. While the lady was under the heavy influence of a sedative—and therefore scarcely cognizant of what she was doing—she was called upon by a salesman for the plan. She relates she heard his explanation of the plan while seated on her bed on which a sum of some hundred-odd dollars (her husband's life insurance) was lying. Following the salesman's departure she found a receipt for \$92 cash indicating this to be the "cash sale price" of a year's membership. The complainant—who was in a near-hysterical condition when she complained to the committee—also found a conditional sale contract which showed she had paid \$92 "down" on her "policy" and was obliged to make 10 installment payments of \$8.10 each. The contract refers to the health plan as an "insurance company" and the lady in question as an "insured."²⁸

One obvious characteristic of many of the foregoing cases is misrepresentation by ill-informed, disingenuous or over-eager sales personnel. Lest the conclusion be drawn, however, that this is the extent of the problem, it should be borne in mind that, under California law, an entrepreneur is substantially responsible for the acts of his salesmen. Moreover, it should be clear from several of the cases that management was fully as responsible for the illusions fostered by the salesman as the salesman himself.

At the January, 1962, hearing of the subcommittee some rather singular testimony was extracted from the manager of a young Los Angeles plan, variously known as Los Angeles Health Association and North American Health Association. Since the transcript of that hearing has been reproduced and its contents generally known, it would serve no great purpose to quote from it at length here. Suffice it to recall that LAHA's manager could not even describe to the committee in general terms the coverages available in his plan, could not recall what conditions would entitle LAHA to cancel memberships, could not remember whether certificates of membership provided members contained all conditions of entitlement, could not shed light on the demise of Los Angeles Beneficial Society²⁹ although he admitted to having obtained membership lists from its principal (Joel D. Neufeld) whom he described as one of the "originators" of LAHA, could not recall the names of LAHA's board of directors—other than himself and two sons—nor could he recollect when the board last met.

Mr. Thomas D. Hodge of the Los Angeles Better Business Bureau pointed out at the same hearing that the BBB "has no legal powers or authority, so that if a complaint, even though it's meritorious, is disregarded, there's nothing we can say to the injured party except [to tell them] to resort to litigation. . . ." Mr. Hodge favored entrusting a government agency with authority to act against misleading advertising as well as consider and evaluate complaints claims service.

A similar point was made at the November hearing by Assistant Attorney General Harold B. Haas.³⁰ Commenting that a "gap in the law" had already been amply demonstrated in the course of the committee's investigation, Mr. Haas noted that health insurance policies are examined by the Department of Insurance and cannot be used prior to departmental approval. He also noted

²⁸ This is not the same plan as that alluded to under "A."

²⁹ Mr. Ted Ellsworth of the Institute of Industrial Relations, UCLA, testified at the January hearing that the Los Angeles Beneficial Society and the Union Labor Benefit League, although they advertised "non-cancellable" memberships, went defunct because their annual dues could not support the benefits guaranteed.

³⁰ Mr. Haas is the Justice Department's ranking authority on insurance law and served for nine years as Assistant Commissioner of Insurance.

that the department acts as "mediator" in disputes between insurers and insureds.

when I was in the Insurance Department hundreds of such claims were constantly in course of processing by what was then known as the Policy Claims Bureau and thousands of dollars of policyholders' recoveries occurred annually. It must be understood that there is no assertion here of intentional inequitable settlements by insurance companies. It is simply that with thousands of claims in process among hundreds of insurance companies, *human nature necessarily affects individual claims settlements and the commissioner's office affords the public an opportunity to obtain the analytical and expert advice relating to the interpretation of the policy*, to direct to the insurance companies' attention provisions, clauses and rules which can easily be overlooked by an adjuster passing on hundreds of such claims, and to give the insurance company an opportunity to reconsider the claim in view of new or different features called to its attention by the insurance experts in the department.²⁵

Alluding to *CPS v. Garrison*, the witness informed the committee that after the Supreme Court rendered its decision former Attorney General Edmund G. Brown persuaded CPS to agree to let his office render the kind of service provided the public by the Department of Insurance.

A similar arrangement was entered into with [Kaiser Foundation Health Plan] a few years ago, but this has been less satisfactory since the Kaiser contracts undertake reimbursement only in extraordinary circumstances specifically spelled out, and their undertaking is limited to affording medical service and hospital service at their facilities. Inasmuch as we were in no position to require them to afford more than granted by their contracts and had no control over their practices in connection with these contracts we have taken up very few matters with the Kaiser organization since our office is scarcely equipped either to determine adequacy of medical service or to issue requirements as to their contracts or sales practices.²⁶

Mr. Haas strongly emphasized that his comment in no way constituted an attack upon Kaiser Foundation Health Plan. But he noted, "it should be called to attention that the total lack on the part of any State officer of the power to question any of these contracts or practices makes it impossible for me to make any statement either way. I just haven't the material."

Mr. Haas went to the very heart of the matter when he observed that injury or illness itself is usually a financial strain, leaving little funds available with which to press a court action against a carrier. [Where there is a controversy over benefits for surgery and hospitalization in connection with, say, a duodenal ulcer, the insured or plan member not only has to find the money to pay his medical bills but runs the risk of developing still another ulcer from the tension and anxiety attendant upon such a dispute.] Furthermore, Mr. Haas noted, "The people who have these claims appear quite often to be on an economic level which makes it impracticable for them to pursue any remedy of any kind to secure a reasonable and impartial review of the action by which they are deprived of benefits."

The Kaiser Health Plan was represented at the November hearing by its chief counsel, Scott Fleming, who went on record as supporting legislation aimed at fraudulent advertising, high pressure and misleading sales techniques and deceptive contracts and cautioned that legislation should not go wide of the mark. He had an additional suggestion

Another area which very likely is appropriate for inclusion is some consideration of minimal standards for a direct service plan. This is a very difficult area because, if

²⁵ Emphasis added
²⁶ Emphasis added

minimal standards are made too high, this can stifle constructive development. On the other hand, *there is evidence, I believe, to support the conclusion that a certain minimal level does need to be achieved before a program can fairly be offered to the public as constituting a direct service health care program.*³³

Following, as it did, on the heels of a conference on regulation of health plans, the subcommittee's hearing at UCLA was enriched by the presence of doctors, health and welfare fund trustees, labor and management representatives, academicians, attorneys and, obviously, health plan officials. In summing up the "sense" of the conference, its chairman, Dr. John Beeston,³⁴ noted that the consensus of the participants was in favor of *some* form of regulation; that certain basic standards as to quality of service, facilities, personnel, etc., ought to be required, that some requirement as to minimum reserves ought to be established so as to eliminate "fly-by-night" operators; that full disclosure of plan benefits, restrictions, exclusions, etc., ought to be promoted.

Representatives of labor suggested that plans developed through collective bargaining, since they were the products of sophisticated and agile negotiators who knew how to protect their own interests, ought to be exempted from proposed regulation. Speaking for O. I. Clampitt of the Retail Clerks International Union, Local 1442, Ted Ellsworth argued that "Any organization that contracts for services for its own members should be allowed to do so." The right to arrive at contracts freely found no foes on the committee but Chairman Cameron was apprehensive that, if exemptions were not phrased quite meticulously, the intent of legislation might very well be negated. He alluded to the unruly and preposterous situation that developed in the field of "franchise life insurance" and provoked legislation in 1961.³⁵ Assemblyman Knox shared this concern.

Mr. Fleming, commenting that "there are some surrounding issues relating to conversion rights . . . to a forum for the consideration of grievances" suggested that.

it would be entirely feasible to develop a concept of administrative discretion to grant an exception in situations in which the public interest could be protected without the full regulatory mechanism being applicable

The distinction between this position and that of Mr. Ellsworth lies in the outright exemption written into the law which the latter espoused in his apprehension that a regulatory body would be oppressive and meddling; Mr. Fleming would rely on the presumed good sense of the agency rather than tie its hands by statute.

As to the agency to be given responsibility, most discussion centered on the Department of Public Health. Anticipating that sentiment would favor this department, Chairman Cameron asked for the views of its director prior to the hearing. On November 26 Dr. Malcolm H. Merrill wrote Mr. Cameron as follows:

We recognize the importance of the growth of direct service health plans to the protection and advancement of public health in California. Like others, we have wondered whether the time might be arriving for some type of regulation of these plans. In this connection we have considered our experience in the regulation of hospitals, nursing homes, laboratories and other direct health service activities. Also,

³³ Emphasis added.

³⁴ Dr. Beeston is an associate professor of preventive medicine and public health in the School of Medicine and an associate professor in the School of Public Health, UCLA.

³⁵ Cf. *Final Report of the Assembly Interim Committee on Finance and Insurance*, Vol. 15, No. 21 (1960), pp. 90-95. The report led to the enactment of Chapters 698 and 718, Statutes of 1961.

we have for some years certified hospitals for participation in the California Blue Cross Plans, using licensure of these hospitals as the standard.

If the Legislature should decide that some regulation of the direct service health plans is desirable, we believe that the State Department of Public Health is the appropriate agency to undertake the responsibility. You may be assured that we will try to carry out in the public interest and to the best of our ability any responsibility which the Legislature assigns to us in this matter.

The only formal expression contrary to this view has been that offered by A. B. Halvorsen, vice president of the Occidental Life Insurance Company of California who expressed his beliefs in written form on November 27. Prefacing his observations by asserting that his attitude was shared by the insurance industry generally, Mr. Halvorsen argued that regulation of health plans by the Insurance Commissioner "will assure the continued confidence of purchasers of health care coverages in the financial stability and integrity of voluntary health insurance."

V. Conclusions

The committee on Finance and Insurance finds that the time is overdue for closing the gap in the law on health plans. While the foregoing material shows that the overwhelming majority of Californians who are today members of health plans are not apt to be subject to the abuses which this report has focused upon, it is manifest that those members of the public who have been victimized and are about to be victimized are entitled to better protection than the law now provides them.

1. While prepaid health plans are in many ways similar to insurance and, as Chief Justice Gibson has pointed out, do in fact assume the responsibility to meet future contingencies, the direct service feature that is becoming an increasingly significant factor calls for special consideration. To assert that health plan contracts constitute insurance, pure and simple, because of indemnification features is analogous to insisting that poisons are fish simply because they are found in the same environment.

2. This committee therefore recommends that the dual nature of health plans be statutorily recognized while perceiving their essence, their real (or professed, as the case may be) purpose in preserving good health and preventing ill health. There should be created a Bureau of Health Plans within the Division of Preventive Medicine in the Department of Public Health, which bureau should draw upon the procedures and expertise of the Department of Insurance insofar as action against fraudulent representations, provisions of contracts, licensing, inspection, standards of performance, and adjudication of disputes is concerned.

3. Since new ground is to be broken here and further, since the health plan field is a burgeoning one, the committee recommends the establishment of a Health Plan Advisory Board, to be composed of medical, public and health plan members, to advise the Director of Public Health.

4. Enabling legislation to accomplish these objectives should be carefully drawn so as to encompass all of the same species under the same regulatory "tent." The striking paucity of authoritative information on the extent and character of health plans is itself argument for establishing minimum reporting requirements. Beyond that, however, the Director of Public Health should

possess the discretionary authority to strengthen or slacken controls on health plans, according to his best judgment, acting in the public interest.

5. It is particularly crucial that a device be found whereby the public is given reasonable assurance that a plan which offers "coverage through age 99" today will not evaporate tomorrow, consonant with the objective of all reputable plans to pare costs and hold to the minimum expenses so as to provide health care at the lowest possible rate for subscribers. The committee does not at this time choose to specifically recommend the mechanism for achieving these two ends, *it is far better that the plans themselves find the way*. While care must be taken to always make it possible for new plans to enter the stage, for health is a commodity which has too few purveyors, there must be guarantees that the glowing promises made to the infirm and the aged will not, in time, turn out to be the cruelest deception.

**CHECK SELLERS
AND CASHERS**

The business of selling and cashing checks (i.e., money orders), apart from the ancillary service traditionally rendered by commercial banks, has grown substantially in the past decade. In recognition of the emergence of this kind of company the Legislature in 1951 enacted the Check Sellers and Cashiers Law¹ which established minimal checks and safeguards in the public interest. By the end of 1961 there were 17 licensees with 4,834 agents selling more than \$700,000,000 worth of money orders.

It has become increasingly apparent that the character and volume of business now being done warrants stricter and better-defined legal requirements and there particularly have been several proposals advanced in the past two years directed to the stability of check sellers and their ability to discharge their fiduciary responsibilities. In 1961 the Legislature was confronted with three bills—A.B. 1009 (Cameron), A.B. 1535 (Cameron) and A.B. 2307 (Monagan)—and enacted one (A.B. 1535). At the First Extraordinary Session of 1962 the subject of check sellers and cashiers was again broached and A.B. 36 (Cameron) was offered. This bill, along with the two other 1961 measures, was set aside for interim study. Since, all told, the three bills had been given no more than 45 minutes' study in committee, it was felt that an exhaustive inquiry at an interim committee hearing would enable legislators to better understand the money order business and the problems to which the bills were addressed.

On July 31, 1962, the Subcommittee on Finance² conducted a full day's hearing in Los Angeles. This report is drawn largely, but not exclusively, from the testimony, documentation and discussion at that hearing.

¹ Division 3 (§§1200-1240) of the Financial Code.

² The subcommittee consisted of Assemblymen Jack T. Casey, Robert W. Crown, John T. Knox, Robert T. Monagan, Bruce V. Reagan, Thomas M. Rees, W. Byron Rumford and Ronald Brooks Cameron, Chairman. Assemblyman Harold K. Levering also participated.

I. Reporting Requirements

If a "key" to deficiencies in the present situation can be singled out it lies in the ineffectuality of the reporting requirement.³ As the law now stands, an agent (ordinarily a merchant) must remit funds to a licensee not later than three days following the close of the given business day in which those funds are received. This sounds fine. The trouble is, it doesn't work that way.

Corporations Commissioner John G. Sobieski, who is responsible for licensing check sellers and generally implementing the law, told the committee that an agent's business is as subject to the vicissitudes of consumers' whims as any business, ". . . [and so,] if an agent gets into financial difficulties it's a little temptation for him to be slow in his remittances."

James F. Mulvaney, vice president of United States National Bank which handles money orders of the Check Service Corporation, testified that the law should require more regular deposits on the part of licensees' agents.

Now you can say, "Why don't the licensees make their agents do this?" Well, we try to, but when we get real tough on these fellows and say "We want a report from you every day" they say "Fine, take your money orders. There are a lot of other people who are in this business that won't be as tough as you are and we'll go to them." So . . . this hurts us.

I think some mandatory provision in the law is necessary in order to require that everybody works on the same basis. And along this line you might look at American Express Company [which] is not under the act, as I understand it, and is not in a position where they can be regulated to the extent of requiring that they get their agents to turn in the funds on a very regular basis.

We recently lost . . . our largest account to American Express [because] this account would not have to report as regularly as we would require.

Chairman Cameron suggested that the law be modified to require all "chain" operations⁴ to remit on a daily basis; that any agency having in its custody \$1,000 or more at the end of a business day remit on the following day; and that the current three-day rule be retained to cover all other situations.

Ben Reagan, spokesman for the Check Sellers Association and president of Handy Payments Company, agreed with the chairman that the law should take cognizance of the chain store operation although he indicated his association's views on a particular figure mandating daily reporting had not crystallized. He also warned, "I think . . . that any restrictive requirements for reporting—unless they were binding upon everyone selling money orders, including American Express—would be quite meaningless. If we were required to have agents who collected a thousand dollars daily report on a daily basis they would go *en masse* over to American Express where they could report once a week."⁵

II. Tighter Controls on Agents

Coupled with his recommendations on reporting, Chairman Cameron suggested that check seller licensees be required to dismiss an agent who fails to comply; that the licensee must promptly notify the commissioner of such a

³ Financial Code §12100.1

⁴ A large supermarket chain currently constitutes an agency, ergo the sundry markets within the chain are under no specified time limit to forward funds to the agent.⁵ The central office three-day period commences when it collects the moneys from various stores.

⁵ Emphasis added.

dismissal for cause or, short of that, the reasons for *not* dismissing the agent; that the commissioner be empowered with discretionary authority to compel a dismissal and to direct all other licensees not to establish an agency relationship with a dismissed agent for a period of one year following the dismissal.

Although the idea of a "black list" troubled him, Commissioner Sobieski endorsed these proposals on condition that the usual Government Code procedures in analogous disciplinary proceedings would be following in this instance (Mr. Sobieski also indicated that he felt the law should be amended to give him specific authority to conduct audits of agencies and received support from the industry on this point.)

The chairman's suggestions met with the approval of the majority of check sellers. "I think . . . you have hit upon the thing," Mr. Reagan commented. ". . . since we do not have control, we feel that any absolute control keeping an agent from jumping from one company to another [in order to evade the three-day requirement] will have to come from the Division of Corporations. . . ."

CHAIRMAN CAMERON Can you cite any specific examples where this has been a problem to you?

MR. REAGAN Yes I could give you quite a long list. Just offhand I would probably limit it to two or three, but I cancelled out Al's Market in Norwalk about three weeks ago after trying for about three years to get compliance, but they continually got a little worse. It took me some two weeks to obtain my money after they were cancelled and they are now selling American Express money orders.

CHAIRMAN CAMERON How far in arrears were they in making their reports to you?

MR. REAGAN He was consistently, I would say, a week in arrears.

CHAIRMAN CAMERON Which represented how much of your money that he was using in this operation?

MR. REAGAN Five thousand dollars.

William D. Evers, vice president of Check Service Corporation, testified that his company loses a good many agents to competitors who give assurance that the agent can retain funds beyond the three-day limit.

I think [it has been represented] here that most of the licensees in the industry are knocking themselves out trying to get the funds in. Well, we're of the impression that this is not true. In some of the testimony they've admitted this, but this is a major problem that in order to meet the competition of American Express and [others], there's a reluctance on the part of some to collect the money. Now, the only way we're going to get that effort made is to have the commissioner's auditors going out in the field and finding out by looking at the outlet's accounts how often they are depositing. And an aid to this would be Mr. Cameron's suggestion as to terminating an agency.⁶

Mr. Mulvaney asserted that "by and large, there's a direct [correlation] between the slowness of reporting and the financial inability of the outlet" in the course of endorsing Mr. Cameron's suggestion. From his own experience he cited an instance wherein a chain of small grocery stores accumulated some \$37,000 worth of funds obtained in the sale of Registered Checks.

MR. EVANS In that illustration you gave us didn't that market get into financial difficulties?

MR. MULVANEY It's my understanding that they did. We, as I saw took away our money orders and they moved to another organization immediately. I presume they used the funds from that organization to pay us off because we were five or six days in getting our payoff. And then I understand that they were on the verge of bankruptcy and were subsequently merged with another chain.

⁶ Emphasis added.

to state this I understand that when they finally got into more serious difficulties it was in the neighborhood of some \$70,000 in money orders outstanding and unreported

III. *In Lieu* Payments

The day's proceedings were enlivened somewhat by several gamey reports of *in lieu* payments to merchants as inducements to disaffiliate with one licensee and affiliate with another. One licensee confirmed a report that he lost a market outlet because he would not meet a demand for a \$50,000 loan. (The market subsequently went bankrupt but, in the interval, obtained a \$30,000 loan from a competing licensee.) There were also reports of Cadillacs and cash registers being dangled before the eyes of market proprietors.

Appearing under subpoena, Ray Steele, controller for Dale's Food Marts, conceded that his firm severed relations with one licensee when it could not meet an offer by another licensee to purchase \$25,000 worth of stock in Dale's Food Marts. Questioning of the witness established that the account would generate roughly \$5,000 gross volume in money orders per year to the competitor.

One of the best arguments against *in lieu* payments was ingeniously advanced by the only witness who defended them—Bud Lewis Suhl, general manager of Security Currency Services:

I feel this way. That money or cash or advertising allowances or automobiles or whatever you want to call it is a discount and as long as those people pay their income tax on it, if there's a payoff—you want to call it a payoff—American Express may put up a \$3,000 sign. We took an account away from them the first of last year where the account stuck with them for two years. They put up a beautiful \$3,000 sign. Everybody does as much as they have to. I've bucked into American Express in states where you wouldn't believe—I mean, you just wouldn't believe what they do, but they're an aggressive and a competitive company and I want to tell you they'll do what they have to save the business if they want it. Maybe they don't want it. They measure everything, the same as everyone else, and there's cash payoffs, sure. Maybe it's \$100, maybe it's \$200, but if a guy wants to give his money away, as long as he's making money and not cheating the public, I think he ought to be able to do what he wants with his money.

Mr. Mulvaney criticized the practice, however. He alluded to the controls imposed by the Legislature on "giveaways" by savings and loan associations and asserted that the practice demeans the financial aspect of the money order program. Beyond that, "... you open the door to possible fraudulent practices—you open the door to under-the-table dealings if the store manager [can] be bought more readily." Asked to elaborate, Mr. Mulvaney pointed out that an *in lieu* payment could as easily go to the sole benefit of the store manager as to the firm for which he works. Mr. Reagan of the Check Sellers Association would go no further than to call the practice "very dangerous."

IV. Commingling of Funds

The Check Sellers Law⁷ presently requires that funds received from the public by an agent in exchange for the sale of money orders must be separated from the other funds of the agent prior to forwarding to the licensee. The original version of A.B. 36⁸ would have provided that this money could only be used in the three-day interval for the purpose of making change or cashing checks and, furthermore, in the event the agent fails to do this, "... all assets

⁷ Financial Code §12300.3

⁸ March 15, 1962

of such agent shall be impressed with a trust in favor of [purchasers of money orders] or [their] subgrogee[s] in an amount equal to the aggregate funds received by the agent from such sale[s]."

Commissioner Sobieski argued in favor of this clause, pointing out that, as matters now stand, if a merchant/agent goes into bankruptcy before remitting funds to the licensee the claims of persons to whom the money orders were sold (as well as the payees) are under a cloud

ASSEMBLYMAN LEVERING Do we, under the law, allow these agents to take these moneys that they receive for these checks—that actually are [due the licensee—to use these funds?] They're only the agents for the licensee, aren't they?

MR SOBIESKI That's correct

ASSEMBLYMAN LEVERING Do we allow them to commingle this with their ordinary bank accounts? Aren't they required to set this up as a trust fund?

MR SOBIESKI The law gives them three days within which to remit to the licensee During that three-day period—

ASSEMBLYMAN LEVERING They can commingle it?

MR SOBIESKI Apparently, under the present law

William H. Keeshing, president of Check Service Corporation, reiterated the point originally made by the Corporations Commissioner, by advocating that funds received by an agent should be "impressed" with a trust in favor of the purchaser or licensee

ASSEMBLYMAN KNOX But you don't feel they are now?

MR KEESLING No

CHAIRMAN CAMERON They're clearly not, Mr. Knox

MR KEESLING We've already been defeated in one bankruptcy

ASSEMBLYMAN KNOX You want it spelled out that there's a presumption in case of bankruptcy that this is a trust fund so that they'd get a proper [accounting]?

MR EVERS Well, you see it's really a problem of presumptions on tracing trust funds That's what it comes down to You're not saying that [the] funds are necessarily in preference What you're saying is that these funds are those trust funds

MR KEESLING It wouldn't be part of the assets of the bankrupt

ASSEMBLYMAN KNOX Well, that's the question The trustee rushes in and grabs all the bank accounts and cash and everything else he can find and he's got it and these trustees are very tight-fisted with it Perhaps you're right Perhaps there's something we can write in the law that would give at least some color of title

V. Bonding

The bond requirement (presently \$10,000 for licensees and \$1,000 for agents)¹⁰ has come under fire from all concerned The difficulty seems to be that the requirement, an unaltered relic of the original law, is little more than a gesture. Commissioner Sobieski told the committee that, according to his information, licensees have difficulty obtaining surety bonds and consequently, when a loss occurs, typically the licensee will absorb the loss rather than file a claim on the bond and run the risk of having the bond cancelled and his license revoked

From his own experience and as spokesman for the Check Sellers Association, Ben Reagan told the committee that in the past five years he had collected on his bond in about 50 percent of the instances in which he was entitled to do so Although claiming a certain "deterrent" advantage to the bond in keeping agents in line, Mr. Reagan conceded that the only reason his own firm carries a bond is to comply with the law.

⁹ Emphasis added

¹⁰ Financial Code §§12206-12213 cover the former and §12223 covers the latter The amount of bond on agent is within the commissioner's discretion

"A procedure against a bonding company is a long and arduous task," Mr. Mulvaney told the committee. He cited a three-year law suit his bank has had pending against a bonding company and contrasted that span of time against the exigencies of the average person who buys a money order for the purpose of paying a premium on an insurance policy or an installment payment on a car.¹¹

The officers of Check Service Corporation stated that their company now pays a \$5,000 premium for bonding "for nothing." They suggested that alternatives to the bond proviso might take the form of deposits with the State Treasurer of cash or government bonds. Mr. Sobieski enthusiastically endorsed the suggestion.

VI. Sundry Points

The committee heard testimony from law enforcement persons whose primary concern is with prophylactic measures to reduce the "bad check" problem. Captain Chester A. Welch, for ten years chief of the Los Angeles Police Department's forgery division and currently with the Telecredit Corporation, used a rather vivid analogy in telling the committee, "... heroin scattered out on the ground . . . is actually nothing but just white powder, but it's the use of the thing that makes it dangerous."

Captain Welch reported that the files of the Los Angeles Police Department showed approximately 340 money order blanks were stolen in 1961. He estimated that 85 to 90 percent of these were blanks left unsecured in agents' business premises.

This witness' testimony, coupled with that of Detective William L. Andis of the Hawthorne Police Department, indicated that the "bad check" problem, insofar as money orders are concerned, could be attributed to (1) lax security precautions, (2) defalcations by agents themselves, and (3) "raising" of the amount payable by means of forgery.

As to the first, it was suggested that agents be required to secure money order blanks in a safe when they are not open for business and that, further, an intrusion alarm system be made mandatory.

Since, of course, there is no 100 percent effective way to forestall defalcations, the only concrete proposal offered to the second point was to empower the corporations commissioner to require the fingerprints of agents along with the notice of appointment given by the licensee. [It should be noted here that under Fin. Code §12304 the commissioner can only ask for annual reports from licensees, his roster of agents is not current since an agent "picked up," then "dropped" by a licensee in the interval between the rendering of annual reports would not appear in the files of the Division of Corporations. The commissioner would like authority to require notice of appointment as well as termination of an agent *when the act occurs*.]

As to the problem of "raised" amounts, Captain Welch testified, "[the agents] leave the pads of checks lying out on the counter or in a drawer—they have no safe. Many times they don't even have a checkwriter.¹² They write these things out in ink. [People] buy them for \$1 and raise them to \$91 and various things of that kind." He also pointed out that, while merchants usually report stolen check pads promptly to the police so warning can be given prospective cashers, there is no way in which a raised check can be

¹¹ Financial Code §12211 puts the initiative for action against a bond in the hands of the purchaser.

¹² A checkwriter (or photostograph or check protector) is a device for impressing—usually with red ink—into the check the amount payable. It is commonly used with payroll checks and bank cashier's checks.

anticipated. Not all licensees provide their agents with checkwriters, as was established in the case Detective Andis related to the committee, and there was support for such a requirement from Commissioner Sobieski and other witnesses.

On March 26, at the Finance and Insurance Committee's hearing during the Extraordinary Session, Assistant Corporations Commissioner A. T. Sullivan expressed the division's concern over firms which do business in more than one state (i.e., either a nationwide company doing business in California or a California corporation doing business beyond the State line). This point was reiterated by Mr. Sobieski at the July hearing, "If the licensees here were all [California corporations] and [doing] business in California, then our auditors, when we audit them, [could] do a complete job and there [wouldn't be] any out-of-state items to confuse anybody with. And I think that a national concern could just as well do [business] through a California subsidiary." There were no vigorous objections raised against this proposal at either hearing.

Also at the March hearing, Mr. Sullivan discussed §3 of A.B. 36, pointing out that the commissioner does not presently have the authority to seize and liquidate a check seller and casher. [His power presently is limited specifically to ordering discontinuance of business for insolvency or hazardous operations.]¹³

VII. Conclusions

Generally, the committee finds that, while check sellers and cashers are really fiduciary institutions, the provisions of the law governing their operation do not adequately reflect this fact of life and should, therefore, be brought up to date.

1. The reporting requirement of agents should be refined to provide for more frequent remittance of funds to licensees, with recognition of the special problems posed by large chain outlets which handle a large volume of money orders sales.

2. The responsibility to discipline agents who consistently flaunt the reporting requirements and otherwise fail to honor the trust reposed in them lies squarely with the licensees to whom they must report. The committee recognizes, however, that the law must deal with all equally and so it recommends that the Commissioner of Corporations be empowered to impose sanctions on wayward agents.

3. Licensees under the Check Sellers and Cashers Law should not be penalized for conforming to ethical and sensible business practices. The exemption from regulation now enjoyed by the American Express Company¹⁴ should be repealed as that firm enjoys an unfair competitive advantage by virtue of its present special status. *The entire concept of improved regulation envisioned in this report is undermined if one of the largest money order companies doing*

¹³ Financial Code §12107.2. The Cameron bill would have added a new section (12107.3) paralleling Financial Code §18818 which relates to industrial loan companies and was enacted in 1959. In a letter to Assemblyman Rees, dated December 26, 1962, Mr. Sobieski noted that the authority he seeks "gives the commissioner take-over powers similar to those which the Superintendent of Banks has as to banks (§1100 of the Financial Code), [and] which the Savings and Loan Commissioner has as to savings and loan [associations] (§9001 of the Financial Code)." He commented, "The experience in California under the laws mentioned above is that the Superintendent of Banks, the Savings and Loan Commissioner, and the Corporations Commissioner have exercised the take-over power cautiously and properly. But the presence of such power also makes it easier for the auditors to receive co-operation from the companies being examined. Therefore, for two grounds, the section appears desirable."

¹⁴ Financial Code §12100(b).

business in California is allowed to go its separate way under the merest skeleton of regulation.

4. As one of the means of putting "teeth" in the commissioner's power to control agent irregularities, the law should categorically state his right to conduct audits of agents

5. While the Legislature cannot legislate business ethics, it is apparent from the testimony taken by the committee that the malodorous practice of *in lieu* payments—or "payoffs" as one witness unabashedly put it—is certainly inconsistent with the concept of fiduciary institutions and should be proscribed by law. Where it is possible for the Legislature to relieve honorable and conscientious businessmen of an onerous and odious practice it should act. Thus committee therefore recommends enactment of a ban on *in lieu* payments similar to Regulation Q of the Federal Reserve System¹⁵

6. The peril in permitting agents to use funds taken from the public in trust for purposes other than cashing checks and money orders is so obvious as to require little argument. Commingling of such funds with the other funds of an agent should be prohibited and the funds accepted for the sale of money orders should be identified as such in the event of an agent's insolvency or bankruptcy

7. There is apparently no point in the law insisting on bonding of licensees' and their agents if the intent is not feasible. The committee endorses the proposal to permit, alternatively, the deposit of cash or securities with the State Treasurer

8. Complaints registered by police and merchants point up the need for legislative action to minimize the "bad check" problem. While it is evident that the burden primarily rests with those who cash checks to exercise every precaution, the committee believes the Commissioner of Corporations should have the discretionary authority to promulgate rules to require that blank checks are reasonably secured from theft, that he be furnished with whatever supplemental information on the character and identity of agents he deems necessary; that measures are taken and devices used to prevent the "raising" of checks.

9. Mindful as it is from its own experience in investigating the "Ten Per-center" scandals, the committee concurs with Commissioner Sobieski in his observation that remedial legislation ought to "lock the barn door *before* the horse goes out." The legislation enacted in 1959 providing the commissioner with seizure and liquidation power in the case of industrial loan companies has not been abused and it is perfectly logical to extend him similar authority with respect to check sellers and cashers. The committee further endorses the recommendation that such firms should be required to transact their business in this State through separate California corporations or California subsidiaries of interstate firms; that out-of-state business of California companies be conducted by separate entities

¹⁵ 12 Code of Federal Regulations 217.1(a)

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**SOCIAL
INSURANCE**

I. Disability Insurance

During the 1959-61 interim this committee determined that as a result of the suspension, since 1953, of the adverse selection provisions of the disability insurance act, the State Disability Fund and the employees contributing thereto were to a substantial degree subsidizing the identical insurance offered by private insurance carriers.

The disability insurance program is and has been a mandatory program whereby each employee contributes 1% of his wages up to a maximum of \$4,500 (\$3,600 maximum prior to 1961 and \$4,200 maximum in 1962). The ability of the private insurance carriers to select their risks, so long as they covered an entire business establishment, forced the State Fund to carry a disproportionate share of the more expensive risks. This is not to say that the private carriers were making overly large profits during the post-1953 period, **but the fact remains that the State Fund was experiencing greater loss ratios than the private carriers, even though the administrative expenses of the State were less than those of the private carriers.**

Still, there exists a large surplus in the State Disability Fund. This resulted from the premium and benefit levels being set so as to allow the private carriers to profit even with their admittedly higher administrative expenses.

Rather than see the continued growth of this reserve fund which was serving no useful purpose, the Legislature increased disability insurance benefits in 1959 without increasing the premium tax. This intentional deficit financing was considered a temporary measure until such time as the fund reserve was reduced to a practical level.

During the 1961 session it became apparent that the reserves were reaching a level that would insure solvency without over-financing of the disability insurance program. Recommendations were therefore made to increase the premium tax base to as much as 1% of the first \$5,600 in taxable wages, a level that would again allow the State Fund to meet all disbursements and increase their reserves.

However, it was felt by the majority of the Legislature that an increase in the premium level without the reinstatement of the adverse selection rule would again produce a situation where poor risks were forced into the State Fund as the better risks were selected out by the private carriers, resulting in subsidization of the private carriers at higher state loss ratios.

Assembly Bill 234 (Rees), as finally adopted, provided not only for a gradual increase in the premium level, but required that the director of the Department of Employment promulgate a regulation based upon criteria of the age, sex and wages of employees that would eliminate the private carrier's ability to select risks that were substantially adverse to the State Fund.

Based upon its preliminary studies, the department, on July 13, 1961, gave notice of a public hearing to be held on August 14, 1961 on an adverse selection regulation proposal. Briefly, this proposal would have required voluntary plan insurers to canvass the content of their existing voluntary plans not later than February 15, 1962 and submit the canvass to the department which would show the percentages of females and individuals age 50 or older and information relating to average weekly wage of employees. The proposal allowed a 10% tolerance for sex, age and a 15% tolerance for average weekly

wage The voluntary plan insurers had until September 30, 1962 to meet the standards for the existing plans, plus any new plans which might be written. Plans which did not meet these requirements were to be withdrawn as of September 30, 1962. The director had power to update the information concerning voluntary plan content whenever he found a significant change had occurred. The department was well aware that this proposal was exploratory—particularly with respect to the use of the average weekly wage for the wage distribution factor. This proposal was reviewed prior to the public hearing with the representatives of the insurance industry, labor and management. As a result of their comments, revisions of a technical nature were made and these were presented at the public hearing on August 14, 1961. One substantive change was made, providing for a withdrawal of approval date of October 1, specifically, with voluntary plan conformance to the standards to occur not later than August 1, 1962.

At the public hearing of August 14, 1961, representatives of the insurance industry requested a continuance. Representatives of labor objected. A continuance was granted to October 16, 1961, upon the insurers agreeing that they would not contend that the delay occurring by the continuance would affect the enforcement of the regulations.

On September 15, 1961, the department gave notice of the continued public hearing to be held on October 16, 1961 under a revised regulation proposal. Tolerances of 5% were proposed for sex, age and wage distribution. Concepts of "standard risk" and "standards for approval" were proposed. The withdrawal of approval date was set at April 1, 1962. At the public hearing of October 16, 1961, numerous representatives of insurers, employers, brokers appeared and vigorously protested the regulation. After considering their objections and reviewing the entire matter, the department ordered a modification of the regulation to make specific, certain procedural matters and to increase tolerances allowed to insurers, since solvency of the disability fund would still be protected under the modifications. On November 4, 1961, the director adopted, filed and published Regulation 3254(i)-1.

The department had determined that benefit payments were proportionately higher to females, to persons age 50 and older and to persons paid less than \$3,600 wages in any four quarter period. *These categories were the poor risks. Predominantly, the state covered the poor risks. Predominantly, the voluntary plan insurers covered the better risks on males, younger persons and employees with higher wages.* Regulation 3254(i)-1 required that each voluntary plan insurer's coverage content as compared with the total coverage content of all voluntary plans and the state must be within 5% for female content, 10% for persons age 50 and older and 7% for persons paid less than \$3,600 in four quarters. Failure to meet these three tests meant that voluntary plan insurers were engaging in "substantial selection of risks adverse to the disability fund."

The regulation does allow tolerances from the combined coverage. An insurer can select risks up to 5% less for sex and 10% less for age and up to 7% less for wage distribution than the average risk for combined coverage and such selection will not be considered "substantially adverse." The regulation contemplated that approval would be withdrawn as of April 1, 1962, the earliest feasible date for all plans which do not meet the regulation requirements. Under Regulation 3254(i)-1 the director, by December 15, 1961, was to announce standards for approval for sex, age and wage distribution to be met by existing plans not later than January 20, 1962. Notices of withdrawals

of approval were to issue. Insurers who wished to do so could, by December 1, 1961—or as late as December 15, 1961, if pre-punched card information was submitted—submit a canvass of the sex, age and wage distribution content of their existing plans. Those who did so would have had a tabulation of this actual content set up by the department. Plans which continued in effect on January 1, 1962, whether included in the tabulation or not, were to be tested for substantial adverse selection.

The basic test for substantial adverse selection, both for approval and withdrawal of approval of plans was to be the standard for approval. However, for insurers who did not canvass their plans or who had one or more plans not included in their tabulation, a preliminary test must be made by the "standard risk" and "risk experience rating" measures. These are based on percentages of benefits actually paid by each insurer as compared with corresponding percentages paid to the total combined State and voluntary plan coverage of insurers.

The risks experience rating formula allowed the same tolerance to insurers as the standard for approval and if an insurer had not paid as much proportionately in any category as the "standard risk," less the tolerance allowed its plans continuing in effect on January 1 and not included in the tabulation, were subject to withdrawal of approval, effective April 1, 1962. Any additional plans included in the tabulation were to be tested against the current standards for approval and withdrawn if they did not meet the current standards. The insurer could, then, within a stated time limit, canvass its plans not included in the tabulation and submit information to retest the plans against the standards for approval. The insurer could also request the reconsideration of those plans it selected from those which were included in its tabulation and for which approval had been withdrawn to be retested against the standards for approval on the basis of the same information previously in the tabulation for such plans.

In short, an insurer could have retained plans which met the new standards for approval but would have lost plans which did not meet such standards, except that an insurer who met the "standard risk" requirement would have retained all plans and would not be required to be further tested against the "standards for approval."

Prior to the effective date of the regulation, numerous employers, insurers and brokers filed appeals at the California Unemployment Insurance Appeals Board under Section 309 of the Unemployment Insurance Code.

The position of the insurance carriers, in summary, was, (1) the regulation could not be applied to existing voluntary plans, (2) both the standard risks and standards for approval tests were invalid, and (3) the tolerances allowed were too small. The department saw no merit in the insurance carriers' contention. The department particularly emphasized that legislative intent was to end substantial adverse selection reflected in the coverage of existing voluntary plans. The insurers, however, at all times, vigorously asserted that the Legislature, in effect, intended to preserve all adverse selection which had accumulated under existing voluntary plans. The insurers contended that the director's regulation could not touch their existing business which was forever immunized from any further adverse selection requirements.

On April 6, 1962 the Appeals Board handed down its decision in the matter. The majority of the board sustained the regulation and the department's contentions.

On April 18, 1962 the California Western States Life Insurance Company joined by other admitted disability insurers filed an action in the Sacramento Superior Court, seeking a writ of mandate, permanent injunction, declaratory

relief and other appropriate relief in respect to the regulations. A temporary restraining order was issued by the court, preventing the enforcement of the regulations, pending a hearing on the question of whether a preliminary injunction should issue. On April 26, 1962, after receiving affidavits and hearing oral argument, the court issued its preliminary injunction restraining any enforcement of the regulation or any approvals of new plans pending the court's determination of the validity of the regulations, but permitting the director to establish the standard risks, the risk experience ratings of individual insurers and standards for approval under the regulation. On April 25, 1962, the Director of Employment issued the standard risk and the standards for approval under the regulation. Under the standard risk it was determined that voluntary plans of an insurer would meet the requirements of the regulation to retain plans if a carrier had paid 36.68% of its benefits to females, 36.14% of its benefits to persons age 50 or older and 39.99% of its benefits to persons earning wages under \$3,600 in a four-quarter period. Under the standards for approval it was determined that a number of persons covered by each voluntary plan insured for particular categories were required to be 30.40%, 19.25% for persons age 50 or older and 37.07% for persons earning less than \$3,600 in a four-quarter period.

The risks experience rating showed that six companies, representing less than 1% of total combined coverage, qualified to meet the standard risk requirements. The preliminary injunction by the court prevented withdrawal of approval of the plans of the remaining insurers. The risks experience rating computations determined that the state plan risks experience was for females 40.74%, for persons age 50 and older 41.71%, and for persons with wages under \$3,600 in a four-quarter period 47.34%. The same computations show that for insurance carriers the total risk experience for females was 32.16%, for persons age 50 and older was 33.06% and for persons earning under \$3,600 in a four-quarter period was 25.85%. Thus, in each of the three categories, the voluntary plan insurers in the aggregate were well below the requirements for retaining plans. The gap between their experience and the state plan experience reflected substantial adverse selection.

On May 2, 1962 the California Supreme Court transferred this cause without opinion to the District Court of Appeals for the Third Appellate District. On May 7, 1962, the District Court of Appeal denied the petition without opinion. On May 11, 1962 Thomas M. Pitts, Secretary-Treasurer of the California Labor Federation, filed a petition for hearing in the Supreme Court after denial of the petition by the District Court of Appeals. In July, 1962, the Supreme Court dissolved the Superior Court's injunction against the department and ordered the department to institute the adverse selection regulations, pending a final determination of the matter.

On December 12, 1962 the Supreme Court unanimously upheld the legality of the director's regulations, finding them to be within the intention of the Legislature. During the period that the regulations were being tested in court for their legality, several alternative proposals were presented to this committee and to the Department of Employment. These alternatives somewhat relaxed the requirements as set forth in the department's regulation, allowing voluntary plan carriers to maintain a greater percentage of their present business. These alternatives are still being considered by the Department of Employment.

There are practical business factors which argue in favor of a less strict adverse selection regulation. Much of the disability insurance business written by private carriers is integrated into complex and complete health and welfare plans provided by companies, either voluntarily or through collective bargain-

ing agreements. Many of these plans provide greater benefits than are required by the disability insurance program, although an extra premium is paid either by the employee or the employer, or both for, these greater benefits. *To require a company to insure part of its program with the State and part with private carriers creates only additional problems for the employee or the plan administrator when benefits are paid under the plans* The disruption of "integrated" planning could result in enough time-consuming effort to make the real benefits received under the plans less attractive.

A serious problem would also arise if many large business establishments with favorable claims experience among their workers which are presently insured with private carriers were to self-insure rather than insure with the State Fund. This decision would upset certain actuarial assumptions upon which premium rates for the State were based, as the low loss ratios of these companies would not be available to offset other high loss businesses already insured with the state.

The committee would recommend that the Department of Employment consider the alternative proposals suggested on the subject of adverse selection and the effect of large-scale self-insurance upon the financial position of the State Fund.

II. Vocational Rehabilitation of the Industrially Injured

The Subcommittee on Workmen's Compensation¹ held a public hearing on December 12, 1961 in San Francisco concerning the adequacy of vocational rehabilitation of industrially injured workers. At that hearing Mr. Z. L. Gullledge, District Supervisor of California State Vocational Rehabilitation Service estimated that 1,026 workmen needed vocational rehabilitation in the fiscal year 1960. This finding was the result of a study made by Mr. Gullledge and the Vocational Rehabilitation Service, published in June, 1961 [California State Department of Education "The Vocational Rehabilitation of Industrially Injured Workers," a report to the California Legislature]. This estimate of over 1,000 workmen in need of vocational rehabilitation was admittedly conservative, as the estimate excluded all those claimants who had left the State and industrially injured workers whose cases were involved in litigation.

The State Vocational Rehabilitation Service does render rehabilitation to industrially injured workers. However, because of a lack of funds and facilities it does not provide services to all those who have been industrially injured.

In 1962 there were \$1,200,000 worth of federal funds that were unmatched by State funds and in 1963 an estimated three million dollars will be unmatched.

A major problem presented at the hearing was who would perform the rehabilitation services to the industrially injured if such a program were established. The consensus among those favoring rehabilitation seemed to run toward designating the California State Vocational Rehabilitation Service as the agency. The chief of that agency, Andrew Marrin, told the committee

¹ The subcommittee was composed of Assemblymen Phillip Burton, John T. Knox, Harold K. Levering, Thomas M. Rees, Jerome Waldie and Jack Casey, Chairman.

that federal matching funds carried no restrictions as to where the State portion of the funds came from. He reported that certain states make direct arrangements through their vocational rehabilitation services for service to industrial cases. The chairman of the Industrial Accident Commission, Elton Lawless, stated that the Industrial Accident Commission has no desire to carry out the actual services within their agency. It became apparent that some sort of jurisdiction should be maintained by the Industrial Accident Commission over cases assigned to the California State Vocational Rehabilitation Service. One person suggested using the Industrial Accident Commission as a court of appeal in cases where insurers refuse to provide rehabilitation.

Another topic discussed at the hearing was the criteria to be used to determine if a person is eligible for rehabilitation. The degree of disability itself is determined on a percentile scale. However, opinion was offered as to the wisdom of using a given percentile as the dividing line between those eligible and ineligible for rehabilitation benefits. It was suggested that a referee of the Industrial Accident Commission might be tempted to nudge borderline cases a few percentage points higher in order to qualify a man for rehabilitation benefits. If need for rehabilitation is considered it is clear that a percentage of disability is not the best criteria. For instance, a person with a low percentage rating may have marginal attachment to the labor market in the first place. In such a case relatively minor impairment, if coupled with lack of education and/or advanced age, might push the injured workman "over the brink" and make rehabilitation a desirable thing. On the other hand, many workmen rated as high as 70% or more disabled had suffered little wage loss and presumably did not need vocational rehabilitation.

APPENDIX

Introduced by Senator Rees

January 30, 1963

REFERRED TO COMMITTEE ON JUDICIARY

*An act to add Section 12526 to the Government Code,
relating to the Attorney General*

The people of the State of California do enact as follows

- 1 SECTION 1. Section 12526 is added to the Government Code,
2 to read
3 12526 The Attorney General, whenever he shall find that there
4 exists or is being conducted any scheme or plan to defraud or de-
5 ceive substantial numbers of members of the public in this State
6 or any illegal or fraudulent business or activity affecting substantial
7 numbers of members of the public of this State, may in the name
8 of the people of the State of California:
9 (a) Institute and maintain such suits, actions or proceedings
10 of any type in any court or tribunal of competent jurisdiction or
11 before any administrative agency for such relief by way of injunc-
12 tion, the dissolution of entities, the appointment of receivers, or any
13 other temporary, preliminary, provisional or final remedies as may
14 be appropriate to prevent the further existence or continuance of
15 such plan or scheme or such business or activity or any acts or con-
16 duct in furtherance or in aid thereof or to undo the consequences
17 to members of the public resulting from the past conduct or opera-
18 tions of any such plan, scheme, business or activity. In any such
19 action, suit or proceeding there may be joined as parties all persons
20 and entities involved, or affected by, or instrumental to such plan,
21 scheme, business or activity or acts or conduct in furtherance
22 thereof

LEGISLATIVE COUNSEL'S DIGEST

S B 342, as introduced, Rees (Jud). Attorney General

Adds Sec 12526, Gov C

Authorizes Attorney General whenever he finds a plan to defraud or any illegal business which affects a large part of the public, to institute and maintain proceedings or intervene in any proceeding in any proper court or before any administrative agency to protect or assert the rights of the public and to obtain appropriate relief

S.B. 342

— 2 —

1 (b) Intervene, on the side of any party or independently, in any
2 action, suit or proceeding pending in any court or tribunal or before
3 any administrative agency affecting or involving such plan, scheme,
4 business or activity or any aspect thereof

5 (c) For the purposes of protecting or asserting the rights and
6 interests of substantial numbers of the members of the public of
7 this State affected by any such plan, scheme, business or activity or
8 acts or conduct in furtherance thereof, to undertake by acceptance
9 of assignments of claims or otehrwise, to institute and maintain for
10 or on behalf of any such member of the public and all persons simi-
11 larly situated, any action, suit or proceedings to enforce, secure or
12 defend any right, interest or claim of such member of the public
13 and in any such suit, action or proceeding to employ or obtain any
14 process, relief or remedy, whether temporary, provisional, prelimi-
15 nary or final to which any such member of the public might be
16 entitled

o

ASSEMBLY INTERIM COMMITTEE REPORTS
1961-63

VOLUME 16

NUMBER 8

FINAL REPORT OF THE
**ASSEMBLY INTERIM COMMITTEE ON PUBLIC
UTILITIES AND CORPORATIONS**

TO THE CALIFORNIA LEGISLATURE
(House Resolution No. 361.19, 1961)

MEMBERS OF THE COMMITTEE

JOHN C WILLIAMSON, *Chairman*

REX M CUNNINGHAM, *Chairman*

MONTIVEL A. BURKE, *Acting and Vice Chairman*

CARL A BRITSCHGI

CHARLES EDWARD CHAPEL

GORDON COLOGNE

CLAYTON A DILLS

AUGUSTUS F HAWKINS

JAMES I HOLMES

FRANK LUCKEL

PAUL J LUNARDI

LESTER A McMILLAN

CHARLES H. WILSON

HENRY RAY KING, *Committee Consultant*

NORMA WAGGERSHAUSER, *Committee Secretary*

GWEN MURRILL, *Committee Secretary*

December 1, 1962



Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

HON JESSE M UNRUH
Speaker

HON JEROME R WALDIE
Majority Floor Leader

HON CARLOS BEE
Speaker pro Tempore

HON JOSEPH C SHELL
Minority Floor Leader

ARTHUR A OHNIMUS
Chief Clerk of the Assembly

LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON
PUBLIC UTILITIES AND CORPORATIONS
SACRAMENTO 14, CALIFORNIA, January 7, 1963

HONORABLE JESSE M. UNRUH,
Speaker of the Assembly; and
Honorable Members of the Assembly
State Capitol

DEAR SPEAKER UNRUH AND MEMBERS Pursuant to House Resolution No. 361 of the 1961 California Legislature, your Assembly Interim Committee on Public Utilities and Corporations submits its report covering its functions and activities during the 1961-63 interim.

All studies were conducted by the full interim committee and the recommendations submitted in this report have been approved by all members of the committee except for a qualified approval by Assemblyman Paul J. Lunardi.

Former Assemblyman Rex M. Cunningham presided as chairman of this committee from the start of the interim period until his resignation on April 22, 1962. Assemblyman Montivel A. Burke acted as chairman of this committee from April 22, 1962, to August 29, 1962. Assemblyman John C. Williamson presided as chairman of this committee from August 29, 1962, to the end of the interim period.

Respectfully submitted,

JOHN C. WILLIAMSON, *Chairman*

HOUSE RESOLUTION No. 361

Relative to Constituting Certain Standing Committees of the Assembly as Interim Committees

Resolved by the Assembly of the State of California, as follows:

1. The following standing committees of the Assembly are hereby constituted Assembly interim committees and are authorized and directed to ascertain, study and analyze all facts relating to (1) the subjects and matters assigned to them by this resolution; (2) any subjects or matters referred to them by the Assembly, (3) any subjects or matters related to (1) or (2) which the Committee on Rules shall assign to them upon request of the Assembly or upon its own initiative:

* * * * *

(s) The Committee on Public Utilities and Corporations is assigned the subject matter of the Public Utilities Code and the Corporations Code, all uncodified laws relating thereto, and other matters relating to public utilities and corporations

* * * * *

This is extracted from House Resolution No 361, which established all Assembly interim committees for the period between the 1961 and 1963 General Legislative Sessions. The full text of House Resolution No 361, as passed by the Assembly, is found in the Assembly Journal of June 6, 1961, on pages 4992 to 4994.

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Recommendations to the 1963 Legislature
of the
Assembly Interim Committee on Public Utilities
and Corporations Covering Subjects Under
Study During the 1961-63 Interim

HOUSE RESOLUTION No. 222

Relating to a Study of the Necessity of Licensing, Regulating,
and Training of Small Craft Operators

HOUSE RESOLUTION No. 352

Relating to Boating

The committee recommends the following actions as necessary to improve the enforcement of existing boating laws, improve boating conditions and facilities, and to strengthen and clarify existing boating laws:

1. The committee finds that there is not adequate information to warrant a recommendation for licensing of operators of small craft at the present time. The committee further feels that enforcement of existing boating laws by local government is inadequate. Therefore, to insure uniformity and adequacy of enforcement, this committee recommends enforcement of the existing boating laws by the State of California. The committee intends to continue to consider licensing of small boat operators for the purpose of making more effective enforcement of laws pertaining to recreational boating. As a possible source of revenue to finance such statewide enforcement, this committee intends to continue consideration of removing boats from personal property tax rolls and creating a state tax in lieu thereof.

The committee does, however, recommend that small craft operators who accept passengers for hire and who operate their craft on other than navigable waters, as defined by the federal government, shall be required to obtain an operator license from the Division of Small Craft Harbors and to pass such tests and/or examinations as are necessary to prove their competency in the operation of their vessels.

This committee recommends that the Division of Small Craft Harbors of the Department of Parks and Recreation, Resources Agency of California, be required to maintain a file of violations of boating law by name of violator, said information to be provided by the courts having jurisdiction, and that such information be supplied to any court on request.

2. This committee recommends that additional funds be provided to continue the Small Craft Harbors program for loans to enable local government to construct recreational boating facilities. The committee commends the current Small Craft Harbors Commission and Mr. Lachlan Richards, Chief of the Division of Small Craft Harbors, for their competence in granting loans under this program.

3 The committee recommends that the construction of harbors of refuge along California's rugged coastline be implemented as soon as possible. The committee further recommends that Section 5823.5 of the Public Resources Code be amended to allow the Division of Small Craft Harbors to construct vitally needed harbors of refuge even though it may not prove possible or practical to enter into prior agreement for the transfer of the completed harbor of refuge to a local agency.

4. Section 704 (b) of the Harbors and Navigation Code be amended to specify that the delivery of documents of sale or transfer to an agent of the Division of Small Craft Harbors is, in fact and law, delivery to the division.

5 Section 682 (e) of the Harbors and Navigation Code be amended to delete the exemption from registration of vessels powered by electric motors of 10 horsepower or less.

6. The Congress of the United States be requested, by joint resolution, to enact legislation requiring that all boats used in the waters of the United States carry a permanent hull number which can provide positive identification.

7 Section 8352 (g) of the Revenue Code be amended so that the total amount of money in the Motor Vehicle Fuel Fund, attributable to taxes imposed on distribution of motor vehicle fuel used or usable in propelling vessels and unclaimed by boat operators, be appropriated to the Small Craft Harbor Revolving Fund on an annual basis.

8. Section 5829.2 of the Public Resources Code be amended to *permit*, rather than to *require*, legislative bodies of a county, city or district to obtain approval of the Small Craft Harbor Commission of the terms of the bid invitation prior to publication of notice inviting bids from private concessionaires or lessees.

9 Section 681 (s) of the Harbors and Navigation Code be amended to provide that fees collected for licensing, registering or numbering small craft be deposited in the Small Craft Harbors Revolving Fund and, further, that the costs of administering this registration or licensing be paid from the Small Craft Harbors Revolving Fund.

HOUSE RESOLUTION No. 417

Relative to Regulating the Car Rental and Leasing Business

The committee recommends that the Legislature take no action at the present time regarding legislation relating to the regulation of the car rental and leasing industry. While testimony presented to this committee indicates that bait advertising exists on the part of some members of the industry, attempts are being made by the industry to correct this problem, and the Legislature believes such efforts should be given every opportunity prior to legislative action. The committee will study the results of the industry's efforts in this matter.

ASSEMBLY BILL No. 152**Relative to Regulation of Commercial Air Operations**

The committee recommends that the Public Utilities Code be amended so that any air common carrier operating wholly within the State of California and without a certificate of public convenience and necessity from the Civil Aeronautics Board or other federal agency designated to issue such a certificate be required to obtain a certificate of public convenience and necessity from the California Public Utilities Commission Authority for this regulation by the State of California should exclude any regulation of the field of air safety which is under the exclusive jurisdiction of the federal government (See Appendix No I, Preprint Bill)

This committee does not recommend any state regulation for air charter operators at the present time. The committee wishes to point out, however, that continued operations of a type testified to before this committee by charter aircraft operators may well subsequently result in regulatory control by the State of California

It is further recommended that all operators of commercial aircraft in the State of California be required to obtain and continue in effect adequate protection against liability imposed by law upon a commercial air operator for payment of damages for personal bodily injury to any passenger, for personal bodily injury to other than a passenger, and for property damage as a result of any accident

HOUSE RESOLUTION No. 222

By MR. MULFORD

Relating to a Study of the Necessity of Licensing, Regulating, and Training of Small Craft Operators

WHEREAS, There is each day a tremendous increase in the number of small crafts being operated on the waters of this State; and

WHEREAS, A result of such increase has been a proportionate increase in the number of accidents involving such craft, which accidents account for untold damage to person and property; and

WHEREAS, It is imperative that our waters be maintained as safe as possible so as to make them proper places for fishing and recreation; now, therefore, be it

Resolved by the Assembly of the State of California, That the Rules Committee assign to an appropriate interim committee for study and report to the Legislature the subject of the desirability and necessity of licensing, regulating, and training the operators of small craft upon the waters of this State; and be it further

Resolved, That such committee be directed to report its findings to the Assembly on the first day of the 1962 Budget Session of the Legislature.

HOUSE RESOLUTION No. 352

By MR CUNNINGHAM

Relating to Boating

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is directed to assign to an appropriate interim committee for study the subject of boating, including, but not limited to, boating safety, education, and an increase in facilities for boating, and to direct such interim committee to report to the Legislature its findings and recommendations on such subject no later than the fifth legislative day of the 1963 Regular Session of the Legislature

HEARINGS HELD ON HOUSE RESOLUTION No. 222 AND HOUSE RESOLUTION No. 352

Three hearings were held by the committee as follows: September 13, 1961, at the Balboa Bay Club, Newport Beach, California; November 2, 1961, in Room 1158, State Building, San Francisco, California; August 27 and 28, 1962, in the American Legion Hall at Al Tahoe, California. Also, a subcommittee meeting of the committee was held jointly with a committee of the Small Craft Harbors Commission in Bakersfield on September 25, 1962.

PERSONS APPEARING AND TESTIFYING BEFORE THE COMMITTEE

GEORGE ASKELUND, State Division of Small Craft Harbors
LESTER C BEDIENT, The Harbor Tug and Barge Company
DOUGLAS BOSWELL, Pacific Inter Club Yachting Association
MRS BERINGTON B BROOKS, Metropolitan Yacht Club of Oakland
VERNON COX, South Tahoe Chamber of Commerce
RICHARD L DAVIS, Golden Gate Water Ski Club
RALPH B DEWEY, Pacific American Steamship Association
CURT DOSH, Balboa Power Squadron
ROBERT W DYER, United Towing Company and California Tugboat Company
C H ESCHER, Bay Cities Transportation Company
HERBERT J EVANS, Kern County Parks and Recreation Department
GEORGE W FAY, River Lines, Inc
JOHN GILCHRIST, California Marine Parks and Harbors Association
LAWRENCE GRINNELL, Yacht Racing Association of San Francisco Bay
J. PAUL GUTLEBEN, Golden Gate Water Ski Club
TAYLOR HANCOCK, National Timberboating Squadrans
JIM HARRISON, Orange County Marine Dealers Association
W BURBECK JOHNSON, Pacific Inter-Club Yacht Association
N B KELLER, Legislative Budget Committee
EDWARD KENNEDY, Outboard Industries Association (Outboard Boating Club of America, Inc.)
PAT KIRKANE, Small Craft Harbors Association
THOMAS F KNIGHT, Southern California Yachting Association
ROBERT H LANGNER, Manager, Marine Exchange, Inc
BEN LEBERMAN, Orange County Outboard Club
RICHARD LERNER, Southern California Yachting Association

FRED B LIFTON, Outboard Industries Association and Outboard Boating Club of America
 KENT H LIME, Monterey County Flood Control and Water Conservation District
 WESLEY W LOUDON, Associated Boat Industries of Northern California
 CARL L MANNS, Pacific Coast Speedboat and Water Ski Association
 WESLEY MCCLURE, League of California Cities
 MRS JAN MOWER, California Boating Council, Inc
 RAYMOND J NESBIT, Wildlife Conservation Board, Department of Fish and Game
 W A NORMAN, Council of Ventura County Boat Clubs and Oxnard Boat Club
 LARRY NYGAARD, Fresno Boat Club
 NEAL J PETERSON, National Boating Squadrons
 FRED H PHILLIPS, San Leandro Boat Club
 GRANT PUGGOTT, Los Angeles Boat and Ski Club
 LACHLAN M RICHARDS, Chief, State Division of Small Craft Harbors
 RALPH RING, Director, Santa Cruz Port District
 PATRICK M ROYCE, Royce Publications and National Trailerboating Squadrons
 KENNETH SAMPSON, Manager, Orange County Harbor District
 RAYMOND SATTLER, Delta Inter Club and Golden Anchor Boat Club
 WILLIS E SHORT, Southern California Yachting Association
 GRETA H SIMON, Los Angeles Area Chapter, Society of Yacht and Ship Brokers
 R D SWEENEY, Counsel, Southern California Marine Association, Inc
 EDWARD J TWOHIG, Santa Cruz Boat Rentals
 WIN UNGER, Cabrillo Beach Yacht Club
 WALTER F VENDETTI, Golden Gate Yacht Club
 BERNARD VOLLMER, Pilot Observer, San Diego, California
 JOHN F WALSH, Contra Costa County Sheriff's Marine Patrol
 WALTER E WEYMAN, District II, National Lido Association
 B R WILKIE, Small Craft Harbors Association and Inland Harbors and Resort Owners Association
 LEO H WUESTHOFF, San Francisco Bay and Tributaries Pilot

SCOPE OF COMMITTEE STUDY

House Resolution No 222 (1961) directed the attention of the Legislature to the problem of water safety in California, and specifically requested that an appropriate committee study the wisdom and probable effect of the establishment of a system for "licensing, regulating, and training the operators of small craft upon the waters of this State"

House Resolution No 352 directed a study of the subject of boating, including but not limited to, boating safety, education, and an increase for facilities for boating. Because of the overlapping of the subjects contained in the two house resolutions, the report of this interim committee has been consolidated.

LICENSING OF BOAT OPERATORS

Theoretical Basis

The promotion of water safety in California through the adoption of a small craft operator licensing program would constitute an invocation of the police power of the State of California. Therefore, the committee feels that its inquiry into the desirability of such a program should be undertaken in accordance with the recognized principles which govern the use of the police power in a constitutional government.

In general, the police power is the instrument for that adjustment of individual rights to social conditions for which governments themselves were originally instituted.

"While every man is free and independent, and may enjoy and defend life and liberty, still he must do so in a way which does not interfere with the same right in other persons. While he may acquire, possess, and protect property, he must do so in a way and by means that will not prevent others from doing the like. While he may pursue and obtain safety and happiness, he cannot be allowed to do so in a manner which may endanger or unreasonably impair the safety and happiness of others. And generally, while everyone is to be secure in the exercise and enjoyment of these rights, he may be restrained or prohibited from exercising them in a manner which will interfere with a reasonable exercise of the same right by other persons." (*California Jurisprudence*, 2d Ed., Vol 11, pp 525-526)

It follows that the police power is one of the broadest powers available to government

"The police power, deriving its existence in part from the rule that the safety of the people is the supreme law, justifies legislation pertaining to public welfare, public health, or public morals. . . . When reduced to its ultimate and final analysis, the police power is the power to govern." (*Op. cit.*, pp 523-524.)

There are, however, certain recognized standards to which an exercise of the police power is expected to conform

"The police power is perhaps the least subject to limitation of any of the powers of government, but it is not illimitable. The marking and measuring of the extent of its exercise and application is determined by a consideration of whether or not an invocation of the power, in any given case and as applied to existing conditions, is reasonably necessary to promote the public health, safety, morals, or general welfare of the community. A valid exercise of the police power may not be arbitrary, unreasonable, or discriminatory, and must not amount to an improper or arbitrary infringement of the constitutional rights of individuals." (*Op. cit.*, p 534)

Thus the problem before the committee is that of determining whether the licensing of small craft operators is a necessary and reasonable step towards a proper goal, water safety, and whether it can be undertaken without compromising the rights and privileges of those citizens for whose protection it has been proposed, the users of the waterways of the State of California

Water Safety

As the first step in its inquiry, the committee found it necessary to appraise the water safety situation in California. There is no question that water safety is a problem of measurable dimensions in the State

Testimony before the committee cited several instances of tragic injury and loss of life, and more numerous instances of accidents or near accidents financially injurious to boaters and marine enterprise. Representatives of marine industries, whose operators are subject to federal licensing, and for whom water safety is a matter of business, cited instances where the hazards of irresponsibly operated pleasure craft had increased business costs and forced curtailment of services.

"One of the reasons that there are not more accidents is that we have taken cognizance of (these hazards) and about two years ago we refused to go into San Rafael Channel because of congested area and because of pleasure boating in the channel. We just refused to serve. This, I am sure, has eliminated potential accidents in there due to congestion and due to the operation of boats by people who know absolutely nothing about it. . . I will say that having elected to give up traffic in the San Rafael Channel has certainly created a financial deficit with us. We operated an average of some \$1,500 to \$2,000 a month revenue in that area but we decided it wasn't worth it because the hazard was too great." (Robert W. Dyer, United Towing Company and California Tugboat Company, San Francisco Hearing, pp. 101-102.)

Unfortunately, while it is evident that some sort of a problem exists, there is no way of properly assessing its dimensions at present. The collection and analysis of safety statistics on small craft is in a primitive stage of development, both in California and in the nation as a whole. Not only are there no thoroughly reliable statistics on the number and extent of small craft accidents, but there also is as yet no satisfactory yardstick for relating the incidence of such accidents to the amount of boating done. Thus while the committee has a reasonably clear picture of the absolute safety of boating in California, in terms of fatalities, it has a less clear picture in terms of injuries and accidents, and little or no picture of the relative safety of boating in terms of fatalities, injuries, or accidents per unit of boat use. From the tentative figures at the committee's command, it would appear that boating safety in California is decreasing absolutely, but increasing relatively, and is about average in national terms. While any departure from absolute safety is cause for concern, it is difficult to propose remedial measures without some understanding of the relative magnitude of the problem. Thus the committee must begin its inquiry by noting that it has little more than subjective knowledge concerning the necessity of any new legislation for the promotion of boating safety.

Advantages of Operator Licensing

Lachlan M. Richards, Chief of the State Division of Small Craft Harbors, enumerated the arguments both in favor of and opposed to operator licensing without supporting or opposing it. Those reasons given in favor of licensing are listed below.

1. Licensing will provide a means of identifying and penalizing repeated offenders. Even a permit system without examination would accomplish this.

2. Licensing would assure some degree of competence, both fitness and training, on the part of boat operators. This presumes an examination, whether oral, written, or a demonstration.

3. Requirements for licensing will assist enforcement officers in various ways including identification of the operator, increased familiarity of the operator with the law, and the operator's awareness that he has something to lose.

4. Licensing would materially aid a boating safety education program on the basis that it would require demonstrations of knowledge, skill and ability.

5. Requirement of a license would provide assistance for new boat operators as those requirements could be the standards of competence toward which they could aspire and which would be readily available to them (Newport Beach Hearing, p. 4).

It is apparent from this list of arguments that there are two primary lines of justification for the licensing of small craft operators. The first of these, represented by points 1 and 3, is that licensing will improve the enforcement of existing laws. This committee has already had the opportunity to take cognizance of deficiencies in the enforcement of present boating law. In appraising operator licensing as an enforcement measure, it must note that it fails to attack the fundamental causes of deficient enforcement, and that nearly all of the hoped-for fruits of licensing might be satisfactorily achieved by administrative action under present law. While the committee believes that operator licensing could make an incidental contribution to improved enforcement, it is of the opinion that such a contribution, standing alone, would be quite inadequate as a justification for the passage of such a law.

The major justification for operator licensing, as represented by points 2, 4, and 5, is that it will promote water safety through compulsory education of boat operators. As one proponent put it:

"In my view it is not a disciplinary device that the licensing would accomplish. It is indeed an educational checkpoint where a man, before he goes on the water, must have a license and must at least have been exposed to the rules of the road." (Ralph B. Dewey, President, Pacific American Steamship Association, San Francisco Hearing, p. 82.)

Assuming for the moment that a practical program of examination and licensing could be developed, and that the educational efforts of private boating associations were continued, it seems clear that some improvement in water safety might be expected, particularly on the part of those who have never availed themselves of private educational programs.

How great might this expected improvement in water safety be? While any progress towards absolute safety would be commendable, it would certainly be a frivolous exercise of the police power of the State to enact an operator licensing law, affecting many thousands of

boat operators, in order to effect a microscopic improvement in the accident rate. In the absence of any previous experiences in operator licensing, the committee is compelled to resort to logic in attempting to predict the magnitude of such an improvement. Perhaps the most promising way is by an armchair analysis of the causes of boating accidents.

Analysis of Accidents

Many accidents are in whole or in part unpreventable, that is, they stem either from mechanical or equipment problems or are the result of unforeseeable situations or conditions, circumstances "beyond the rulebook." While it is true that the experienced operator is perhaps somewhat less likely to encounter such difficulties and more likely to surmount them, it is hardly possible that information gained in a basic licensing examination would be of much help to the novice in these situations. As far as any diminution in "unavoidable" accidents is possible, it must come through increased experience and improved judgment on the part of all California small craft operators. Under an operator licensing law, such experience and judgment would of necessity be achieved long after the acquisition of the license.

Among preventable accidents, an indeterminate number are caused by disregard of known principles and regulations pertaining to water safety. Again, it would appear that licensing as an educational measure would have little or no effect in the prevention of these accidents. The problem here is instead quite obviously one of enforcement. Licensing as an enforcement measure might make certain minimal contributions as to improved enforcement, but such improvements, as was noted earlier, might also be achieved by means other than operator licensing.

Other preventable accidents are caused by ignorance of the fundamentals of water safety. These are the accidents that presumably would be, at least in part, prevented by the adoption of operator licensing. There is, however, considerable disagreement concerning the percentage of the total accident picture that is accounted for by ignorance. Some individuals feel that the percentage is fairly high, but the preponderance of opinion at committee hearings was that the percentage was rather negligible.

"The U.S. Coast Guard accident study for 1960 has reports and has analyzed the reports on a group of accidents in which there were 739 deaths. In the cases of but 30 of these 739 deaths is the cause charged up to operator inexperience. In other words, in the other 709 cases—or that proportion of the fatalities represented in cases—the Coast Guard felt that the operators were sufficiently experienced and knowledgeable at least as to what they were doing" (Edward F. Kennedy, *Outboard Boating Club of America, Inc., Newport Beach Hearing*, p. 87).

The general belief, backed up by these and other tentative statistics, was that willful irresponsibility was the prime cause of boating accidents.

"We find the man that does most of this violating is the individual that could pass a test without any problem at all, possibly with his eyes blindfolded. We sort of look at him as a man that has got everything out of his boat that he possibly can and now he is getting bored with it unless he can demonstrate himself to a great many people and the only way he can do it is by getting close to the shore and showing off and that is the individual we want to get at." (Ben Leberman, Orange County Outboard Club, Newport Beach Hearing, p. 111.)

"It is our observation that the pressure which has made the licensing of boat operators a matter of concern to all of us is caused by a small hard core of violators who will resist all methods short of punishment to live amicably with the rest of society. We have seen the same type of person on the highways, we read about him in airplanes, and we have him on the waters in the same small percentage in rowboats, canoes, outboards, power cruisers and sailboats. This same type of individual, supposedly educated and licensed on the highway, is as much a menace as he is unlicensed and supposedly uneducated on the water." (Burbeck Johnson, Pacific Inter-Club Yacht Association, San Francisco Hearing, pp. 37-38.)

On the basis of this evidence, the committee must conclude that no great improvement in water safety in California would result from the licensing of small craft operators.

Obstacles to a Successful Operator Licensing Program

In addition to the likelihood that a successful operator licensing program would eliminate only a small number of accidents, there is considerable doubt as to whether any such program can be developed on a practical basis. It would appear that any successful program would have to be complex, rigorous, and almost prohibitively expensive, and that any simple and inexpensive system would be almost totally ineffective as an educational measure.

"It seems to me that you find yourselves in a little bit of a dilemma when you talk about operator's licensing. In attempting to assuage the feeling of the boater that you are not going to impose heavy fees, that you are not going to impose a burden, it is said on the one hand that it will be a very simple form—you will just be given it or it will be gotten without any trouble and it won't cost you any money but if you are going to do that, you will consume the entire fee in administering the program and you will have no money left over and you won't be accomplishing anything. You will just be passing out a piece of paper. On the other, if you are going to try to make it meaningful, in the sense that you are trying to determine the person who actually knows

how to operate a boat, you are faced with a program so expensive, so cumbersome, so tremendous, and so concise administratively that it falls of its own weight " (Fred B. Lifton, Manager, Government Relations Department, Outboard Industries Association, San Francisco Hearing, pp. 65-66)

In the first place, a meaningful law would almost certainly require the development of rather numerous and mutually distinct categories of operator licenses. The public confusion and administrative expense that such a proliferation of licenses would cause is among the least attractive features of the operator licensing proposal. In the second place, the general lack of support for operator licensing among the boating public would mean that for the program to be effective, a drastic increase in marine law enforcement would be required.

"Prohibition might have been a good thing or it might not have. It didn't work because it didn't have public support. This licensing, as proposed, does not have public support. I think it would be impossible to police this and I don't think the people will go for it " (Jim Harrison, Orange County Marine Dealers Association, Inc., Newport Beach Hearing, p. 106)

Adequacy of Enforcement of Existing Boating Laws

Of necessity, licensing of boat operators must be considered in direct relationship to the adequacy of the existing boating laws and to the enforcement of them by local government.

Of the 58 counties comprising the State of California, only San Benito and Alpine Counties have no waterways used for recreational or commercial boating. Of the area represented by the 56 remaining counties, only 31 political subdivisions appear to have made any effort to enforce the existing boating laws and only 12 of these are making what can be determined to be a reasonable effort in this direction. The glaring deficiency regarding enforcement by local government of the laws devised by the State to insure boating safety make it appear advisable that a statewide uniform enforcement program be instituted.

There is no question but that a drastic improvement in enforcement, without licensing, would result in a very real increase in water safety. Until such an improvement is realized, any operator licensing system, no matter how ambitious, would of necessity fail to accomplish the desired purpose.

In order to support an adequate enforcement of existing boating laws, a central file of violations of boating laws, by name of violator, should be maintained by the Division of Small Craft Harbors. Information contained in such a file would be useful in the determination of appropriate punishment by the courts, and should be made available to them upon request. This information would make it possible to identify habitual boating law violators and determine the percentage of accidents and injuries attributable to these habitual offenders. It is probable that a judge in sentencing boating law violators would find such information useful both to temper punishment for violators without prior records and to increase penalties applied to those who demonstrate patterns of habitual violations.

• OTHER COMMITTEE STUDIES

The committee also heard testimony relative to legislation which is required to increase small craft harbor facilities, create harbors of refuge, and make minor adjustments in the existing law. The committee also considered economic and budgetary considerations relative to harbors of refuge and small craft harbor operations and development.

The specific recommendations made by the committee in this interim report can have a profound effect on boating safety and facilities improvement, yet none of the recommendations represent a major departure from past practices. The minor adjustments of law have been fully considered and, in the opinion of the committee, are all required to meet the needs of public safety and convenience.

It should be pointed out that testimony was offered at the committee meeting at Al Tahoe, California, to the effect that, since Congress has given the states only the authority to number small craft, all other boating law enacted by the Legislature is unconstitutional. The committee rejected this testimony on the grounds that (1) the exercise of police power requires the application of laws to the waters as well as the lands of the State, and (2) that the Legislature enacted these laws in good faith, they were signed by the Governor of California after the Attorney General of California had rendered an opinion that they were not unconstitutional and further, (3) that challenges on the constitutionality of laws are properly the affair of the judicial rather than the legislative branch of government and such challenges cannot properly serve as the basis for objection to amendment, subsequent addition or implementation before a legislative committee (See Exhibit No. I, Legislative Counsel Opinion No. 5160, dated October 17, 1962).

FINDINGS OF THE COMMITTEE

Findings in Support of Recommendation No. 1

After a careful weighing of the evidence, it is considered judgment of this committee that enforcement of the existing boating laws of the State of California is inadequate at the present time. The potential improvement in California's water safety must come from uniformly administered enforcement of the laws. The committee further finds that there is not adequate information available to recommend licensing of operators of small craft at the present time. In terms of the police power, licensing is not a measure that is "reasonably necessary to promote the public health, safety, morals, or general welfare of the community . . . as applied to existing conditions" . . . (supra) and thus does not constitute a valid exercise of that power. Since the proposal does not run directly contrary to any fundamental constitutional right, the committee's decision does not represent an absolute finding of right or wrong, but rather a reasonable judgment based upon a delicately balanced equation of claims and counterclaims. Should circumstances change, and additional and more substantial information become available, the equation will demand re-evaluation. For the present time, however, it seems clear that the passage of a general operator licensing law would be a futile step without uniformly adequate enforcement.

The committee does believe, however, that the licensing of small craft operators who accept passengers for hire would be a desirable undertaking. Such operators sailing on navigable waters are under the jurisdiction of the federal government, and are required to have licenses. By offering his services to the public, the operator of a boat for hire is in effect making a public claim of his competence to operate such a boat. It is difficult, if not impossible, for potential passengers to check the validity of this claim in the way that proper concern for their own safety would prompt them to inquire about the competence of a friend or acquaintance offering them a pleasure ride on his own craft. In the face of this difficulty, it is to the benefit of both passenger and operator that the government take steps to establish standards of competent operation, and see to it that they are met. Because the federal government has no jurisdiction over inland waters within a state, and has in fact adopted the practice of only certifying an operator for waters in which he actually operates, it would seem logical for the State of California to establish operator licensing provisions for its own waters which parallel those established by the federal government for federal waters.

Findings in Support of Recommendation No. 2

Testimony received by this committee indicates that there are no further funds to conduct the loan program to local government for construction of recreational boating facilities and that over \$12 million in applications for loans cannot currently be investigated and processed because of a lack of these funds.

Over one million Californians are using the waterways and boating facilities of the State. There are approximately three hundred thousand boats now registered in California and the projections of the Division of Small Craft Harbors indicate an additional twelve thousand boats will be registered each year during the next decade.

To protect the lives of California boaters and to provide the facilities required for this major recreational activity, the Legislature must continue to exercise leadership.

Findings in Support of Recommendation No. 3

The committee was particularly impressed with testimony relating to the need of a harbor of refuge program along California's coastline. The coast of California is eleven hundred miles long and many recreational boaters use the coastal waters as does the fleet of commercial boats from California ports. Unfortunately the California coastline does not offer the boater, commercial or recreational, the natural harbors, bays and bights which can provide protection and refuge from ocean storms. Therefore, the Legislature of California has instructed the Division of Small Craft Harbors to prepare a plan for development of manmade harbors of refuge.

The committee believes that this program must be implemented as quickly as possible in order that the lives and property of the people of California be adequately safeguarded.

The passage of Senate Bill No. 815 in 1961, provided that no harbor shall be constructed until an agreement for transferring the harbor to a county, city or district has been entered into. The division discovered that this requirement prevented any action in developing a harbor in some of the locations where refuge is most needed.

Mr. Lachlan Richards, Chief of the Division of Small Craft Harbors, in testimony before the committee, noted specific examples of this dilemma. He pointed out that Cojo Bay, which has a high priority for construction, lies adjacent to Point Conception in a largely uninhabited area. The sea here is often beset with northwest gales and 105 miles of open sea lie between the existing harbors of Santa Barbara to the south and Port San Luis to the north. However, before the division can proceed with any development at Cojo Bay a local government must agree to accept the harbor. Because of the uninhabited nature of the area, no existing county, city or district has any operations in the area and none has been willing nor able to assume the heavy burden of responsibility and cost in operating this harbor of refuge. Until there is some change in the law there will be no harbor of refuge at Cojo Bay.

The committee believes that it is unsound to deprive our citizens of the security of harbors of refuge solely because no local jurisdiction can be found that is willing to co-operate from the outset. Therefore the committee feels that harbors of refuge should be built on the basis of demonstrable need and that while the division should be required to make every effort to secure agreements to accept transfer in advance, this requirement should not prevent construction of harbors of refuge required for the safety of recreational and commercial boaters using our coastal waters.

Findings in Support of Recommendation No. 4

The fourth recommendation of the committee is required if we are to protect the public with regard to legal actions involving boats. The committee was made aware that the existing law is unclear with regard to the transfer of ownership of a boat. The law provides that legal ownership, and hence legal responsibility, transfers when documents of such a transfer are received by the Division of Small Craft Harbors or when these documents are placed in the United States mails.

However, the division is now designating *agents* throughout California who are empowered to accept these documents as a service to boaters. These agents, furthermore, are required to forward these documents to the division only once each week. Hence the question of legal ownership and responsibility during the period when the documents are in the hands of the agent is unclear. To remove doubt the committee recommends that delivery of these documents to the designated agent of the division be accepted as delivery to the division for purposes of determination of legal ownership. Failure to enact this change would jeopardize the rights of persons injured by a boat the transfer of which was accomplished through an agent of the Division of Small Craft Harbors. (See Exhibit No. II, Legislative Counsel Opinion No. 4989, dated September 19, 1962.)

Findings in Support of Recommendation No. 5

Under existing law vessels powered by electric motors of 10 horsepower or less are exempt from requirements to register with the Division of Small Craft Harbors. Since the purpose of registration is to make possible identification of boats involved in accidents, lost boats, or boats operated in violation of boating law and since a vessel powered by an electric motor can as readily become involved in an accident, be lost or be operated in violation of the law as one powered by gasoline or diesel or other fuel, there would appear to be no justification for exempting these electric powered boats from the requirement to register.

On the contrary, the exemption of electric motor powered boats creates unfair competition with engines of similar horsepower using other fuel.

Findings in Support of Recommendation No. 6

The committee is aware that the Council of State Governments has under consideration a recommendation that boat builders in the United States be required by federal law to affix to each hull a number which would serve as a means of positive identification. The committee supports this recommendation and urges the Legislature to communicate this support to the Congress of the United States.

At present there is no way to distinguish between two hulls from the same manufacturer and anyone in possession of a boat, however acquired, may register that boat as his own. It is clearly impossible to improve materially on this situation so long as a method of positive identification is lacking.

Findings in Support of Recommendation No. 7

The Legislative Analyst, as directed by Assembly Concurrent Resolution No. 47, 1961 Legislative Session, has prepared an estimate of the amount of tax paid into the Motor Vehicle Fuel Fund by persons purchasing fuel for boats. This estimate is necessitated by the language of Section 8362(g) of the Revenue Code which requires that funds be appropriated from the Motor Vehicle Fuel Fund,

“(g) To the Small Craft Harbors Revolving Fund for expenditure in accordance with the provisions of Division 57 (commencing at Section 5801) of the Public Resources Code, the sum of seven hundred fifty thousand dollars (\$750,000) per annum, commencing with the 1959-60 fiscal year, this sum representing the amount of money in the Motor Vehicle Fund attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels. Payments pursuant to this subdivision shall be made prior to payments pursuant to subdivision (d).”

The committee feels that a formula should be devised to determine the amount of unclaimed gas tax paid by the boaters to the Motor Vehicle Fuel Fund and that these moneys be annually allotted to the Small Craft Harbors Revolving Fund.

In the opinion of the committee this tax money, having been paid by the boaters, should be used for boating facilities and in the general support of boating in California and calls attention to the language of the Revenue Code, Section 8352(g) which makes patent the logical proposal that taxes paid by boaters should be used for boating.

Findings in Support of Recommendation No. 8

The committee feels that an amendment to Section 5829 2 of the Public Resources Code is needed to provide greater flexibility in negotiations between the state and local jurisdiction for operation of small craft harbors

This change was supported in testimony by the committee of the Small Craft Harbors Commission which met jointly with a subcommittee of the Committee on Public Utilities and Corporations

The wording of the section as it now stands requires that the Small Craft Harbors Commission approve both invitations to bids and contracts under which facilities of a small craft harbor are leased to concessionaires by the operating county, city or district prior to granting the lease for the operation of the whole or part of the harbor to the county, city or district

This procedure of approval of bids prior to advertisement has proved to be difficult to follow and has hampered orderly development of lease agreements Further, the interests of the State are fully protected since the State, which is not a party to the concession leases, must approve the final contract

Section 5829 2 of the Public Resources Code should be amended in the following manner:

5829 2 If the legislative body of a city, county, or district has acquired, constructed or improved small craft harbor facilities pursuant to an agreement or contract for a transfer pursuant to Section 5823, or a loan pursuant to Sections 5827 or 6499 5, such facilities may not be leased in whole or in part to a private concessionaire or lessee until such legislative body has published a notice pursuant to Section 6066 of the Government Code inviting bids and has otherwise complied with this section Prior to publication of the notice the legislative body ~~shall~~ *may* obtain the approval of the commission to the proposed leasing of the harbor facility and to the terms and conditions of the proposed lease The notice shall distinctly and specifically describe the harbor facilities which are to be leased and set forth the period of time for which the facilities are to be leased, and the minimum rental to be paid under the lease The notice shall recite that the lease will reserve to the legislative body the power to fix and determine the rates to be charged by the lessee for the use by the public of such facilities The notice also shall recite that award of the lease by the legislative body is subject to final approval by the commission, and fix a time and place for the opening of bids by the legislative body

At the time and place fixed in the notice the legislative body shall meet and consider all bids which have been submitted. The lease shall be awarded to the highest responsible bidder, but the award shall become final only after the award by the legislative body has been approved by the commission.

(Added by Stats. 1959, Ch. 1863.)

Findings in Support of Recommendation No. 9

The committee believes that equity requires that the fees collected by the Division of Small Craft Harbors in connection with registration or licensing of boats be deposited in the Small Craft Harbors Revolving Fund and further, that the division use these funds for administering the boat registration program and apply the remaining funds to the support of other operational costs of the division.

The committee believes that money contributed by boaters for registration, as with money contributed by them in fuel taxes, should be appropriated to the costs of supporting boating in California.

RECOMMENDATIONS OF THE COMMITTEE

The committee recommends the following actions as necessary to improve the enforcement of existing boating laws, improve boating conditions and facilities, and to strengthen and clarify existing boating laws.

1. The committee finds that there is not adequate information to warrant a recommendation for licensing of operators of small craft at the present time. The committee further feels that enforcement of existing boating laws by local government is inadequate. Therefore, to insure uniformity and adequacy of enforcement, this committee recommends enforcement of the existing boating laws by the State of California. The committee intends to continue to consider licensing of small boat operators for the purpose of making more effective enforcement of laws pertaining to recreational boating. As a possible source of revenue to finance such statewide enforcement, this committee intends to continue consideration of removing boats from personal property tax rolls and creating a state tax in lieu thereof.

The committee does, however, recommend that small craft operators who accept passengers for hire and who operate their craft on other than navigable waters, as defined by the federal government, shall be required to obtain an operators license from the Division of Small Craft Harbors and to pass such tests and/or examinations as are necessary to prove their competency in the operation of their vessels.

This committee recommends that the Division of Small Craft Harbors of the Department of Parks and Recreation, Resources Agency of California, be required to maintain a file of violations of boating law by name of violator, said information to be provided by the courts having jurisdiction, and that such information be supplied to any court on request.

2 This committee recommends that additional funds be provided to continue the Small Craft Harbors Program for loans to enable local government to construct recreational boating facilities. The committee commends the current Small Craft Harbors Commission and Mr. Lachlan Richards, Chief of the Division of Small Craft Harbors for their competence in granting loans under this program.

3 The committee recommends that the construction of harbors of refuge along California's rugged coastline be implemented as soon as possible. The committee further recommends that Section 5823.5 of the Public Resources Code be amended to allow the Division of Small Craft Harbors to construct vitally needed harbors of refuge even though it may not prove possible or practical to enter into prior agreement for the transfer of the completed harbor of refuge to a local agency.

4 Section 704(b) of the Harbors and Navigation Code be amended to specify that the delivery of documents of sale or transfer to an agent of the Division of Small Craft Harbors is, in fact and law, delivery to the division.

5 Section 682(e) of the Harbors and Navigation Code be amended to delete the exemption from registration of vessels powered by electric motors of 10 horsepower or less.

6 The Congress of the United States be requested by joint resolution to enact legislation requiring that all boats used in the waters of the United States carry a permanent hull number which can provide positive identification.

7 Section 8352(g) of the Revenue Code be amended so that the total amount of money in the Motor Vehicle Fuel Fund, attributable to taxes imposed on the distribution of motor vehicle fuel used or usable in propelling vessels, and unclaimed by boat operators, be appropriated to the Small Craft Harbor Revolving Fund on an annual basis.

8 Section 5829.2 of the Public Resources Code be amended to *permit*, rather than to *require*, legislative bodies of a county, city or district to obtain approval of the Small Craft Harbors Commission of the terms of the bid invitation prior to publication of notice inviting bids from private concessionaires or lessees.

9 Section 681(s) of the Harbors and Navigation Code be amended to provide that fees collected for licensing, registering or numbering small craft be deposited in the Small Craft Harbors Revolving Fund and, further, that the costs of administering this registration or licensing be paid from the Small Craft Harbors Revolving Fund.

EXHIBIT No. 1

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, October 17, 1962

HON. JOHN C. WILLIAMSON
212 Goodman Street
Bakersfield, California

STATE BOAT LAW—No. 5160

DEAR MR. WILLIAMSON

QUESTION

You have asked if the enforcement of the safety provisions of Article 1 (commencing with Section 650) of Chapter 5 of Division 3 of the Harbors and Navigation Code which are applicable to undocumented vessels operated upon waters within the territorial limits of California is in conflict with federal jurisdiction or legislation

OPINION

It is our opinion that as a result of the express authorization granted to the states to regulate the use of undocumented vessels upon the navigable waters of the United States by the Federal Boating Act of 1958 under conditions with which California has complied, the enforcement of the safety provisions found in Article 1 (commencing with Section 650) of Chapter 5 of Division 3 of the Harbors and Navigation Code in no way conflicts with federal jurisdiction or legislation

ANALYSIS

The California law relating to the operation, equipment and registration of vessels is found in Chapter 5 (commencing with Section 650) of Division 3 of the Harbors and Navigation Code,* which generally provides for state and local regulation of the equipment and operation of vessels, under the general supervision of the Small Craft Harbors Commission, and for the registration of vessels and issuance of ownership and numbers by the State Division of Small Craft Harbors. The provisions of Chapter 5 are to be enforced by all peace officers of the State or local governmental agencies (Sec. 663, H. & N.C.). Article 1 prescribes safety laws for undocumented vessels operated upon all waters within the territorial limits of California. An undocumented vessel is defined to include any vessel that is not required to have, and does not have, a valid marine document issued by the Bureau of Customs of the United States Government or any federal agency successor thereto (subd. (1), Sec. 651, H. & N.C.). Article 2 provides that every undocumented vessel using the waters of this State must be numbered in accordance with the provisions of Chapter 5 or applicable federal law (see Sec. 680, H. & N.C.).

* Unless otherwise indicated, all article references hereafter are to Chapter 5 (commencing with Section 650) of Division 3 of the Harbors and Navigation Code.

In 1958, the Congress of the United States enacted the Federal Boating Act of 1958 (72 Stats 1754, 46 U.S.C.A. 527-527h) This act provides in part as follows.

"527h. The applicability and the jurisdiction for enforcement, upon the navigable waters of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the District of Columbia, of the laws of the United States and of any State which require the numbering and otherwise regulate the use of undocumented vessels, shall be as follows:

"(1) Such laws of the United States shall be applicable and enforced on such waters by law enforcement officers of the United States

"(2) Such laws of any State in a State having a numbering system approved by the Secretary under section 527a(c) of this title shall be applicable and enforced on such waters by law enforcement officers of the State or by law enforcement officers of the appropriate subdivisions of the State.

"(3) Nothing herein shall preclude enforcement of State or Federal laws pursuant to agreements or other arrangements entered into between the Secretary and any State within the contemplation of section 527f of this title

"(4) Nothing herein shall interfere with, abrogate or limit the jurisdiction of any State. Provided, however, That the Secretary shall not approve any State system for numbering which does not fully comply with the standards set forth in section 527a(c) of this title " [Emphasis added] (46 U.S.C.A. 527h)

It is clear, in our opinion, that the above emphasized language grants power to the states to regulate the use of undocumented vessels operated upon the navigable waters of the United States provided that the State has a numbering system for vessels which has been approved by the secretary of the department in which the United States Coast Guard is operating. We have been informed by the State Division of Small Craft Harbors that the California provisions relating to the numbering of vessels has received federal approval. Thus, since California has received the requisite approval from the federal government, we conclude that the grant by the Federal Boating Act of 1958 empowers the State of California to regulate the use of undocumented vessels upon the navigable waters of the United States without conflicting with federal jurisdiction.

Very truly yours,

A. C. MORRISON
Legislative Counsel

By LLOYD M. HARMON, JR.
Deputy Legislative Counsel

EXHIBIT No. II

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, September 19, 1962

HON JOHN C WILLIAMSON
212 Goodman Street
Bakersfield, California

CALIFORNIA BOATING ACT—No. 4989

DEAR MR WILLIAMSON:

You have asked the following questions which we will answer in series concerning the registration of undocumented vessels by the Division of Small Craft Harbors.

QUESTION No. 1

If the division delegates someone to act as its agent for the issuance of a certificate of number is that person an agent of the State of California for the purpose of the transaction?

OPINION No. 1

In our opinion he is.

ANALYSIS No. 1

Generally speaking, every undocumented vessel using the waters of this State is required to be numbered (Sec 680, H & NC*). To obtain a certificate of number, the owner of the vessel is required to make application therefor on an approved form and to pay the required fee (Sec 681). If proper application is made, a certificate of ownership is issued to the legal owner and a certificate of number is issued to the owner, or both to the owner if there is no legal owner (Sec 681).

The law provides that the application may be made to the Division of Small Craft Harbors at its Sacramento office or to a person authorized by the division to act as its agent for the issuance of a certificate of number (subds (a) and (e), Sec. 681). A person so authorized is assigned a block of numbers which, upon issuance in conformity with the statute and any rules and regulations adopted pursuant thereto, "shall be valid as if issued directly by the Division of Small Craft Harbors" (subd. (e), Sec. 681).

In connection with these agents, the regulations provide that the appointment of such agents, referred to as undocumented vessel registration agents, is at the pleasure of the Division of Small Craft Harbors. They receive no compensation for their services and are required to be bonded under a good and sufficient bond conditioned as deemed necessary, the premium to be paid by the State. All moneys received by such agents from the registration of vessels are required to be kept separate from any other funds of such agent and are at all times declared to be the property of the State. As a condition to appointment as an agent, a person must have an established place of business, be

* All further section references are to sections of the Harbors and Navigation Code

engaged in an activity directly related to boating, and have a means of identification which will clearly indicate to the public the name of his business (14 Cal Adm. C. 5511).

We believe it is clear from the above described provisions that a person appointed to act as an undocumented vessel registration agent is an agent of the State of California for the purposes of the transaction authorized by the designation.

QUESTION No. 2

In a transaction involving a transfer of ownership to an undocumented vessel, when is the liability of the original owner terminated? Is notice to an agent sufficient to relieve him of liability?

OPINION No. 2

The original owner's liability is terminated when he either makes proper endorsement and delivery of the certificate of ownership and delivery of the certificate of number to the transferee or when he delivers the required notice to the Division of Small Craft Harbors. Notice to an agent will not relieve him of liability.

ANALYSIS No. 2

Generally speaking, no transfer of title to an undocumented vessel numbered as required by law is effective until one of the following is complied with:

(a) The transferor has made proper endorsement and delivery of the certificate of ownership and delivery of the certificate of number to the transferee and the transferee delivers to the Division of Small Craft Harbors or places the certificates in the United States mail addressed to the Division of Small Craft Harbors as required by law with the proper transfer fee and thereby makes application for a new certificate of ownership and a new certificate of number.

(b) The transferor delivers to the Division of Small Craft Harbors or places in the mail addressed to that office the appropriate documents for the transfer of ownership of the vessel (Sec 700).

However, although a transfer of title does not become effective until either one of the above has been complied with, provision has been made in Section 704 for the termination of civil liability of a former owner on a bona fide sale.

Section 704 states that an owner who has made a bona fide sale or transfer of an undocumented vessel and has delivered possession thereof to the purchaser shall not be deemed the owner of the vessel so as to be subject to civil liability for its operation thereafter by another when he either makes proper endorsement and delivery of the certificate of ownership and delivery of the certificate of number to the transferee, or when he delivers to the Division of Small Craft Harbors or places in the United States mail addressed to the Division of Small Craft Harbors, the required notice or appropriate documents for the transfer of the vessel. The section specifically requires notice to the *division* and not to an agent of the division.

The notice referred to is that required to be made by Sections 710 and 711. Section 710 states that whenever the owner of an undocumented vessel numbered as required by law sells or transfers his title or interest therein and delivers possession of the vessel to another he must, within five days thereafter, notify the Division of Small Craft Harbors of the sale. Section 711 provides that every dealer, upon transferring by sale, lease, or otherwise any undocumented vessel required by law to be numbered, must no later than the end of his next business day give written notice of the transfer to the Division of Small Craft Harbors.

Thus, liability terminates after the sale and transfer of possession of an undocumented vessel when the former owner makes proper endorsement and delivery of the certificate of ownership and delivery of the certificate of number to the buyer or when he gives the required notice to the division.

Very truly yours,

A. C. MORRISON
Legislative Counsel

By (Mrs) ANN MACKEY
Deputy Legislative Counsel

HOUSE RESOLUTION No. 417

By MR CUNNINGHAM

Relative to Regulating the Car Rental and Leasing Business

WHEREAS, There have been reported to the Legislature instances of alleged advertising and business frauds in the car rental and leasing business; and

WHEREAS, The growth and development of this business is increasing its effect upon, and importance to, the economic well-being of this State; and

WHEREAS, It is necessary that a legislative study be made of the necessity and feasibility of subjecting the car rental and leasing business to regulation by some appropriate body such as the Public Utilities Commission in order to protect the public against fraud and abuses, now, therefore, be it

Resolved by the Assembly of the State of California That the Committee on Rules is directed to assign to an appropriate interim committee for study the subject of the car rental and leasing business, including but not limited to alleged advertising and business abuses in the field and the possibility of regulation by an appropriate body such as the Public Utilities Commission, and that such interim committee report to the Assembly with its recommendations not later than the fifth calendar day of the 1963 Regular Session.

HEARINGS HELD ON HOUSE RESOLUTION No. 417

One hearing was held by the committee on July 30, 1962, in Room 1138, State Office Building, at 107 South Broadway, Los Angeles.

PERSONS APPEARING AND TESTIFYING BEFORE THE COMMITTEE

ROBERT J BAUER, President, Better Business Bureau of Los Angeles

R J EVANS, The Hertz Corporation

O'NEAL D GANEY, Los Angeles County Taxpayers League

ALLEN M GARFIELD, American Automotive Leasing Association and S & C Lease Plans, Inc

THOMAS D HODGE, Better Business Bureau of Los Angeles

GENE HOLMES, Avis Rent-A-Car

W A KNIGHT, Avis Tanner Rent-A-Car System

JAMES E McDONALD, National City Truck Rental Company

M J MIRKIN, Budget Rent-A-Car

RICHARD A NELSON, Cal State Auto Leasing, Inc

J R NICHOLS, General Truck Leasing Corporation

PHILIP S SNYDER, CATRALA of California

SCOPE OF COMMITTEE STUDY

This committee heard testimony relating to the car rental and car leasing business as conducted in the State of California. Testimony received relating to the leasing of cars and trucks indicated that there are no problem areas nor do there appear to be any fraudulent advertising claims or operating procedures in this industry.

In the car rental field, testimony presented indicated extensive use of bait advertising, i.e., advertising cars available at low rates when in fact an extremely low number of cars were available at the rates advertised.

Every attempt is being made by the industry to support an advertising code of ethics in an attempt to correct the problem of bait advertising in conjunction with and with the support of better business bureaus.

While this committee recognizes that fraudulent advertising practices do exist in the car rental field it would appear that legislation on regulatory control would be premature at this time.

RECOMMENDATIONS OF THE COMMITTEE

The committee recommends that the Legislature take no action at the present time regarding legislation relating to the regulation of the car rental and leasing industry. While testimony presented to this committee indicates that bait advertising exists on the part of some members of the industry, attempts are being made by the industry to correct this problem, and the Legislature believes such efforts should be given every opportunity prior to legislative action. The committee will study the results of the industry's efforts in this matter.

ASSEMBLY BILL No. 152

By MR CUNNINGHAM

Relative to Regulation of Commercial Air Operations

Assembly Bill No. 152 was introduced by Mr. Cunningham and co-authored by all members of this committee as a result of interim study conducted between the 1959 and 1961 General Sessions. After hearings conducted by the Assembly Public Utilities and Corporations Committee, this bill and its subject matter were rereferred for additional interim study. Draft legislation which embodies the detailed recommendations of this committee appear as Appendix I to the section of this report relative to Assembly Bill No. 152.

HEARINGS HELD BY THE COMMITTEE

Three hearings were held by the committee as follows: December 11 and 12, 1961, in Los Angeles; February 15 and 16, 1962, in San Francisco; and September 17 and 18, 1962, in San Francisco.

PERSONS APPEARING AND TESTIFYING BEFORE THE COMMITTEE

J. FLOYD ANDREWS, President, Pacific Southwest Airlines
M. F. BAGAN, President, San Francisco-Oakland Helicopter Airlines
RALPH BANKS, President, United Helicopters, Inc.
CLYDE P. BARNETT, Director, California Aeronautics Board
TOM BAXTER, National Air Taxi Conference
ROBERT A. BERLINER, Helicopter Association of America and Western Helicopter Operators
VINCENT A. BORDELON, Manager, Transportation Department, Los Angeles Chamber of Commerce
ROBERT P. BOYLE, Associate General Counsel, Federal Aviation Agency
HOWARD CRAMER, S. V. Flying Service, Inc.
JOHN C. COULSTON, Vice President, Agricultural Aircraft Association
JACK DOWELL, Air Taxi Operator, San Diego
M. J. GAGNON, Senior Transportation Rate Expert, California Public Utilities Commission
WILLIAM GIBBS, JR., Gibbs Flying Service, Inc.
ROBERT F. GUNNELL, Secretary, California Aircraft Dealers Association
J. D. HANAUER, Los Angeles Chamber of Commerce
ROBERT J. HANLEY, President, Catalina Channel Airlines, Inc.
LESLIE HOOD, Executive Secretary, Bay Area Aviation Committee
ALBERT J. HUBER, California Association of Airport Executives
HAROLD A. IRISH, City Attorney, City of Ukiah
HENRY A. JACOPI, Assistant Director of Transportation, California Public Utilities Commission
RICHARD KEATINGE, Trans California Airlines
E. R. KOOSMANN, California Air Carriers and Operators Association

EDGAR J LANGHOFER, San Diego Chamber of Commerce
 JOHN W LUHRING, Director, Los Angeles Chamber of Commerce
 JOSEPH S MARRIOTT, Aero Consultant, Airports and Airspace
 JOHN W McINNIS, Pacific Southwest Airlines
 D W MERCER, Mercer Enterprises, Burbank, California
 JAMES M NISSON, Aviation Committee, League of California Cities
 JOHN C PATTERSON, Director, California Aircraft Dealer's Association
 BUDD J PEASLEE, Airport Director, City of Salinas
 LEE PITT, Secretary and Manager, Aerospace Committee, Los Angeles Chamber of Commerce
 JOHN PRESTON, JR., Attorney
 EUGENE A READ, Director, Freight Traffic Department, California Manufacturer's Association
 JACOB W ROSENTHAL, Chief, Routes and Agreements Division, Bureau of Economic Regulation, Civil Aeronautics Board
 J WALTER SCHAEFER, California Aeronautics Board
 MRS JIM SORTHUN, Admiral Air Service, Inc
 J STANLEY STROUD, United Airlines
 W R THIGPEN, Air Transport Association
 ROBERT WANAMAKER, California Association of Airport Executives
 EDWARD C WATSON, JR., Crownair
 MALCOLM T WORDELL, Manager, El Dorado County Airports

SCOPE OF COMMITTEE STUDY

PRESENT JURISDICTION OVER COMMERCIAL AIR OPERATORS IN CALIFORNIA

Commercial air operators in California are subject to possible regulation by the federal government, through the Civil Aeronautics Board (CAB) and the Federal Aviation Agency (FAA). Common carriers are subject to rate regulation by the California State Public Utilities Commission. Operators of crop dusting equipment are regulated by the Department of Agriculture.

FEDERAL GOVERNMENT

Under the Federal Aviation Act of 1958, the Federal Aviation Agency has exclusive jurisdiction over safety regulation of air operations in intrastate air transportation as well as in interstate air transportation. Under the same act, the Civil Aeronautics Board is given authority over interstate, overseas, and foreign air transportation. We find nothing in this act giving specific authority to the Civil Aeronautics Board to regulate intrastate air transportation except as to the transportation of mail.

The Federal Aviation Act of 1958

The Federal Aviation Act of 1958 provides for the regulation and promotion of civil aviation and for the safe and efficient use of the navigable airspace. This act, which repealed the Civil Aeronautics Act of 1938, re-enacted, in substance, the provisions of that act pertaining to air carrier economic regulation, with only such deletions as were necessary to eliminate obsolete matter. The outstanding feature of the 1958 act was the division of responsibility for the administration of air safety regulation and for economic regulation.

The Federal Aviation Agency (FAA), created by the 1958 act, was made responsible for the management of the national airspace, airworthiness of aircraft and safety in civil aeronautics. Its jurisdiction includes the intrastate operation of all aircraft, regardless of the purpose for which such aircraft are operated.

The Civil Aeronautics Board (CAB) continued to be responsible for the economic regulation of air transportation and for aircraft accident investigation. The economic regulation prescribed under the act extends only to common carriers by air performing interstate, overseas or foreign air transportation. The board does not have jurisdiction over the economic regulation of strictly intrastate air common carrier operations except in connection with the transportation of mail.

Federal Aviation Agency

The Federal Aviation Agency (FAA) is directed by an administrator who is responsible for the exercise of all powers and the discharge of all duties of the agency.

The FAA constructs, operates and maintains the federal airways system and acquires, establishes, operates and maintains the air navigation facilities established on the airways and at terminal areas. It allocates and regulates the use of the airspace and is responsible for keeping aircraft safely separated while operating in controlled airspace.

This agency administers the Federal-aid Airport Program and acts in an advisory capacity for communities in the design and construction of civil airports.

The FAA prescribes and administers rules and regulations dealing with the competency of airmen, airworthiness of aircraft and the control of air traffic. It promotes safety through certification of airmen, aircraft and such air agencies as flight and ground schools. It checks the design, structure and performance of new aircraft to insure the safety of the flying public.

The FAA disseminates information on civil aviation generally and provides flight information data for pilots. It develops and recommends medical standards for airmen and conducts aviation medical research. It undertakes or supervises research and development in the fields of aeronautics and electronics and carries on such other activities as may be required to encourage and foster the development of civil aviation and air commerce in the United States.

The Civil Aeronautics Board

Responsibilities of the Civil Aeronautics Board (CAB) are (1) to encourage the development of an air transportation system adapted to the present and future needs of commerce, the postal service, and the national defense; (2) to regulate air transportation in such a manner as to recognize and preserve its inherent advantages and to foster sound economic conditions therein; (3) to promote adequate, economical and efficient service by air carriers at reasonable charges; (4) to encourage competition to the extent necessary to assure the sound development of an adequate air transportation system; (5) to promote safety in air commerce; and (6) to promote, encourage and develop civil aeronautics.

The CAB is responsible for the issuance of certificates of public convenience and necessity to qualified applicants authorizing them to engage in air transportation subject to such conditions and limitations as the public interest may require. It may modify, suspend or revoke such certificates and may authorize the transfer thereof. An air carrier may not abandon any certificated route, or part thereof, unless the CAB finds that such abandonment is in the public interest. Temporary suspension of service may be authorized by the CAB if such suspension is in the public interest.

The CAB may suspend the use of rates, fares or charges proposed by air carriers. It may determine and prescribe lawful rates, fares, or charges for the transportation of persons and property and the divisions thereof, and may establish reasonable through air service and joint rates, fares or charges applicable thereto. The CAB determines service mail rates and subsidy, and makes payments of subsidy. Every air carrier is required to file with the CAB and keep open to public inspection, tariffs showing all local and joint rates, fares and charges and rules, classifications, practices and services. The CAB prescribes the form and manner in which such tariffs shall be published, posted and filed and the information to be contained therein.

The CAB regulates air carrier accounting practices and develops air carrier reporting systems. Copies of all intercarrier contracts and agreements affecting air transportation subject to the economic provisions of the act must be filed with the CAB and are subject to its approval. Field audits of carriers' accounts and records are performed at regular intervals.

Consolidations, mergers, purchases, leases, and interlocking relationships involving air carriers, or acquisition of control of air carriers, are unlawful unless approved by the CAB. Loans or financial aid from the United States to any air carrier must be approved by the CAB subject to such terms and conditions as the CAB shall prescribe.

Other major CAB activities:

(1) The maintenance of public records of tariffs, schedules and other material required to be filed by air carriers;

(2) Assuring protection of the public by requiring the performance of safe and adequate air carrier service, and by eliminating rate discriminations and unfair competition or unfair and deceptive practices in air transportation;

(3) Investigation and determination of the probable causes of civil aircraft accidents and suggesting corrective action to improve safety in air commerce;

(4) Adjudication of appeals from safety enforcement decisions of the administrator of the FAA, and participation in safety rule-making proceedings of the administrator as appropriate.

The economic regulations of the Civil Aeronautics Board incorporate all the substantive rules adopted by the CAB as authorized by law and statements of general policy or interpretations thereof for the guidance of the public. These regulations cover the following matters:

- (1) The classification and exemption of air carriers;
- (2) Applications for and terms, conditions and limitations of certificates of public convenience and necessity;
- (3) Construction, publication, filing and posting of air carrier tariffs;
- (4) Temporary suspension or interruption of service or change of route authorized by such certificates;
- (5) Charter trips and special services;
- (6) Transportation of mail;
- (7) Inspection of accounts and property;
- (8) Uniform system of accounts and reports and the filing of reports;
- (9) Preservation of carrier records;
- (10) Prohibited interests; and
- (11) Pooling and other agreements.

Under Part 298 of CAB regulations aircraft weighing less than 12,500 pounds have been granted an exemption from the regulatory authority of the CAB. This exemption is granted subject to meeting the following requirements: (1) that operating aircraft weigh under 12,500 pounds; (2) that they have an appropriate safety authority from the FAA; and (3) that they do not operate between points served by scheduled helicopter operators.

STATE OF CALIFORNIA

Air common carriers performing intrastate air transportation of persons and/or property are regulated under Article 7, Sections 17, 19, 20, 21 and 22 of the California State Constitution. This regulation is maintained on both wholly intrastate common carriers and on the intrastate segments of common carriers operating as interstate airlines (i.e. United Airlines, Western Airlines, Transworld Airlines, Pacific Airlines, etc.). Under these constitutional provisions such air common carriers must publish and file with the California Public Utilities Commission tariffs naming their intrastate rates, fares and charges. They may not raise any rate or charge except on a showing before the commission that such increases are justified. The commission has the authority to regulate within the field of tariffs only, including the right to examine books, records and papers of such companies, and to prescribe a uniform system of accounts to be kept by them.

The California Aeronautics Board, while given broad general legislative powers over aviation in California, has never received adequate funds from the Legislature to enforce these powers. Also the Legislature has never defined specific duties in the field of advancing the aviation industry, except those powers of the California Aeronautics Board concerning control over construction of airport facilities.

LOCAL REGULATION

There is no local regulation by cities and/or counties concerning commercial air operations except those regulations which may exist for purposes of airport operations (see Exhibit I, Legislative Counsel Opinion No. 2021, dated March 12, 1962.)

AREAS WHERE NO REGULATORY JURISDICTION EXISTS

Air common carriers and air contract carriers operating wholly within the boundaries of the State of California are exempt from federal regulation by the Civil Aeronautics Board. Economic regulations of such wholly intrastate air operations are within the authority of the State of California (see Exhibit No. II, Legislative Counsel Opinion No. 4446, dated July 10, 1962). However, since the State of California has not seen fit to regulate these air common carriers and air contract carriers, at the present time they are not subject to any economic regulation with the exception of air common carriers whose rates are subject to regulation by the State Public Utilities Commission under Article 7, Sections 17, 19, 20, 21 and 22 of the California State Constitution. States such as Illinois, Michigan, Nebraska, Nevada and New York do in fact regulate intrastate commercial air operations to varying degrees (see Exhibit III, Legislative Counsel Opinion No. 4455, dated July 25, 1962).

Another area in which no regulatory jurisdiction exists is that of providing the general public with adequate protection by insuring that all commercially operated aircraft carry adequate public liability and property damage insurance.

The committee notes with interest that a list of commercial air operations, supplied it in May 1961, contained 354 such companies of which, by September 1962, 31 were no longer in business.

NEED FOR AIR SERVICE TO AREAS OF LESSER POPULATION

Testimony presented to this committee indicates a need for aircraft service to communities outside of the metropolitan San Francisco, Los Angeles and San Diego areas. Further testimony indicates that communities previously enjoying the use of air service were unable to provide an adequate number of boarding passengers to make continued air service economically feasible, in light of the size of the aircraft used. In addition, testimony indicated that the economic feasibility of properly regulated air common carrier operations in such areas depended upon:

- 1 Properly financed commercial air operations, given an adequate opportunity to encourage air service without fear of undue competition
- 2 Use of aircraft of a size capable of economic operation in the area involved
- 3 Proper schedules, encouraging maximum travel by air

FINDINGS OF THE COMMITTEE

As a result of the hearings held on this subject the committee determined the following facts:

1. Assembly Bill No 152, as introduced in the 1961 General Session, did not appear to be a suitable vehicle for regulating wholly intrastate commercial air operations.

2 All interstate air operations are issued a certificate of public convenience and necessity by, and are regulated by, the Civil Aeronautics Board. The issuance of this certificate also brings within the control of the CAB all intrastate operations of those companies receiving such a certificate.

3 Air common carriers operating wholly within the boundaries of the State of California are exempt from federal economic regulation by the CAB. Air charter operators operating wholly within the boundaries of the State of California are likewise exempt from economic regulation by the Civil Aeronautics Board.

4 All aircraft operated in the State of California are subject to the regulations of the Federal Aviation Agency dealing with the competency of airmen, airworthiness of aircraft and control of air traffic, in order to provide for the safe and efficient use of the navigable airspace.

RECOMMENDATIONS OF THE COMMITTEE

The committee recommends that the Public Utilities Code be amended so that any air common carrier operating wholly within the State of California and without a certificate of public convenience and necessity from the Civil Aeronautics Board or other federal agency designated to issue such a certificate be required to obtain a certificate of public convenience and necessity from the California Public Utilities Commission. Authority for this regulation by the State of California should exclude any regulation of the field of air safety which is under the exclusive jurisdiction of the federal government.

This committee does not recommend any state regulation for air charter operators at the present time. The committee wishes to point out, however, that continued operations of a type testified to before this committee by charter aircraft operators may well subsequently result in regulatory control by the State of California.

It is further recommended that all operators of commercial aircraft in the State of California be required to obtain and continue in effect adequate protection against liability imposed by law upon a commercial air operator for payment of damages for personal bodily injury to any passenger, for personal bodily injury to other than a passenger, and for property damage as a result of any accident.

EXHIBIT No. 1

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, March 12, 1962

HON GORDON COLOGNE
Assembly Chamber

AIR CARRIER FRANCHISES—No. 2021

DEAR MR. COLOGNE. You have submitted to us the following question.

QUESTION

Does a city or a county have the right to grant an exclusive franchise to an intrastate public air carrier for the exclusive use of the city's or county's public airport?

OPINION

In our opinion it is doubtful that a general law city or a county may grant an exclusive franchise to an intrastate public air carrier for the exclusive use of the city's or the county's public airport.

As to chartered cities, however, the power of a city to grant such a franchise would depend upon the provisions in each city's charter.

It is also our opinion that if federal funds have been expended on the airport that federal law would prohibit the granting of such an exclusive franchise.

ANALYSIS

In general, the power of the State to grant franchises may be delegated to municipal corporations; it is well settled, however, that in the absence of constitutional or legislative authorization, municipalities have no power to grant franchises (38 Am Jur., Municipal Corporations, Sec 525; and see 22 Cal. Jur. 2d, Franchises, Sec. 12). Statutes conferring power upon municipalities to grant franchises are subject to rules of strict construction (*Water, Light and Gas Co. v. Hutchinson* (1907), 207 U.S. 385, 52 L. Ed., 257, 262-263).

The Legislature may delegate to municipal corporations, in the absence of constitutional prohibition, the power to grant exclusive franchises to public service corporations, but this power must be expressly conferred or necessarily implied from other powers granted (38 Am Jur., Municipal Corporations, Sec 540). The authority of municipalities to grant exclusive franchises is consequently not implied from the use of general language in statutes or charters, and a grant of power which enables municipalities to confer the privilege of furnishing a service is not necessarily a grant of power to make such a privilege exclusive (38 Am Jur., Municipal Corporations, Sec 540, and see *McQuinn*, Municipal Corporation, Sec 34-23).

Article 1 (commencing with Section 6001) of Chapter 1 of Division 3 of the Public Utilities Code governs the manner in which cities and counties may grant franchises.

These provisions, however, do not grant any right or privilege, nor do they purport to empower or authorize boards of supervisors to grant

franchises or other privileges, but instead they indicate an intent to limit and restrict the powers which may have been granted under other laws by specifying the procedure which must be imposed in the granting of any franchises by subordinate legislative bodies (*County of Los Angeles v. Southern Cal Tel Co* (1948), 32 Cal 2d 42 Cal. 2d 110, 116-117; and see, e.g., Sec 26001, Gov C, which authorized county board of supervisors to grant franchises along and over public roads and highways)

Further, although the power of the State to grant franchises may be delegated to cities, the intention to do so must be clearly expressed, and any doubt as to whether there has been such a delegation must be resolved in favor of retention of the power by the State (*City of Petaluma v. Pac. Tel. & Tel. Co.* (1955), 44 Cal 2d 284, 287; and see *Pacific Tel & Tel. Co. v. City of Los Angeles* (1955), 44 Cal. 2d 272, 279-280). And, as previously noted, a grant of power which enables municipalities to confer the privilege of furnishing a service is not necessarily a grant of power to make such a privilege *exclusive*.

We are unaware of any statute expressly authorizing cities or counties to grant exclusive franchises to intrastate air carriers.

In view of the foregoing and in the absence of express statutory or constitutional authorization, in our opinion it is doubtful that a general law city or county has the power to grant an exclusive franchise to an intrastate air carrier for the exclusive use of its airport (see *Colen v. Sunhaven Homes, Inc.* (Fla 1957), 98 So 2d 501)

As to chartered cities, however, the power of a city to grant such a franchise would depend upon the provisions in each city's charter, for the authority of the council of a chartered city to grant franchises is measured by its charter (see *Mann v. City of Bakersfield* (1961), 192 A.C.A 440, *City of Salinas v. Pacific Tel & Tel. Co.* (1946), 72 Cal App 2d 494, 34 Cal Jur 2d, Municipal Corporations, Sec 176)

It should also be noted that if federal funds have been expended for airports and navigation facilities, federal law prohibits the granting of an exclusive right for the use of any landing area or air navigation facility (Title 49, U.S.C.A., Sec. 1349, subd (a)). In interpreting this statute, the Attorney General of the United States has held that the grant of an exclusive right to use an airport for a particular aeronautical activity, such as an air carrier, falls within the provision of this section prescribing any exclusive right for the use of the landing area (40 Ops. U.S. Atty Gen 71, 73; and see Final Report of the Senate Interim Committee on Aviation, 1959, pp 42-43, wherein there is listed the airports in California which have received federal aid for the years 1956 through 1959).

Thus, where federal funds are expended for airports and navigation facilities, it would appear that federal law would prohibit the granting of exclusive franchises to intrastate air carriers.

Very truly yours,

A. C. MORRISON
Legislative Counsel

By ALAN W. STRONG
Deputy Legislative Counsel

EXHIBIT II

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, July 10, 1962

HON MONTIVEL A BURKE
1525 St. Albans Road
San Marino, California

REGULATION OF COMMERCIAL AIRLINES—No. 4446

DEAR MR BURKE. You have asked us two questions relating to the regulation of airlines engaged in intrastate commerce. These questions are set forth and considered separately below.

QUESTION No. 1

What commercial air businesses, including common carriers or for-hire charter services, are subject to possible regulation by the State of California similar to that imposed by the federal Civil Aeronautics Board?

OPINION AND ANALYSIS No. 1

We have assumed that the regulation referred to is the economic regulation of air carriers which is authorized in the Federal Aviation Act of 1958, and which concerns such matters, for example, as certificates of public convenience and necessity, permits, tariffs and rates (see Title 49, U.S.C.A. Sec 1371 et seq.).

While it is clear that the power of Congress under the commerce clause extends to the regulation of the operation of air carriers and that Congress has exercised this power and occupied the field of flight regulations to the exclusion of state regulations, it is equally clear that with respect to intrastate air transportation (solely between points within a state), certain regulations by state law in the economic field are permissible (*People v Western Air Lines, Inc.* (1954), 42 Cal 2d 621).

For example, at the present time the control of intrastate rates of common carriers by air is subject to the jurisdiction of the California Public Utilities Commission, under Sections 20 and 22 of Article XII of the California Constitution (see *People v Western Air Lines, Inc.*, supra; see also Secs. 160.6 and 160.91 to 160.95, incl, Ag.C., which require crop dusters to obtain a certificate of qualification and make certain financial responsibility requirements).

Thus, in our opinion, the State could subject commercial air businesses engaged in intrastate commerce, to some form of economic regulation, including such businesses as passenger air carriers, freight air carriers, contract air carriers, and so forth. As to exactly what types of commercial air business should be regulated is, of course, a matter for the Legislature to determine.

QUESTION No. 2

Are air carriers which operate wholly within the boundaries of the State of California subject to state regulation when they carry passengers or freight which will become a part of interstate commerce?

OPINION AND ANALYSIS No. 2

We have assumed that this question relates to a situation wherein a passenger boards a local air carrier in Bakersfield, for example, for a flight to San Francisco, where he will transfer to another air carrier for a flight to Seattle.

Although the air carrier in such a case may be engaged in interstate commerce (see 11 Am. Jur., Commerce, Sec. 65), we doubt that this factor would prohibit some form of economic regulation of the intrastate business, so long as the effect of such legislation would not be to obstruct or unduly burden the freedom of interstate commerce (see *People v. Western Air Lines, Inc.*, *supra*; 11 Am. Jur., Commerce, Sec. 21).

Very truly yours,

A. C. MORRISON
Legislative Counsel

By ALAN W. STRONG
Deputy Legislative Counsel

EXHIBIT No. III

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, July 25, 1962

HON. MONTIVEL A. BURKE
1525 St. Albans Road
San Marino, California

**CONTROL AND REGULATION OF COMMERCIAL
AIR ENTERPRISES—No. 4455**

DEAR MR. BURKE: You have asked what types of economic regulation the various states employ, if any, to control commercial air enterprises, both common carriers and for-hire charter services.

It is our understanding that the term "economic regulation" refers to the requiring of certificates of public convenience and necessity, filing of tariffs, rates, schedules, and so forth.

For the purpose of answering this question, we have perused the statutes of the States of Illinois, Michigan, Nebraska, Nevada, New York, and Texas. A short summary of the types of economic regulation that we have found in the statutes of these states is set out below.

ECONOMIC REGULATION OF AIR CARRIERS**(1) Illinois**

The Illinois Aeronautics Act (Ch 15½, Smith-Hurd Ill. Annot. Stats., Sec. 22.1 et seq.)¹ authorizes the Department of Aeronautics of that

¹ All section references are to Chapter 15½, Smith-Hurd Illinois Annotated Statutes.

state to require the annual registration of *federal* licenses, permits, or certificates of civil aircraft engaged in air navigation within the state, and the department is required to charge a one dollar fee for such registration (Sec 22 42)

The department is given the authority to revoke the certificate of registration under certain specified conditions (Secs. 22 42(4) and 22 42b), and the subsequent operation of such aircraft is unlawful (Secs 22 42j(c) and 22 43)

There are several exceptions to these registration requirements, however. For example, the act does not apply to aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce (Secs 22 42k and 22 44)

The Illinois Department of Aeronautics is authorized to promulgate rules and establish standards for the purposes of protecting and insuring the general public interest and safety, but no such ruling shall apply to airports or other air navigation and facilities owned or controlled by the federal government (Sec 22 28) Further, such rules must be kept in conformity, as nearly as may be, with the current federal legislation and rules (Sec 22 29).

(2) *Michigan*

The Michigan statutes² authorize the state's aeronautics commission and department to exercise general supervision over aeronautics within the state, including the power to regulate commercial operations in intrastate commerce within the borders of the state by the issuance of appropriate regulations (Sec 259 51), but no such regulation shall apply to aeronautical facilities owned by the federal government (Sec 259 51(c))

All aircraft operating over the state are required to be registered annually with the department and a registration fee paid, as fixed by a statutory formula (Secs 259 76 and 259 77) No aircraft can be issued a state registration certificate that does not have an appropriate and effective registration or airworthiness certificate issued by the proper federal authorities (Secs 259 76 and 259 80). There are several exemptions to the registration requirements, including any aircraft or its personnel engaged in commercial flying constituting an act of interstate or foreign commerce, or in that part of such commerce which is intrastate in character (Sec 259.84(d))

(3) *Nebraska*

The regulatory provisions in the Nebraska law are substantially similar to those found in the Illinois law, and therefore are not repeated here (see, e.g., Vol 1 R R S of Neb 1943, Secs 3-109, 3-110, 3-128, 3-129, and 3-130)

(4) *Nevada*

The Nevada law³ provides that it shall be unlawful for any person to operate any civil aircraft within the state unless such aircraft and

² All section references are to Volume 2, Compiled Laws of Michigan, 1948.

³ All section references are to Volume 4, Nevada Revised Statutes

the airman have an appropriate certificate issued by the United States, if such certificate is required by the United States (Secs. 493 150 and 493 160).

In Nevada, a "public utility" means "airship companies" (See 704 020), and thus a company so qualifying would be required, among other things, to furnish reasonably adequate service and facilities (Sec. 704 040), to file its rate schedules with the Public Service Commission (Sec. 704 070), to give notice as a prerequisite to a change in rates (Sec. 704 100), and to furnish to the commission uniform and detailed accounts of all business transacted (Sec. 704 180).

(5) New York

The New York statutes⁴ provide for extensive regulation of common carriers (see Sec. 25 et seq ; and see Sec. 2, subd. (9) for definition of "common carrier"). For example, a common carrier is required to file with the commission tariff schedules (Sec. 28), to submit notice to the commission upon a change in schedule (Sec. 29), to refrain from unjust price discrimination (Sec. 31) and unreasonable preference in his service (Sec. 32).

It should be noted, however, that not all air carriers qualify as common carriers.

(6) Texas

None found (see *Avi Law Rep*, CCH, V. 2, pp 20, 829 to 20,831, incl).

You have also asked whether states control the interstate segments of commercial air operations.

In the six states surveyed, we did not find any state statute which expressly purported to control the interstate segments of commercial air operations.

In fact, several of the states surveyed expressly excepted interstate operations from the purview of the regulatory statute (see above, States of Illinois, Michigan, and Nebraska).

Very truly yours,

A. C. MORRISON
Legislative Counsel

By ALAN W. STRONG
Deputy Legislative Counsel

⁴ All section references are to Book 47, Public Service Law, Consolidated Laws of New York

APPENDIX I

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY PREPRINT BILL No. 10

Proposed by Mr. Williamson

An act to add Part 5 (commencing with Section 24100) to Division 9 of the Public Utilities Code, relating to the regulation of passenger air carriers.

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

1 SECTION 1. Part 5 (commencing with Section 24100) is
2 added to Division 9 of the Public Utilities Code, to read:

3
4 PART 5. PASSENGER AIR CARRIERS

5
6 CHAPTER 1. GENERAL PROVISIONS

7
8 24100 Unless the context otherwise requires, the defini-
9 tions in Part 1 (commencing with Section 21001) of this di-
10 vision shall govern the construction of this part

11 24101 As used in this part, "passenger air carrier" means
12 a person owning, controlling, operating, or managing aircraft
13 primarily as a common carrier of passengers for compensa-
14 tion wholly within this State, between fixed termini or over
15 a regular route

16 24102 As used in this part, "commission" means the
17 Public Utilities Commission

LEGISLATIVE COUNSEL'S DIGEST

Passenger air carriers

Adds Pt 5 (commencing with Sec 24100), Div. 9, P.U.C.

Provides generally for regulation, supervision and control by Public Utilities Commission of passenger air carriers operating as common carriers of passengers for compensation wholly within State, between fixed termini or over regular route, and not operating under federal certificate

Requires passenger air carriers to obtain certificate of convenience and necessity, and prescribes requisites therefor. Authorizes commission to revoke or alter such certificate under specified conditions

Authorizes commission to prescribe rules applicable to passenger air carriers, and to require such carriers to obtain insurance

1 24103 The provisions of this part do not apply to aircraft
2 operated under an effective certificate of public convenience
3 and necessity issued by the federal government

4 24104 This State recognizes the authority of the federal
5 government to regulate and control safety factors in the operation
6 of aircraft and the use of airspace

7 8 CHAPTER 2 CERTIFICATION AND REGULATION 9

10 24115 No passenger air carrier shall operate aircraft or
11 cause the operation of aircraft primarily for the transportation
12 of persons as a common carrier for compensation wholly
13 within this State, between fixed termini or over a regular
14 route, except in accordance with the provisions of this part

15 24116 The commission shall

16 (a) Supervise and regulate every passenger air carrier in
17 all matters affecting the relationship between them and the
18 public

19 (b) Fix the rates, fares, charges, classifications, and rules
20 of each such carrier

21 (c) Regulate the accounts and service of each such carrier,
22 and require the filing of annual and other reports and of
23 other data by such carriers

24 The commission, by general order or otherwise, may prescribe
25 rules applicable to any and all passenger air carriers.
26 The commission, in the exercise of the jurisdiction conferred
27 upon it by the Constitution of this State and by this part, may
28 make orders and prescribe rules affecting passenger air carriers,
29 notwithstanding the provisions of any ordinance or permit
30 of any city, city and county, or county, and in case of
31 conflict between any such order or rule and any such ordinance
32 or permit, the order or rule of the commission shall prevail

33 24117 No passenger air carrier shall engage in any operation
34 in this State without first having obtained from the commission
35 a certificate of public convenience and necessity
36 authorizing such operation

37 24118 An applicant shall submit his written verified application
38 to the commission. The application shall be in such
39 form and contain such information and be accompanied by
40 proof of service upon such interested parties as the commission
41 requires

42 In awarding certificates of public convenience and necessity
43 pursuant to Section 24117, the commission shall take into
44 consideration, among other things, the business experience of
45 the particular passenger air carrier in the field of air operations,
46 the financial stability of the carrier, the insurance coverage
47 of the carrier, the type of aircraft which the carrier would
48 employ, proposed routes and schedules to be established,
49 whether the carrier could economically give adequate service
50 to the communities involved, show cause as to the need for the
51 service, and any other factors which may affect the public
52 interest

1 24119—Each application for a certificate of public con-
2 venience and necessity made under the provisions of this part
3 shall be accompanied by a fee of one hundred fifty dollars
4 (\$150).

5 The commission may, with or without hearing, issue the
6 certificate as prayed for, or refuse to issue it but only after a
7 hearing is held, or issue it for the partial exercise only of the
8 privilege sought, and may attach to the exercise of the rights
9 granted by the certificate such terms and conditions as, in its
10 judgment, the public convenience and necessity require.

11 A fee of one hundred fifty dollars (\$150) shall be paid to
12 the commission for filing each application to sell, mortgage,
13 lease, assign, transfer, or otherwise encumber any certificate

14 24120 Notwithstanding any other provision in this part,
15 the commission shall issue a certificate of public convenience
16 and necessity to any passenger air carrier doing business as
17 of January 1, 1963, without a hearing, if such carrier meets
18 the conditions and requirements specified in this part.

19 24121 Without the express approval of the commission, no
20 certificate of public convenience and necessity issued to one
21 passenger air carrier under the provisions of this part shall
22 be combined, united, or consolidated with another such cer-
23 tificate issued to or possessed by another such carrier, so as
24 to permit through service between any point or points served
25 by one carrier on the one hand, and any point or points served
26 by another such carrier on the other hand

27 24122 Unless prohibited by the terms and conditions of
28 any certificate that may be involved, any one passenger air
29 carrier may establish through routes and joint rates, charges,
30 and classifications between any and all points served by it
31 under any and all certificates or operative rights issued to or
32 possessed by it.

33 24123 The commission may at any time for a good cause
34 suspend, and upon notice to the grantee of any certificate, and
35 opportunity to be heard, revoke, alter, or amend any such
36 certificate

37 24124 When a complaint has been filed with the commis-
38 sion alleging that any aircraft is being operated without a
39 certificate of public convenience and necessity, as required by
40 this part, or when the commission has reason to believe that
41 this part is being violated, the commission shall investigate
42 such operations and may, after a hearing, make its order re-
43 quiring the owner or operator of the aircraft to cease and
44 desist from any operation in violation of this part. The com-
45 mission shall enforce compliance with such order under the
46 powers vested in the commission by law

47 24125 The commission may, upon its own motion, or upon
48 application of any interested party, and after hearing, require
49 any passenger air carrier to procure and maintain insurance
50 in such amounts and upon such terms as the commission may
51 determine.

- 1 **24126.** The commission shall have the power to suspend
- 2 and enforce the suspension of certificates of public convenience
- 3 and necessity, issued by the commission, upon a finding by any
- 4 agency of the federal government that an air passenger carrier
- 5 is operating in violation of any federal safety law or regula-
- 6 tion

HOUSE RESOLUTION No. 107

By MR. CHARLES H. WILSON
(First Extraordinary Session, 1962)

Relating to Highways

WHEREAS, Some cities in California have contributed funds for construction of bus turnouts (passenger loading facilities) on freeways in the state highway system; and

WHEREAS, Such cities expected returns from transit system franchises to amortize the contributions; and

WHEREAS, The establishment of transit authorities as branches of state government has eliminated the collection of franchise fees, thus making it impossible for such cities to recoup their contributions, now, therefore, be it

Resolved by the Assembly of the State of California, That the Committee on Rules assign to the proper interim committee for study and report to the Legislature not later than the fifth calendar day of the 1963 Regular Session the subject matter of equitable compensation to cities, from the State Highway Fund, or other funds, for contributions by the cities for bus turnouts on freeways in the state highway system, and be it further

Resolved, That the Department of Public Works is directed to investigate this matter and report such facts and figures that such interim committee may request; and be it further

Resolved, That the Chief Clerk of the Assembly is directed to transmit a copy of this resolution to the Department of Public Works.

* * * * * *

House Resolution No. 107 directed the Department of Public Works to investigate the subject matter of the resolution. The report of the department (see Exhibit No. I) was not received by this committee in time for hearings to be held prior to the publication of this report.

HOUSE RESOLUTION No. 201

Relative to an Interim Study of a Department of Transportation

Subsequent to passage of House Resolution No. 201, Senate Bill No. 699, introduced by Senator Randolph Collier, was passed by the 1961 Legislature thus resolving any need for a study as proposed in House Resolution No. 201.

HOUSE RESOLUTION No. 416**Relative to a Study of Natural Gas Supply**

Prior to the start of the interim study of this committee the California Public Utilities Commission instituted a study of natural gas in a wider scope than envisioned by this house resolution.

Since a study by this committee would have duplicated the study of the commission, with the resultant duplication of the expenditure of taxpayers' funds, this committee did not study the subject assigned under this resolution.

The staff of this committee was assigned to attend the hearings of the Public Utilities Commission on this subject and copies of the transcript of the commission study were supplied to each member of this committee. At such time as the study of the Public Utilities Commission is completed and its findings published this committee intends to consider this matter further.

HOUSE RESOLUTION No. 448**Relative to the Los Angeles Metropolitan
Transit Authority**

During the interim period just concluded the Los Angeles Metropolitan Transit Authority was subject to two separate labor disputes. During this same period the authority entered into negotiations with the federal government toward having the federal government guarantee the sale of rapid transit bonds.

Under these circumstances the committee felt that a study of the scope and magnitude requested by this house resolution could have presented a formula which may have injured the negotiations between the Metropolitan Transit Authority and the labor unions, and also between the Metropolitan Transit Authority and the federal government.

EXHIBIT No. I**RESULTS OF STUDY BY DEPARTMENT OF PUBLIC WORKS, STATE OF
CALIFORNIA, IN CONNECTION WITH H.R. No. 107
(1962 First Extraordinary Session)**

For the use of the interim committee's study and report to the Legislature on HR 107, 1962 First Extraordinary Session, the Department of Public Works has investigated the matter of contributions made by those cities whose transit authorities are now branches of state government and who had made contributions toward the construction of bus turnouts (passenger loading facilities) on freeways in the state highway system. These contributions were all made prior to the 1955 enactment of Section 148 of the Streets and Highways Code.

The only city in the above category is the City of Los Angeles. This city made contributions toward bus passenger loading facilities at Alvarado, Vermont, and Western Avenues on the Hollywood Freeway and on Seventh Street, Pico, Jefferson, Santa Barbara Avenue, Slauson, and Manchester on the Harbor Freeway; also, for concrete bus pads on frontage roads adjacent to the Harbor Freeway at Vernon Avenue, Florence Avenue, and 76th Street.

Following are the amounts, by locations and approximate date of payment, of all the contributions made by the City of Los Angeles for bus loading facilities:

Hollywood Freeway

Alvarado	(1949-1950)	\$286,006 95
Vermont	(1949-1951)	204,182 15
Western	(1950-1952)	388,572 94
Lighting for above locations		23,452 00

Total Hollywood Freeway.....\$897,214 04

Harbor Freeway

Seventh Street	(1953)	\$298,410 81
Jefferson Street and Santa Barbara Avenue (1951-1956)		127,537 37
Vernon, Slauson, and Florence	(1955)	55,759 51
Manchester and 76th	(1955)	32,229 90
Pico	(1953)	223,331 41

Total Harbor Freeway.....\$737,269 00

Total contributions by City of Los Angeles.....\$1,634,483 04

o

ASSEMBLY INTERIM COMMITTEE REPORTS

1961-1963

VOLUME 17

NUMBER 10

FINAL REPORT
of the
ASSEMBLY INTERIM COMMITTEE
ON AGRICULTURE

(House Resolution 361, 1961)

MEMBERS OF THE COMMITTEE

LEVERETTE D. HOUSE, *Chairman*

JOHN C. WILLIAMSON, *Vice Chairman*

JACK A. BEAVER

GORDON R. COLOGNE

MYRON H. FREW

CHARLES B. GARRIGUS

JAMES L. HOLMES

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JACK SCHRADER

HAROLD T. SEDGWICK

GORDON H. WINTON, JR.

FRANCIS RUGGIERI, *Consultant*

WILLIAM GEYER, *Intern*

SUE JOHNSON, *Secretary*



Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

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Speaker

HON. JEROME R. WALDIE
Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore

HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk

LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON AGRICULTURE

March 28, 1962

HON. JESSE M. UNRUH

Speaker of the Assembly; and

HON. MEMBERS OF THE ASSEMBLY

State Capitol, Sacramento, California

GENTLEMEN: In accordance with the provisions of House Resolution 361 of the 1961 General Session, the Assembly Interim Committee on Agriculture herewith submits a record of committee activities and a report upon the several subjects studied by the committee

Respectfully submitted,

LEVERETTE D. HOUSE, *Chairman*

JOHN C. WILLIAMSON, *Vice Chairman*

JACK A. BEAVER

GORDON R. COLOGNE

MYRON H. FREW

CHARLES B. GARRIGUS

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PART I. AGRICULTURE

A. MARKETING ORDERS

Review of the California Marketing Act (HR 392)

The California Marketing Act makes a finding of fact that excessive production, disorderly marketing, and static or declining consumption create a preponderance of supply over demand which results in "unreasonable and unnecessary economic waste" of California's agricultural wealth. It further declares that such waste is contrary to the public interest because it jeopardizes the future production of an adequate food supply (presumably by destroying both the actual food products, and the farmer's interest in producing them), and prevents the farmer from maintaining income parity with other gainful occupations (thus weakening the farmer as a consumer and as a producer of tax revenue). For these reasons, the act commits the State to assisting its farmers in correcting maladjustments of supply and demand in the marketing of their products.

There are two basic methods of correcting such maladjustments of supply and demand. One is to decrease supply; the other is to increase demand. The California Marketing Act contains provisions which are intended to help the farmer in developing programs to work in both directions towards the solution of his problem. The quantity control provisions of the law allow producers to limit the amount of a commodity marketed after production has been initiated. However, such provisions can be adopted only in so far as they are necessary to maintain incentives for the production of a crop adequate to fulfill the normal consumer demand for the product. In this instance, the farmer is considered solely as an agent of economic supply, rather than as a consumer and citizen, while consumer welfare is designated as the ultimate objective.

All other programs permitted by the law are limited only to the pursuit of the general objectives of the act. Most of these other programs, such as sales promotion and research, are devoted to increasing demand. Some, such as grading and inspection standards, are nominally demand stimulators, but function in practice as supply restrictors as well. A few, such as unfair trade practice regulation, are concerned with neither supply nor demand, but with confidence and efficiency in the marketplace itself.

All programs may be put in effect in one of two ways, the simpler of which is through a marketing agreement. Marketing agreements are contracts between the Director of Agriculture and any processors, distributors, or producers whose agreement is necessary for the purposes of the contract. Such agreements are voluntary, binding only upon the signatories, and violation of their terms is not a criminal offense.

The second, and by far the most common, way of instituting a program is by the adoption of a marketing order. Marketing orders are

TABLE I THE CALIFORNIA MARKETING ACT (1960)

Commodity	Producers	Directly affected	Provisions					Expenditures				
			Inspection			Re-search and surveys	Quantity or control pool	Un-fair trade acts	Admin-istration	Inspection	Promo-tion	Research
			Grade and use	Pack and contr	Inspection							
Early Apples.....	1,145	200	X	X	X	X	X		\$8,889	\$6,405		
Globe Artichokes.....	174	160	X		X	X	X		11,017			\$16,294
Processing Artichokes.....	77	30	X		X	X	X		45,013			\$10,138
Processing Avocados.....	277	30	X		X	X	X		20,086			44,168
Standard Lima Beans.....	616	24	X		X	X	X		13,459			24,338
Bush Berries.....	230	34				X	X		8,995			36,644
Quail Berries.....	220	101	X	X	X	X	X		46,691			23,185
Green Corn.....	273	10	X	X	X	X	X		49,227			25,243
Dried Figs.....	227	40	X	X	X	X	X		13,571			18,172
Desert Grapefruit.....	112	39	X		X	X	X		13,571			622
Distilled Honey.....	419	34	X		X	X	X		9,433			47,720
Summer Head Lettuce.....	554	196	X		X	X	X		9,433			25,685
Winter Head Lettuce.....	127	85	X	X	X	X	X		93,132			27,980
Canned Olives.....	2,489	33	X	X	X	X	X		39,803			105,438
Young Peas.....	1,783	324	X	X	X	X	X		2,215			42,018
Fresh Peas.....	1,783	324	X	X	X	X	X		298,100			31,038
Fresh Peas and Winter Peas.....	340	92	X	X	X	X	X		697,659			2,522,396
Canning Fall and Winter Peas.....	719	10	X		X	X	X		40,091			1,250
Canning Early Peas.....	418	17	X		X	X	X		3,278			33,085
Fresh Bartlett Peas.....	1,290	253	X	X		X	X		10,146			33,163
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		3,139			18,139
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		16,424			31,526
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		13,432			290,932
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		19,575			38,493
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		8,765			3,807
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		3,807			164,236
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		60,018			483,036
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		432,959			9,151
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		66,438			3,000
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		44,693			95,347
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		32,851			245,303
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		96,966			2,358,686
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		212,452			270,523
Fresh Bartlett Peas Promotion.....	1,519	252				X	X		2,061,194			\$393,619
Totals.....	30,556	3,289	18	10	15	25	27	5	\$1,506,508	\$537,178	\$5,881,693	\$45,318,998

SOURCE: Sidney Hoos and Kenneth Farrell, "California Marketing Orders," California Agricultural Experiment Station, Leaflet 117, State of California, Department of Agriculture, Bulletin, Volume I (April-June, 1961), p. 103

* Marketing agreement

* Currently inactive (1961)

* Not in operation (1960)

nonvoluntary, and binding upon all producers or processors covered under their terms. Orders are developed through hearings, and must be submitted to all producers or processors directly affected by them for ratification. If an order is adopted, the Director of Agriculture must appoint an advisory committee from the industry affected. The recommendations of this committee are generally accepted by the director, and form the basis for administration of the order. Marketing orders can be made effective for any length of time. Unpopular orders are often terminated informally by the failure of the advisory board and the director to implement them. They can also be terminated at the director's discretion if he finds that they fail to carry out the purposes for which they were enacted. All program expenses, including those of administration, are defrayed by the producers or processors involved.

At first, the California Marketing Act was not widely used to establish marketing programs. Only 13 of the 33 present programs were initiated prior to 1950. Now, however, orders adopted under the act are the dominant form of compulsory marketing program for California farm products. In 1960, such programs directly affected 30,556 producers, 3,289 handlers, and nearly half a billion dollars in crops, expending \$8,318,998 in industry funds in the process. Demand stimulation provisions were the most extensively used part of the act, both in terms of expenditures and of total programs. Twenty-five orders authorized advertising and sales promotion, and \$5,881,693 was spent in this manner, although nearly two-thirds of the total was accounted for by the wine and cling peach programs. An even greater number of programs (27) provided for research and surveys, but in 1960 only nine made any significant expenditures for this purpose. The total outlay for research amounted to \$393,619, of which more than half was expended by the wine order.

The next most popular type of provisions were those effecting quality control. Nineteen programs had some sort of combination of grade, size, pack, container, and inspection regulations. These cost a total of \$537,178, with the cling peach program accounting for over half of the entire sum. Thirdly, 14 programs, of which four are currently inactive, permit some sort of quantity regulation. Since there is no direct cost for quantity regulation except that of general administration, a financial estimate of the importance of such regulation is difficult, but the direct costs of quantity control programs are in any case not the most important factor in evaluating their importance. Finally, five programs provide for the regulation of unfair trade practices, but such regulation is of minor importance in the overall marketing program picture.

The California Marketing Act is not without competition in the marketing program field. The original marketing programs in California were established under the Agricultural Prorate Act of 1933, and 15 programs were put into effect before the enactment of the California Marketing Act in 1937. The Prorate Act, now known as the Agricultural Producers Marketing Law, continued to be the most popular of the two acts until the end of World War II. However, only two programs are currently operated under the law; canning Bartlett pears, in operation since 1938, and freezing brussels sprouts, which in 1958

became the first new program to be instituted under the act for 15 years. The chief difference between the Producers Law and the California Marketing Act is that the former applies only to producers, while the latter applies to both handlers and producers. The fact that joint producer-handler programs permit effective commodity regulation at the handler level has been one important reason behind the success of the Marketing Act. Other differences include provisions for establishment of zones, for partial state financing of administration programs, and for preproduction marketing quotas, all of which are in the Producers Law but not in the Marketing Act.

The most important current competitor of the California Marketing Act is the Federal Agricultural Marketing Agreement Act. Federal marketing agreements were first authorized by the Agricultural Adjustment Act of 1933. The Agricultural Marketing Agreement Act was passed in 1937 after the judicial abrogation of the AAA, and replaced a system of agreements and licenses with the now-familiar marketing orders. Currently, 16 marketing orders involving 18 California commodities (all but one of which are tree or vine crops) are operating

TABLE II
FEDERAL MARKETING AGREEMENT ACT
Programs Affecting California Commodities (1961)

Commodity	States
Valencia Oranges.....	California
Navel Oranges.....	California
Dates.....	California
Dried Figs.....	California
Tokay Grapes.....	California
Nectarines.....	California
Tree Fruit (fresh Bartlett Pears, Plums, and Elberta Peaches).....	California
Prunes.....	California
Raisins.....	California
Almonds.....	California
Crushing Grapes.....	California
Grapefruits.....	California and Arizona
Lemons.....	California and Arizona
Potatoes.....	California and Oregon
Winter Pears.....	California, Oregon and Washington
Walnuts.....	California, Oregon and Washington

SOURCE: California Department of Agriculture, Bureau of Marketing

under the act. Several of these commodities previously operated orders under the California Agricultural Producers Marketing Law. The federal law differs from the California Marketing Act in not extending to all commodities (federally supported or controlled crops are not eligible for orders, but most others now are, thanks to a 1961 amendment), in not providing for advertising or promotion (again, a 1961 amendment may make such programs possible under the research provisions of the law, and pay for them out of federal funds), in regulating

only handlers (although producers co-operate in the establishment and operation of programs), in paying the expenses of the administration of orders, in establishing zone programs, and in permitting the establishment of programs upon the approval of two-thirds of those participating in a referendum on the subject.

In 1937, the California Legislature also passed the California Agricultural Products Marketing Act as a companion act to the federal law, since the possibility existed that court decisions might make the federal law inapplicable to intrastate commerce. The Products Act is still on the books, but a walnut program, which operated from 1942 to 1954, was the only program to be activated under it. Since the Products Act is specifically limited to operation in conjunction with a federal order, and since the courts have long since granted the federal government extensive powers over intrastate commerce, it is currently a dead letter.

Several California commodities are regulated by special laws. The beet industry operates under the Federal Sugar Act of 1938, which provides for the establishment of acreage quotas when necessary. The cattle industry has maintained a program under the California Beef Council Law of 1957, and the Special Act for Shipping Grapes (SB 1010) was passed by the 1961 California Legislature to provide facilities for the grape industry to activate a program. Although all these programs have some of the features of the California Marketing Act, they differ widely in others, since they are programs tailored to the needs of individual industries, rather than segments of a single comprehensive program.

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Preproduction Quotas Under the California Marketing Act (AB 793)

The basic function of quantity controls in marketing orders is to adjust the supply of a commodity downward to meet demand. Although there are many different types of quantity controls, all fall into one of two basic categories; postproduction controls, or preproduction controls. Postproduction controls are established by determining the demand for a given commodity, and the actual supply which is to be available for market. The percentage of this commodity produced by an individual becomes the basis for determining his fair portion of the available market. Since quotas are based upon actual supply, they are established after production has been completed, or at least after production has been commenced, and accurate estimates of commodity yield can be made. The California Marketing Act currently provides for postproduction quantity controls, and 10 active and 4 inactive programs adopted under the act have included some sort of quantity control among their provisions.

Postproduction quantity controls have historically been accomplished by any one of a number of means. A commodity program may establish a surplus or stabilization pool, into which an equal percentage of each producer's crop must go. Such pools are held apart from the normally marketed portion of the total product, and are either diverted into noncompetitive byproduct channels, or held until the supply of the normally marketed product has diminished, and the demand for it has increased. Quantity controls have also been achieved indirectly by means of quality controls. However, the most direct method of postproduction quantity control has been the establishment of marketing quotas for individual producers, based upon a uniform percentage of each producer's total crop. Under all forms of postproduction quantity controls, with the exception of a completely successful stabilization pool, the farmer takes a partial or complete loss on that part of his production which exceeds his established normal marketing quota.

Preproduction controls, on the other hand, are determined prior to the commencement of production. The predicted demand for a commodity becomes the desirable supply, and quotas are allotted to producers on the basis of their past production histories. Thus the grower's quota is determined by his past production rather than by his actual production, with the result that production is effectively confined to old producers producing in established relationships to each other.

There are two main types of preproduction controls. The more widely known is the federal-type program based upon acreage controls. Acreage controls are direct production controls, and are established by calculating the acreage necessary to produce the desired supply of a product, and apportioning it among past producers. Experience has demonstrated that the acreage necessary to produce a given supply of a product differs with each farm and each farmer. For this and

other reasons, acreage controls have not always been successful in aligning production with predicted demand. However, because they are accompanied by support prices, they do guarantee the farmer a supported market for the entire production of his allotted acreage.

A less prevalent type of preproduction control is that based upon marketing quotas. It is this type of control which has been established in the brussels sprouts industry under the provisions of the Agricultural Producers Marketing Law in California, and which would be added by AB 793 to the California Marketing Act. Marketing quotas are established by apportioning the desirable supply directly among the producers, and leaving to their own judgment the problem of the acreage necessary to produce their allotted supply. Preproduction marketing controls are probably more accurate in adjusting actual production to predicted demand, since farmers themselves are better able than the government to estimate the number of acres required for a specified yield on their own farms. However, while acreage controls contain a built-in bias towards overproduction, marketing controls probably contain some bias towards underproduction, since a farmer is permitted to market no more than his allotted quota unless actual demand should happen to exceed actual supply. Although producers are not specifically prohibited from producing more than their quota, the probability that they will be unable to market any excess production constitutes a strong restrictive influence upon production itself. Thus, preproduction marketing quotas can be justly considered as indirect production controls.

Both types of preproduction controls are theoretically effective in eliminating the cost-loss on surplus production experienced by farmers operating under postproduction controls. In the case of acreage controls, surplus production becomes the government's problem. With preproduction marketing quotas, the responsibility for surplus production is still the farmer's, but unless the government's demand forecasts prove too optimistic, he has a safe market for his production quota, and knows that he exceeds it at his own risk. In a more general sense, preproduction marketing controls are much more likely to eliminate "waste," since their built-in bias is towards underproduction, and they do not encourage surplus production at government expense.

AB 793, as introduced, would have amended Section 1300 15, subsection (b), item (2) of the Agricultural Code to permit the Director of Agriculture to "calculate and announce individual producer marketing quotas or quantities prior to [as well as] during the planting or production season." The director may subsequently adjust the quotas, as at present, "in order to more nearly approximate market demand at time of harvest." The bill also set forth several principles to guide the director in the determination of preproduction quotas.

- 1) All quotas must be allocated under a uniform rule.
- 2) All quotas must be based upon quantities marketed in a prior representative period, adjusted to (a) current needs, or (b) current available supplies, or both.
- 3) Adequate provision must be made for (a) entry of new producers into the field, and (b) producers whose volume of marketing was abnormal during the established "prior representative period" in (2).

AB 793 was subsequently amended to provide that the director could only establish preproduction quotas "upon the recommendation of the advisory board." Senator Thompson introduced a similar bill (SB 1395) which contained quota provisions identical to those in AB 793, with the exception that separate assent or voting was required for quota approvals. Thus, producers might reject the quota provisions of an order while accepting the order itself. SB 1395 died in committee.

Although the establishment of preproduction marketing quotas is the main purpose of AB 793, the bill also contains amendments pursuant to other problems. The present law (Section 1300 15(a)(1), Ag C) requires that if a marketing order directly affects only producers, then the members of the advisory board for that commodity must all be producers, while if only handlers are affected, all members must be handlers. AB 793 as introduced provided that if an order affects only producers, only a majority of the board must be producers, and similarly, when an order affects only handlers, only a majority of the board must be handlers. Changes made in the amended bill are technical, and were made for the purpose of clarification. The purpose of this alteration in advisory board composition is to permit the inclusion of representatives from indirectly affected groups on a board. The inclusion of any such representatives is not mandatory upon the director, however, and in any case, control of the board will remain with those who are directly affected by the order. The amendment concerning brands offered in Section 1300 15(b)(13) of the bill has already been enacted into law as AB 799 (Chapter 1471) and thus is of no further concern to the committee.

Referendum Procedures Under the California Marketing Act (AB 794)

In several marketing programs set up in the 1930's by state law, the assent procedure for the ratification of individual programs was used. Under the assent procedure, each producer of a commodity is given a copy of the order, to give his assent, he must sign the order and return it to the government. Various laws required various percentages of assent in order to put programs into operation. The now unused California Agricultural Products Marketing Law of 1937, which affected both handlers and producers, required written assents from at least 65 percent of all handlers or from the handlers of 65 percent of the total product, and the approval (in unspecified form) of either 65 percent of all producers, or of the producers of 65 percent of the total product. The Agricultural Producers Marketing Law (or Prorate Act), under which many programs have operated in the past, and under which two programs are currently being operated, affects only producers. It requires the written assents of either 65 percent of all producers who produce 51 percent of the total product, or 51 percent of all who produce 65 percent of the total product.

The present California Marketing Act, under which the great majority of California marketing programs are operated, affects both handlers and producers. Like the California Agricultural Products Marketing Law of 1937, the Marketing Act requires the written assents of 65 percent of all handlers or of the handlers of 65 percent of the

total product. Its producer assent provisions have been amended several times. Originally, in 1937, it required the assents of 65 percent of all producers producing 65 percent of the total product. In 1939, it was changed to require the assent of either 75 percent of all producers, or 75 percent of the total product. In 1941, the assent provisions were put into their current form. These are identical with those of the Prorate Act, either 65 percent of all producers producing 51 percent of the total product, or 51 percent of all producers producing 65 percent of the total product.

Under the California Marketing Act, the collection of assents has proven to be a difficult and costly undertaking. In effect, each producer must be individually "sold" on the program until the required percentage of assents is reached. In practice, what often happens is that the director is forced to grant extensions of the original deadline for filing assents, while the proponents of the program beat the bushes to try and round up enough additional assents to put the program "over the top." This procedure is not only costly, but results in prolonged uncertainty, and in the exertion of undue pressures upon those individuals who fail to file assents. It has therefore been argued that the present assent procedures make marketing programs unnecessarily difficult to achieve, and restrict the operation of the law to a point beyond the needs of reasonable unanimity.

In the California Marketing Act, an alternative procedure of approval has been available since 1949. This is the referendum procedure. The Federal Marketing Agreement Act, which has been operative since 1937, has always used the referendum procedure, requiring a favorable vote of either two-thirds of the producers voting, or else two-thirds of the product voted. Under the referendum provisions of the California Marketing Act, ballots must be sent out, and the results tabulated after a period of two months. If 51 percent of all producers producing 51 percent of the total product vote in favor of the program, it is carried (provided the written assent of enough handlers, as previously provided, has also been achieved). If an insufficient number of favorable votes has been cast, the director may grant a 30-day extension, so that additional ballots may be received and tabulated. Because it provides for the approval of a majority of all producers and of the total product, rather than a majority of the product and producers actually voting, and because it provides for a long balloting period, and for an extension of that period, the existing referendum procedure does not differ greatly from the assent procedure. Despite the small percentage reduction in the number of producers or in the amount of total product required for passage of a program, the referendum provisions of the law have been considered even more difficult and cumbersome than the assent provisions, and have apparently never been used in any campaign for a new order.

The main drawback of both assent and referendum provisions in the present law, from the standpoint of program approvals, has been the fact that failure to vote counts as a negative vote. A major problem has been that of the casual or "backyard" producer. Such producers, are naturally apathetic towards marketing programs, yet in some industries, may account for a substantial percentage of the total producers, although they produce only a tiny fraction of the crop. AB 792 (Section

130013 (f), Ag C) authorizes the Director of Agriculture to exclude such "backyard" producers from participation in assent or referendum proceedings, on condition that they also be excluded from the provisions of any ensuing order or program. This bill was enacted into law (Chapter 438) at the last session, and ought to benefit both the backyard and commercial producer by exempting the former from onerous marketing rules and regulations, and by making it easier for the latter to achieve desirable marketing programs. The new law, however, will not be of equal importance to all industries, and it is too early to tell what its general effect upon the approval of marketing programs will be.

TABLE III
PROPOSED MARKETING ORDERS AND AMENDMENTS TO MARKETING ORDERS
REACHING THE HEARING STAGE BUT NOT SUBSEQUENTLY ADOPTED

California Marketing Act (1941-1961)

Marketing Orders	Hearing	Result
Canning Tomatoes.....	7/14/41	Failed Assent
Processing Spinach.....	12/ 6/45	Failed Assent
Early Irish Potatoes Produced in Kern, Tulare, Fresno, Kings and Madera Counties.....	4/29/47	Abandoned
Canning Bartlett Pears.....	5/16/50	Failed Assent
Head Lettuce.....	8/29/51	Failed Assent
Winter Head Lettuce.....	2/27/52	Failed Assent
Carrots Produced in Imperial and River- side Counties.....	2/27/52	Failed Assent
Newtown Pippin Apples.....	7/10/52	Failed Assent
Winter Head Lettuce.....	3/25/53	Failed Assent
Producer Marketing Order for Processing Tomatoes.....	2/ 8/54	Failed Assent
Northern California Potatoes.....	8/ 3/54	Failed Assent
Sales Promotion of California Fresh Plums. California Canned Olives.....	6/ 1/55	Failed Assent
California Hops.....	8/11/55	Abandoned
Winter Lettuce.....	10/ 4/56	Failed Assent
Processing Tomatoes.....	2/18/56	Abandoned
Processing Freestone Peaches.....	8/ 6/59	Recessed—abandoned
Chilled Orange Juice.....	5/23/60	Failed Assent
Summer Lettuce Promotion.....	8/ 2/60	Recessed indefinitely
	12/20/60	Failed Assent
Amendments to Marketing Orders	Hearing	Result
California Dried Prunes.....	6/10/48	Failed Assent
Desert Grapefruit.....	12/15/48	Failed Assent
Grape Stabilization.....	7/28/50	Failed Assent
Wine Processors.....	3/21/52	Failed Assent
Wine.....	2/26/54	Failed Assent
Desert Area Green Corn.....	3/ 9/54	Failed Assent
Processing Asparagus.....	10/23/56	Failed Assent
Long White Potatoes.....	11/13/57	Abandoned
Summer Head Lettuce.....	7/20/61	Recessed indefinitely

SOURCE: California Department of Agriculture, Bureau of Marketing

AB 794 as introduced would have allowed the director to establish a referendum period of not less than 10, and not more than 60 days. It retained the provision for a 30-day extension. It prescribed that a program might be adopted by the favorable votes of 65 percent of the producers voting who produced 51 percent of the voting crop, or of 51 percent of the producers voting who produced 65 percent of the voting crop. In other words, a majority of producers and crop voting, rather than of all producers and total product, was required. AB 794 was amended on March 10 to reduce the maximum referendum period from 60 to 30 days, and to eliminate the provision for any extension.

A similar bill, SB 1396, was introduced in the Senate at the last session by Senator Thompson. As amended, this bill would have changed the referendum provisions to require the approval of two-thirds of the producers voting who produced two-thirds of the product voted. It would have also required participation in the referendum of at least 51 percent of the total number of producers. The bill was reported from committee without further action.

Investigation of the Turkey Promotion Advisory Board (HR 233)

House Resolution 233 arose from complaints made about the operation of the California Turkey Promotion Marketing Order, a program developed under the authority of the California Marketing Act. Mr. Charles Edwards, the chief critic of the order, is the president of a nascent organization of turkey growers which apparently hopes to supplant the California Turkey Federation as the dominant turkey producer organization in the State.

Mr. Edwards was afforded a full hearing before a subcommittee of the State Board of Agriculture on March 30, 1961. At this hearing, he charged that the method of selection of members of the California Turkey Promotion Advisory Board was contrary to law, that unqualified persons had been appointed to the board, that the board was dominated by the California Turkey Federation and the National Turkey Federation, that funds of the board were being used in violation of the law, and that they were being wasted through contributions to the National Turkey Federation. The subcommittee found that Mr. Edwards' charges were without merit, and that the order was being legally administered. However, it did make certain recommendations which it felt might remedy conditions which had led to past misunderstandings.

Subsequent to the subcommittee's hearing, the Assembly Agriculture Committee scheduled a hearing of the charges against the Turkey Promotion Marketing Order, as stated in HR 233. Although given ample notice, Mr. Edwards failed to attend this hearing. Consequently the committee's report on HR 233 is largely based upon the transcript of the State Board of Agriculture subcommittee hearing, and upon the report issuing from that hearing.

RECOMMENDATION

The committee concurs with the opinion of the State Board of Agriculture subcommittee that any further investigation of Mr. Edwards'

allegations will be without profit, and that the matter should be considered closed.

After reviewing the record, the committee finds itself in substantial concurrence with the report of the State Board of Agriculture subcommittee. The method of selection of the members of the Turkey Promotion Advisory Board is entirely legal, since the Director of Agriculture, to whom the selection is delegated, undoubtedly possesses the discretionary power to request an advisory vote upon nominees in different areas. While such votes are laudable in that they tend to increase producer participation in the selection of representatives, it should be remembered that, in practice, any such vote has the effect of compromising the discretionary power of the director. If the director decides that such elections will continue to be desirable, he should continue to take especial precautions that they be held in a formal and equitable manner, and that all producers be informed of their advisory nature.

The Department of Agriculture readily admits that, because of various types of integration existing in the turkey industry, it has had a difficult time interpreting the definition of "producer," as it is given in the Turkey Promotion Marketing Order and in the California Marketing Act. The department also admits that it has had difficulty in ascertaining whether a producer has his "principle activity and . . . greatest financial interest in the turkey industry . . . in the raising and care of turkeys for commercial purposes," as is required of two-thirds of the members of the Turkey Promotion Advisory Board. Therefore, it is understandable that different individuals might hold different opinions in these matters. For this reason, the committee recommends that either the marketing order be amended to encompass a more precise and detailed definition of the controversial terms, or that by court decision or public education, the department clearly establish its definitions in the mind of all producers. Certainly the payment of turkey assessments should be a prime criterion in establishing the definition of a producer.

The active interest in, and influence upon, the Turkey Promotion Advisory Board displayed by members of the California Turkey Federation are natural phenomena. The CTF is apparently the sole significant turkey producer organization in the State (a conclusion borne out by the evasiveness of Mr. Edwards when questioned about the membership and representativeness of his own organization). Therefore, it is reasonable to assume that the leadership of the CTF is drawn from the ranks of those most active in the industry, and that as activists, they might also be represented on the Turkey Promotion Advisory Board. The committee, however, endorses the suggestion of the State Board of Agriculture subcommittee that the Department of Agriculture keep the functions of the CTF and the Turkey Promotion Advisory Board clearly separate at all times.

Finally, it would appear that the turkey promotion campaign carried on under the California Marketing Act has been a success. State per capita consumption of turkeys has more than doubled since the program began; export of California turkeys has been reduced from 60 percent to 15 percent, providing real savings in transportation

costs for California's producers. Furthermore, it is unrealistic to suppose that support of national turkey promotion campaigns is not also beneficial to California producers. If national consumption is not also increased, California producers might expect increased competition from imports originating in low-cost producing areas. While all market promotion activities are not equally fruitful, a product such as turkeys, with a highly seasonal market structure, should continue to stand an above-average chance of expanding consumption through off-season promotional activities.

B. EGGS

Refrigeration of Eggs (AB 3045)

A maxim with perishable food products is that cooling maintains quality and prolongs product life. Recent research in various states, including California, demonstrates its truth in regard to eggs. In general, egg life increases as storage temperature decreases, although other factors such as shell treatment and humidification may also have a decisive influence upon it. Eggs may be held for weeks at near-freezing temperatures without marked diminution of quality; conversely, they will deteriorate in a matter of hours when subjected to high summer temperatures. The purpose of AB 3045 is to protect the consumer against such egg deterioration by requiring that all eggs be held at an interior temperature of not more than 60 degrees Fahrenheit from the time of grading to their purchase by the consumer.

The expense of complying with such a law might be expected to fall most heavily upon retailers, most of whom control egg temperatures in one way or another, but not uniformly to 60 degrees Fahrenheit. Hardest hit would be the small retailer, whose per-unit cost for the necessary refrigeration would be greater than that of the large retailer. On the other hand, handler and producer costs would be relatively unaffected by the law. Most handlers have already equipped themselves, as a matter of commercial necessity, with adequate refrigeration facilities, while most producers would be exempt from refrigeration requirements since they would apply only after grading had been completed.

In terms of benefits, the picture would appear to be reversed. Retailers, for whom eggs are only one among many items of sale, would realize little return on their increased investment, outside of the elimination of occasional losses due to spoilage. Handlers and producers, however, anticipate that increased consumption resulting from improved consumer confidence might materially improve the position of the egg industry.

RECOMMENDATION

Do not pass

The benefits alleged to accrue to the egg industry and the consumer from the passage of this bill are more apparent than real. In the first place, it is possible that the forced installation of refrigeration equipment where none now exists would raise the retail price of eggs sufficiently to offset any stimulus to increased consumption that might

result from improved consumer confidence in egg quality. In the second place, existing law already places the responsibility for maintaining egg grade quality upon the seller; a retailer found to be selling eggs whose quality is below their stated grade can be convicted of a misdemeanor. This latter consideration would seem to be controlling. The cost of checking egg grade should hardly be more than that of checking interior temperature, and is a more comprehensive protection for the consumer, since a momentary temperature test provides no insight into an egg's history. Existing law affords adequate protection to the consumer without burdening the retailer with arbitrary and often unnecessary expenses.

Labeling of Eggs as "Fresh" (HR 428)

In the egg industry, the term "fresh" is ambiguous. In the days of primitive preservation methods, age was the primary index of quality; hence "freshness" was almost exclusively a concept of age. Currently age remains a long-term influence on quality, but is often considered unreliable as an absolute index of quality because its influence is minimized or delayed by various preservation practices. For this reason, the egg industry itself has come to consider "freshness" as a concept of grade quality rather than of age. Webster's *Dictionary* indicates that both old and new concepts of the term are in common usage. "Fresh" is defined as being "newly produced, gathered, or made; hence not stored or preserved;" but also as "having its original qualities unimpaired, not stale, sour, or decayed." Thus neither concept can be said to have priority over the other in semantic usage.

So far in its efforts to define "freshness," the Legislature has recognized both concepts as valid. In 1937, it was made unlawful (Section 1105 3, Ag C) to sell either (a) cold-storage eggs, or (b) eggs of grade B or less, as "fresh eggs," "ranch eggs," or "farm eggs." In 1957, the Legislature took cognizance of the increasing public acceptance of the practice of egg refrigeration by amending the law to permit eggs cold-stored less than 30 days to be sold as "fresh." By including minimum grade standards, the Legislature supported the quality concept; by discriminating against cold-storage eggs and placing an age limitation upon them, it paid homage to the age concept. So far, no easy resolution of the two concepts has been possible. The grade quality system assumes that all data relevant to egg quality have been considered, and that as long as an egg maintains grade, it maintains quality. On the other hand, proponents of the age concept maintain that age differentials within a single grade are detectable, and that a newly laid grade B egg might possess qualities of freshness which a cold-stored grade A egg might lack.

RECOMMENDATION

The committee recommends that the terms "farm egg" and "ranch egg" be excluded from legal definition, and that "fresh eggs" should be defined as grade AA eggs, without limitation upon the duration of cold storage.

It is useful to remember that the "fresh" egg problem centers, not around grades and standards for egg sale which are well defined and

specifically set forth in statute, but around phrases ("fresh eggs," "farm eggs," and "ranch eggs") which are used for advertising purposes and have no such definite meaning, other than that given them by Section 1105 3. The purpose of legislative regulation of advertising ought to be the protection of the consumer against fraudulent or misleading statements by the seller. Legislation which does not meet this test must be considered, at best, useless and unnecessary, and at worst, confusing and beyond the scope of proper legislative action. By these standards it would appear that the Legislature was unwise to include the terms "ranch eggs" and "farm eggs" in the law. All eggs must be "ranch eggs" or "farm eggs" by nature of their origin; therefore, while the terms tell the consumer nothing about the product, they could hardly be considered misleading in any context. Unless it can be shown that the language of Section 1105 3 has, since its inception, actually conferred a new meaning upon these terms in the public mind, they should be dropped from the section.

The problem of the "fresh egg" is more complex. There is general agreement that the term has a substantive meaning, but disagreement as to what that meaning is, or should be. It might be argued that because two popular, though conflicting, definitions of "freshness" exist, the Legislature is correct in reflecting both in the law. It is more likely, however, that in doing so the Legislature violated the canons of clarity, since the two definitions are almost mutually exclusive. If grade quality is a true index of "freshness," then the 30-day cold-storage provision in the law represents an invalid restriction upon the advertising of fresh eggs; if age is sole criterion, the grade A or better limitation is incorrect.

In examining the claims in behalf of each definition, it would appear that the case for the retention of any absolute age standards for "freshness" is quite weak. In the first place, grade maintenance as a standard of freshness is a comprehensive qualitative principle with the age factor built in. Once it is conceded that freshness is affected by preservation methods, then it follows that grade maintenance is the most flexible and practical method for determining "freshness." All previous attempts to set an absolute age standard for freshness have foundered upon the rocks of standard determination and enforcement. It has simply proven impossible to arrive at an equitable and scientific time unit standard, and it has been equally impossible, without a cumbersome egg-dating procedure, to enforce any such standard. The current 30-day limit on cold-storage eggs is arbitrary, inconsistent with the principle of grade maintenance, and virtually unenforceable. For these reasons it should be eliminated from the law.

While the case for grade maintenance as a practical standard of "freshness" is superior to that of absolute age, the Legislature has utilized only a crude version of it in the existing law. By defining a "fresh egg" as one of grade A or better, the Legislature has actually erected a second system of absolute quality within the original one. Where strict adherence to the grade maintenance system would require that no reggraded or below-grade eggs be labeled as "fresh," with this rule applied uniformly through all grades, the present law establishes minimum quality provisions which actually eliminate the age factor

in quality determination below grade A. Thus, legally, "freshness" has become more synonymous with high quality than original quality.

To the degree that this is true, the "fresh egg" law is redundant upon the grading system, and might logically be removed from the books. However, since the law was intended to regulate advertising rather than establish mandatory grades, the Legislature would still be faced with the problem of defining the term "fresh egg," since unlike the terms "ranch egg," and "farm egg," it is not self-defining. Having once assumed the responsibility for its definition, the Legislature might merely worsen a confusing situation by giving the privilege back to private enterprise. For this reason, the committee feels that the Legislature must continue to define "freshness," and must do so in such a way as to neither disappoint quality expectations created by its previous definitions, nor do violence to dictionary definitions of the term.

Fortunately, while the concepts of high quality and original quality are not identical, they overlap in the case of Grade AA eggs. Grade AA is the highest California egg grade, and no egg with any significant deviation from its original quality can fulfill the requirements for this grade. Therefore, the committee proposes that the use of the term "fresh" in the sale of eggs be restricted to Grade AA eggs only. It is the committee's opinion that these several changes will give California a definition of "freshness" which will be more accurate, more meaningful, and more enforceable than the present one.

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C. SEEDS

Regulation of Weed Seeds and Enforcement of the California Seed Law (AB 653)

Weeds are one of the most important factors in determining production costs on American farms. A recent article estimated that "losses due to weeds have reached . . . four billion dollars annually."¹ By competing with commercial crops, and by consuming natural resources without economic return, weeds pose both an immediate and a long range threat to the welfare of every farmer.

Fortunately, there are many ways of controlling and limiting weeds. Thorough preparation of the seedbed and continual cultivation have been the traditional weapons against weeds. More recently, the improvement of field sanitation practices, the introduction of vigorous

¹ W. C. Shaw and L. L. Damelson, "The Control of Weeds in Seed Crops," United States Department of Agriculture, *Yearbook of Agriculture: Seeds* (1961), p. 281. It has also been estimated that weeds cost California farmers \$365 million annually. *Some Facts About California Agriculture*, California Agricultural Extension Service (1961), p. 8.

and competitive varieties of commercial plants, and the development of selective chemical herbicides have augmented the farmer's arsenal. Still another factor in the struggle has been governmental regulation. The State of California has long recognized that weed control is a problem which extends beyond the resources and boundaries of individual farms. In 1927, the Legislature authorized the Director of Agriculture to proclaim and enforce weed-free areas, and in the 1930's, enacted abatement legislation to eliminate two specific weeds—camelthorn and Austrian field cress.

In California, however, the control of weed seeds is perhaps the most important element in the whole weed control program. As the aforementioned article states, "the use of weed-free crop seed is a sound starting place for an effective program to control weeds."² California has had a state seed law since 1921. As part of an extensive modernization in 1943, it was amended to require that all seed sold under the law be accurately labeled as to weed content, and to prohibit the sale of any seed containing primary noxious weed seeds.³ This law, still current, gives the farmer almost absolute protection against primary noxious weed seeds, and allows him to protect himself against all other kinds of weed seeds through the exercise of his own judgment.

Assembly Bill 653 is intended by its proponents to be a further modernization of the California Seed Law. The several amendments in the bill are directed towards two main goals: an increased control of weed seeds and a strengthening of the enforcement of the entire Seed Law. Under the present law, it is possible to sell and transport any amount of all weed seeds, except those of primary noxious weeds, as long as the quantity and kind of weed are specified on the container. Experience has shown that many farmers are not sufficiently cognizant of the dangers of purchasing many kinds of weed seed. In an effort to save money by buying impure seed they often endanger their own crops and those of their neighbors. Since the underlying assumption of the whole state weed control program is that all farmers benefit from weed abatement, the bill proposes to prohibit the sale of all agricultural or vegetable seed that contains more than 1½ percent by weight of all weed seeds.⁴ Certain categories of seeds, already exempt from the labeling, marketing, transporting and germinating requirements of the law, would also be exempt from these "pure-seed" provisions. These categories are (1) seed or grain not intended for sowing purposes, (2) seed being cleaned or processed, and (3) seed or grain transported without transfer of title for sowing by its producer. Assembly Bill 653 would also

² Shaw and Danielson, *op cit*, p. 286.

³ According to this law, a seed can become a "weed seed" in one of two ways: (1) it can be any seed not specifically defined as agricultural, occurring incidentally in agricultural seed, or (2) it can be a specifically enumerated "noxious weed seed." A "noxious weed" is defined as "any species of plant which is or is liable to be detrimental or destructive and difficult to control or eradicate" (Sec. 911.23, Ag. C. A.). Noxious weeds are in turn divided into two categories, primary and secondary. The distinction between them is not generic, but rather that the latter are widely distributed throughout the State, while the former are not. Noxious weeds, both primary and secondary, can be enumerated either by direct inclusion in statute, or by proclamation of the Director of Agriculture. For examples, see Margaret K. Bellue, "Weed Seed Handbook," California Department of Agriculture, Special Publication No. 275 (1959).

⁴ The application of existing tolerance requirements in enforcement procedures will mean that enforcement will actually begin at a figure slightly in excess of 2 percent weed seed.

amend this last category to restrict the producer of the seed to sowing it upon his own land, as a protection for landlords.

The bill also proposes some minor technical amendments to the weed seed and labeling portions of the law. First, the definition of "weed seed" itself is restricted by the exemption of vegetable seeds incidentally found in agricultural seed. Under the existing law, such incidental vegetable seed is considered to be residual, and therefore, weed seed. Second, the bill provides that the amounts of all kinds of secondary noxious weeds are to be listed "per pound." This would eliminate the current practice of listing some "per ounce," and thus remove the enumeration of "per ounce" and "per pound" categories from the law. Finally, the bill would specify the word "kind" as the sole referent of the term "commonly accepted name" in the labeling provisions of Section 912. This is for the purpose of clarification and makes no substantive change in the law.

The second main object of the bill is to improve the enforcement of the entire Seed Law. It has been the habit of the Department of Agriculture to inspect seed offered for sale prior to its sale, a practice to which the seed industry has generally been amenable. Recently, however, the department discovered that the law only authorizes it to inspect seed "which is sold." The department has received advice from law enforcement officials, with which its counsel concurs, that the use of the past tense "sold" means that seed cannot be inspected until after it is actually sold. AB 653 would amend the language of the Seed Law in four places to replace the past tense "sold" with the present tense, "sell." Although the bulk of the seed industry continues to permit prior inspection, under the old law, this change would eliminate the opportunity for unscrupulous dealers to avoid inspection. Six other amendments in AB 653 authorize the deputation of the director's inspection and enforcement authority to deputies and inspectors specifically found competent in seed inspection by the director, and require either specific direction or written permission from an enforcing officer to move or dispose of a lot of seed held under a "stop-sale" order.

RECOMMENDATION

Do pass.

The committee believes that AB 653 represents a comprehensive and timely improvement of the California Seed Law. The desirability of a "pure seed" law seems to be well established. The assumption that weed control is public responsibility as well as a private one has been the basis of public policy in California for many years, for it is self-evident that any completely voluntary program of weed control can only be as strong as its weakest link. It has been further established that weed seed control is a fundamental part of any practical weed control program. From these premises, it would appear that the legislature is justified in invoking the police power of the state to enact a pure seed law (which in effect would limit an individual's right to purchase impure seed), since the purpose of such a law is less to protect individual purchasers than to protect all farmers in general from the effects of such purchases by any farmer. Although the committee realizes that with certain crops under certain cropping conditions the need for the pure seed is less than absolute, it does not feel that these

exceptions are so numerous and well-defined as to justify the creation of specific exemptions for them. Since the ultimate beneficiary of any sound weed control program can only be the farmer, it is difficult to believe that the passage of a pure seed law could run contrary to the long-term interests of any farmer.

The committee can likewise see no valid objection to the proposed alterations in the enforcement provisions of the law. It recognizes that inspection of seed prior to sale is essential to the enforcement of the Seed Law, since the dispersal of seed after sale makes extensive postsale inspection virtually impossible. Furthermore, the employment of certified deputies would seem to be a step in the direction of more uniform and expert enforcement, and therefore, beneficial to buyer and seller alike. Finally, the committee notes in passing that under the existing law, a farmer cannot lawfully sell seed to his neighbor without having it inspected and labeled, if he is aware that it will be used for sowing purposes. Although, for obvious reasons, such violations are not often detected, AB 653 proposes no substantial change in this area. However, the committee desires to go on record as expressing its intention that in all instances where an exemption from the law is claimed for "seed or grain not intended for sowing purposes" (Section 915(1) Ag C), the burden of proving intention should rest upon the Department of Agriculture. Such a practice should provide adequate protection for any innocent transactions which might come under the department's scrutiny.

D. ADMINISTRATION

State Subventions to County Agricultural Commissioners (AB 573)

In California, each county agricultural commissioner is the servant of two masters. As a county official, he is appointed by, and responsible to, his board of supervisors, and is charged with the administration of local ordinances pertaining to agriculture. The office which he holds, however, is state-created, and minimum requirements for holding it are also prescribed by the State. Furthermore, each commissioner is responsible to the Director of Agriculture for the administration and enforcement, in his county, of numerous sections of the Agricultural Code, and the regulations issued pursuant to them.

In 1947, the Legislature took cognizance of some of the problems created by these circumstances. It found that the enforcement of state laws by commissioners varied greatly from county to county, and that the Director of Agriculture had virtually no means to compel any commissioner to follow his regulations and directives. It found counties understandably reluctant to expend county funds on the local department of agriculture, when an ever-increasing percentage of the local department's time was being demanded by programs of nonlocal origin. Finally, it found that because of the conflicts of authority and the unwillingness of counties to finance the administration of state legislation, the position of commissioner was, in many counties, quite unattractive. In some counties, conscientious commissioners were underpaid, overworked, and received little thanks from either state or county officials. In other counties, the office was little more than a sinecure, with county-imposed duties negligible, and state-imposed duties ignored.

Desiring to attract high-caliber and expert personnel to the office of commissioner, and to increase the uniformity of the enforcement of state laws, without imperiling the undeniable advantages of home rule, the Legislature authorized the Director of Agriculture to enter into "co-operative agreements" with the board of supervisors of any county for the purpose of increasing the salary or compensation of the county agricultural commissioner. These agreements were subject to two limitations:

- 1) That the subvention from the State to any county not exceed (a) \$3,000 per year or (b) two-thirds of the commissioner's yearly salary, and
- 2) That the county not reduce the salary of the commissioner below the base salary as of 1947.

By 1959, all but six counties had entered into such agreements with the director, and were receiving the maximum allowance, \$3,000, under the law. For the 44 counties where complete statistics are available, the average commissioner's salary increased nearly $2\frac{1}{2}$ times over the unsubsidized 1947 salary. Although state contributions financed nearly two-thirds of this increase, they still accounted for only 37 percent of the average commissioner's total salary, and defrayed none of the salaries of his assistants. Since the average commissioner has a full-time staff of 16, and a part-time staff of 3, it is apparent that the subventions have been of crucial financial importance only in the smaller counties. Nevertheless, the agreements have lessened county-state conflicts even in the larger counties, by the mere creation of a contractual relationship between the two parties in which the nature of the relationship is more clearly spelled out.

In 1959, a bill was introduced to increase the permissible subvention to \$5,000 per county, to define "base salary" as the lowest step on a salary range, and to update the effective date of the base salary provision to 1959. The bill passed the Senate and was approved by the Assembly Committee on Agriculture, but was amended by the Committee on Ways and Means to reduce the maximum subvention from \$5,000 to \$3,300, and enacted as amended. Subsequently, the Department of Agriculture determined on the policy of providing two-thirds of the funds for any increase in a commissioner's salary, until the statutory limit was reached. Since 1959, the majority of contracting counties have increased the base salary of their commissioner by at least \$450, so as to take full advantage of state aid. Only a handful have failed to grant any increase in salary, and some of these are charter counties where contracts cannot be altered for a four-year period.

AB 573 reintroduces the \$5,000 maximum subvention and updates the effective date of the base salary provision to 1961. It also passed the Assembly Agriculture Committee, but was referred to interim study at the suggestion of the Committee on Ways and Means. Current state expenditures under the "co-operative agreement" section of the Agricultural Code (Section 63.5) are approximately \$170,000 per year. Were AB 573 enacted, the additional yearly cost to the State would be \$88,400, if the Department of Agriculture's 1959 policy remained in effect, and if all currently participating counties elected to take full

advantage of the law. However, past experience indicates that 5 to 10 years would elapse before all counties availed themselves of the additional subvention, so that the increase in yearly expenditure should in practice be gradual, rather than precipitate.

RECOMMENDATION

Do Pass

All evidence indicates that the "co-operative agreement" law has been a resounding success. It has indisputably raised commissioners' salaries. In 1947, the average commissioner made about \$3,500 a year; today, no commissioner makes less than \$6,000 a year, and the average commissioner makes over \$8,750 a year. The increased salaries made possible by state subvention have attracted better personnel into the profession, and helped smaller counties to support the services of an expert, while the subvention contract itself has promoted uniform enforcement of the Agricultural Code and decreased county-state misunderstanding. Few would argue that the law has not proven an extremely practical tool for securing effective enforcement of state law by county authorities.

It would seem unwise for the State to rest on its laurels at this point, however. The job of an active agricultural commissioner has never been an easy one, and with each passing year, the quantity of state legislation which he must administer increases. If Californians desire the implementation of the agricultural legislation which their elected representatives enact, they should not object to paying the bill. Many county-enforced programs, such as weed control and pest quarantine, are only as strong as their weakest link. Although few counties shirk their responsibilities, the provision of adequate facilities and staff for a commissioner puts a heavy strain on their resources. Surely the guarantee of an adequate incentive pay scale for all county agricultural commissioners is a small enough price for the people of California to pay for the proper administration of the State's number one industry.

PART II. WEIGHTS AND MEASURES

A. REGULATION

The importance of a climate of trust and confidence surrounding all business dealings with measurable commodities can hardly be overestimated. Without such a climate, the everyday transactions upon which our whole economy is predicated would become infinitely more difficult, and many of the material advantages which modern technology makes possible would be lost. It has been the historic purpose of weights and measures laws to protect and foster this climate in a free and competitive society by setting certain limits to the application of the doctrine of *caveat emptor*. More specifically, the proper objective of weights and measure law is to provide adequate protection for the buyer without either (1) unreasonably increasing the cost of commodities to him, or to the taxpayer, by overintensive enforcement, or (2) unreasonably harassing the seller, or holding him criminally culpable where there is no intent to defraud, but only difficulty in mastering mechanical or technical processes.

Elimination of Specific Tolerances in Sampling Procedures (AB 545)

One fundamental principle of the California Weights and Measures Law is that the seller of any commodity must make an accurate representation of the weight or measure of such commodity to the buyer. In the days when most sales were made from bulk lots and quantity was determined at time of purchase, enforcement of this principle was confined to the inspection of measuring devices; any further safeguarding of the buyer's interests was left to buyer himself. However, the increasing use of processed and prepackaged commodities has meant that changes in enforcement methods have been necessary to maintain the principle of accurate representation. For many years now, the law has required that all packaged goods contain a statement of net content. In the past, enforcement of this law has been based upon the concept that each package constitutes a separate entity, and that therefore conformity of each package with the law must be individually determined. This concept has had a decisive influence in the shaping of testing methods to determine the existence of violations, and of methods to deal with the violations, once discovered.

In testing, the concept has had the effect of limiting the efforts of the Department of Weights and Measures to random spot checking. The public expense of individually testing all packages offered for sale obviously exceeds any resultant public benefit; therefore, the department has tried to confine its efforts to the minimum necessary to ensure accurate packaging. In the department's experience, spot checking has proven to be a reasonably effective deterrent to false packaging.

In dealing with violations, however, the individual package concept has handicapped enforcement officers in the use of the two primary enforcement tools, offsale orders and criminal prosecutions.

Although a sample check of a packaged commodity may indicate to a sealer that an entire lot of that commodity has been inaccurately packaged, he can only protect the public from the entire lot by testing all packages within the lot, and ordering each deficient package offsale. Such an expensive method of removing such packages from sale defeats the public interest in their removal. Furthermore, in the absence of any effective method of dealing with inaccurately packaged lots, sealers have been forced to fall back upon criminal prosecution as means of enforcing compliance with the law. However, since neither men nor the machines they make are infallible, it is doubtful whether the public interest is served by the criminal prosecution of packagers for errors which may well have been beyond their power to control. Thus the concept of individual package evaluation, once held to be the ultimate guarantee for the buyer, has to some extent frustrated comprehensive, inexpensive, and impartial enforcement of the principle of accurate representation of content.

Recently, the Legislature has attempted to deal with this situation by modifying the individual package evaluation concept. In 1957, the Director of Agriculture was given the authority to adopt sampling techniques, through the promulgation of rules and regulations. As a further guide to the use of these sampling techniques, the Legislature also gave permissive authorization for the adoption of specific numerical tolerances for packaged commodities, with the proviso that the average net content of any lot sampled be no less than the statement of net content upon the individual package. By relaxing the absolute guarantee that individual package evaluation had meant for the buyer, the Legislature permitted a far more comprehensive enforcement of the principle of accurate representation, and at the same time reduced the likelihood of criminal prosecution for involuntary violation of that principle. From the buyer's standpoint, an absolute guarantee, minimally enforced, was traded for a general guarantee, comprehensively enforced.

The Legislature's action, however, did not solve the problem of what sampling methods the department should adopt. In point of fact, the department took no action upon the matter until late in 1959, when several industry groups requested the establishment of tolerances on certain items. Subsequent to these requests, the department held hearings upon the proposed tolerance provisions, and in co-operation with industry groups, conducted an intensive study of sampling provisions in general. As a result of this study, specific tolerances were rejected as unworkable. It was concluded that the establishment of tolerances, commodity by commodity and package by package, would result in unnecessary expense by both government and industry, and perhaps subject the impartiality of the department to superhuman stress.

Instead of specific tolerances, the department ultimately adopted statistical quality control procedures. The specific procedures, adopted effective January 29, 1961, were derived from military, industrial, and governmental sources, and were put into table form for easy reference.

These procedures establish a uniform evaluative principle for all packages and commodities, and according to the State Sealer, eliminate 99 percent of the personal judgment previously exercised by field inspectors. Under this system, a lot can be found deficient if the sample displays any one of three characteristics:

- (1) An average content which is below the stated content of each package (widely deviant packages are omitted in the computation of average content)
- (2) Too high a percentage of deviations from the stated content of each package
- (3) Too wide a range of deviations from the stated content of each package

If the lot does not display any of these characteristics, it is considered to have been accurately packaged, and all packages within it become legal packages, including any which may have been slightly below stated content. As a result of its experience with this system, the department is confident that it offers more comprehensive protection for the buyer, provides more equitable regulation of the packager, and results in more accurate representation of content than either the old individual evaluation system, or the proposed specific tolerance system.

The purpose of AB 545, as introduced, was to return the enforcement of weights and measures law to the principles of individual evaluation and absolute guarantee. At the time of its introduction, the statistical quality control system had not been matured, and it appeared that the consumer's choice was between the old system and the proposed specific tolerances. With the evolution of quality control, the bill was amended to restore the authorization for sampling procedures, and delete only the provision for specific tolerances contained in the 1957 law. AB 545, as amended, will permit the department to continue with its newly established quality control procedures, and remove only the authority to establish specific tolerances, which the department will not implement, and in fact no longer desires.

RECOMMENDATION

Do pass.

The Department of Agriculture is apparently correct in the belief that its newly adopted statistical quality control methods provide superior protection for the buyer at less cost to the taxpayer and less inconvenience to the packager. Consumer representatives are, or should be, coming around to the acceptance of this belief, and to a realization of the limitations of the old principle of absolute guarantee. An almost unanimous consensus exists that the specific tolerance system represents an inferior method of sampling, and would be more expensive and less equitable for all concerned. Therefore, the elimination of the director's authority to establish specific tolerances is justified.

Technical changes should be made in the language of the bill (p. 2, lines 9-11) to clarify the intention of the department and the committee that slightly deficient packages included in a sampled and approved lot not be ordered off-sale or otherwise considered illegal.

Labeling of Price-per-unit on Packaged Goods (AB 1364)

Existing law requires that an accurate statement of the net contents of any packaged commodity appear on the package. General retail practice indicates the total selling price on the package, or on the shelf where the package is displayed. The price per unit of any commodity can be computed from the above information, by ascertaining the unit of sale as specified in the statement of net content and dividing the number of units into the total selling price. With uniform packages containing uniform net contents, the consumer can compute the price per unit with some degree of efficiency. Packages containing random weights, measures, or counts may offer a somewhat greater problem. Although the method of computation remains the same, the fact that similar packages may contain differing net contents, and differing qualities of a single commodity sometimes makes the establishment of comparative price per unit by the consumer somewhat more difficult.

As introduced, AB 1364 would have added Section 12608.5 to the Business and Professions Code, requiring all commodities of dissimilar quantities packaged in "similar containers" to bear conspicuously the price per unit by which they were being sold. The bill was amended March 16. The language of Section 27 in the *Model State Law on Weights and Measures, Form 2*, adopted by the National Conference of Weights and Measures in 1960 was substituted for the original language of the proposed section. As amended, the section would require any packaged commodity, (1) in a lot containing any random weights, measures, or counts, and (2) bearing the total selling price on the package, to bear also a conspicuous declaration of the price per unit of weight, measure or count.

The intent of the bill was apparently to protect the consumer against possibly misleading but currently lawful methods of packaging which involve random quantity, and to remove, from the consumer, the burden of computing price per unit of random packages in general. Particular concern was indicated in the fields of meats, dairy products, and delicatessen goods. Proponents claimed that AB 1364 was the minimum bill necessary to make weights and measures standards meaningful in the matter of random packages. It was established by testimony that many retailers and some wholesalers already put the price per unit on their random packages. Proponents argued that the consumer deserves this information as a matter of right, and that present usages indicate that it would place no appreciable cost burden upon the retailer.

The original bill and the amended bill represent variant approaches to the problem. An examination of both bills demonstrates some of the pitfalls involved in the framing of legislation on the subject. Both bills contain vague passages, phrases, or words which leave much leeway for interpretation; both include passages which would cover a wider field than that claimed by their advocates. The original bill made no distinction between retail and preretail activities, and could have conceivably applied to wholesale containers, or even farm lug boxes. Existing statutes would have made the bill inapplicable to sales from bulk when the quantity "is weighed, measured, or counted for the immediate purposes" of the sale (Section 12603, B & P. C.), but

apparently no other exceptions existed. Finally, the phrase "similar container" was the subject of no precise legislative definition, and might well have been the source of extensive litigation.

The amended form of the bill is in some ways more restrictive than the original bill. It limits the bill to commodities in "package form," rather than in "containers." It also limits the bill to commodities "bearing the total selling price of the package." This latter limitation by implication excludes most preretail operations, since price labeling is the exception rather than the rule on preretail levels, and in most instances is voluntary at both retail and preretail operations. Finally, the amended bill eliminates the uncertainty of the phrase "similar container." However, it transfers this uncertainty from the nature of the container to the nature of its contents. The word "random" is apparently better understood at the federal level than in California. It is possible that the wording of the original bill, "where the quantity of the commodity . . . is not the same," would better convey the intention of the bill's proponents.

The chief difficulty with the amended bill is that it covers *any* package containing random weights, measures, or counts, despite the fact that this random weight, measure, or count might not figure in the pricing of the package. For example, identical bags of potato chips have identical weights, but contain random counts (number of potato chips per bag). Although potato chips are in fact sold by weight, the bill would require on the bag a "declaration of the price per single unit of weight, measure, or count." This latter phrase leads straight to a related problem, about which the bill is distressingly unclear. Is the price per unit to be that of the random element in the package, even if pricing procedure does not normally involve the computation of the random element? Or, can the retailer choose between single units of weights, measures, and counts? To return to the potato chips, must the price per unit be that of weight (as they are normally sold), or must it be that of the count (the random element in the package), or does the retailer have the option to select either, or to choose neither and select measure? The example of potato chips does not represent a resort to *reductio ad absurdum*; the bill would have a similar effect upon innumerable packaged commodities.

Finally, it might be noted that the passage of AB 1364 as amended might actually have the effect of reducing the price information available to the consumer. Since the provisions of the bill only apply when the total selling price appears on the package, the cheapest mode of compliance for the wholesaler and retailer might well be to remove the selling price from packages where it had previously been included. Nothing in the law would prevent this.

RECOMMENDATION

Do not pass.

It is clear that AB 1364, as amended, is not in suitable shape to be written into statute. A more difficult problem is posed by the principle embodied in the bill. It is not necessary to accept the argument that because the present bill is vague and broad, no satisfactory bill on the subject could be written. Various proposals have in fact been made which would limit the effect of the bill more closely to the professed

intentions of its proponents. Any future proposed legislation on the subject might well follow the suggestion of the State Sealer of Weights and Measures in confining itself to "food," as defined in Section 12024 5 of the Business and Professions Code, with any necessary additions

The argument that the consumer deserves price per unit information as a matter of right is unconvincing, by any meaningful definition of the word "right." The information from which price per unit is computed has already been made available to the consumer by law. Therefore, the addition of price per unit would seem to be a matter of convenience rather than right, unless the committee is to assume that the average consumer lacks the intelligence to make any such computation. Furthermore, no convincing evidence was presented to distinguish the need for price per unit information on random packages from its desirability on standard packages. Indeed, proponents based a part of their case on the proposition that current standard containers were often so confusing that the housewife could not understand them, and that it was difficult to compute price per unit on a standard container when the net content was $4\frac{1}{2}$ ounces. This would indicate that, for the purposes of this bill, the distinction between random and standard packages is an artificial one.

Neither is it apparent that there is a great demand for such legislation among the consumers themselves. As the representative of the retail grocers pointed out, almost all consumers would like price per unit information if it could be had at no extra cost, but far fewer would desire it if it appreciably increased food costs. Testimony regarding the cost of such information was conflicting. Apparently, the cost would be greatest if the information was supplied by the small retailer, but would be reduced if it was supplied by a large retailer, or at the wholesale level. The fact that, in the past, it has usually been the large operator who has voluntarily supplied such information lends credence to this conclusion. Price per unit legislation would therefore have little effect upon the large operator, but, as the proponents recognize, would place the small retailer at an added disadvantage.

In summary, it would appear that there is at present no real public interest in price per unit legislation. It has been shown that many factors in the food industry have found it good marketing practice to supply price per unit information to their customers, but this does not mean that all stores should be required to do so. At present, the furnishing of this information is done on a competitive basis, consumers who feel that the computation of price per unit should be done for them may shop at stores which do it, or urge their local merchant to adopt the practice. Small retailers who find that the cost of the practice would make their prices too non-competitive will continue to rely upon convenience and personal service to retain their trade. It would seem foolish for the State to further increase their cost disadvantage, the day of the captive consumer is not yet at hand.

Penalties for Nonwillful Violations (AB 2828)

Modern processing methods have often created problems in the equitable enforcement of the Weights and Measures Law. Such has

been the case in the poultry industry. In the not too distant past, most poultry was sold whole-bodied (with head and feet on, and eviscera in) to a consumer living in the general area where the poultry was produced. The limitations inherent in these methods of distribution were numerous, however. In the first place, the predominance of local distribution meant that poultry was not available in all areas at all seasons. There was no such thing as an even flow of poultry to all markets throughout the year. In the second place, the sale of whole-bodied poultry meant that either the consumer or the retailer was faced with the problem of cleaning the poultry and making economic use of all portions of it, when, in fact, only a single portion might be desired. The net result of these limitations was to make poultry an occasional luxury, rather than a staple of the consumer's diet.

In recent years, the poultry industry has attempted to remove these limitations by revolutionizing its distribution methods. New methods of preservation have made poultry an interstate commodity. Pre-cleaning, presegmenting, and prepackaging methods have given both the retailer and the consumer a more attractive and convenient product as well as an expanded range of choice among various portions of the product. Mass producing and processing have also resulted in a reduction of cost. The result has been a phenomenal expansion of the production and per capita consumption of poultry in the United States. Today, poultry, and especially chicken, has become competitive with other meat products, and a staple in the national diet.

The preservation of poultry for interstate distribution and the evisceration and segmentation necessary for an attractive product have made it increasingly difficult to determine accurate weights without resorting to uneconomically frequent weighings. In the days of local production and whole bodied delivery, there was little weight loss from the time of killing to the time of consumption. The practice of weighing, at the time of retail sale, all poultry not in labeled packages (required by statute after 1939), gave the consumer adequate protection for accurate weight. However, once the skin is broken, poultry suffers a more or less constant and continual weight loss through evaporation. For this reason poultry should ideally be weighed upon delivery to each link in the commercial chain, with the seller absorbing any weight loss which occurs during his possession. This principle, however, is not always followed in practice. Since many processors do their own transporting, much poultry is purchased and weighed at the farm. At the other end of the chain, many retailers have neither the time or the facilities to weigh the incoming product. In the first instance, the processor increases the amount of shrinkage he must bear, and in the second, the wholesaler becomes responsible for delivering accurate weight to the retailer. When processing and wholesaling are combined in one operation, as is often the case, the result is a multiplication of cost and quality control problems.

In the California poultry industry, the delivery of accurate weights to the retailer has been the subject of much consideration. Originally, the problem stemmed from the fact that out-of-state producers shipped poultry into California, which, by time of arrival, had shrunk below its stated weight. Through the co-operation of local officials and the U.S. Department of Agriculture, California receivers were able to

reduce the amount of underweight poultry shipped into the State, and obtain cash credits for underweight poultry received. The elimination of this difficulty did not solve the problem of accurate retail delivery, however, since further shrinkage still occurs in both transshipped and processed poultry while it is in the wholesaler's hands. If the wholesaler is responsible for delivering correct weight to the retailer, he must accurately predict the amount of shrinkage which will occur between his final weighing of the product and delivery. Many in the industry feel this is simply impossible, and want to place the responsibility for weighing upon the retailer. Where the retailer does take such responsibility, no weights and measures enforcement problem arises, but where he is unwilling or unable to do so, officials have the legal obligation to see that he gets accurate weight. Industry representatives contend that under these circumstances, involuntary violations of the weights and measures laws are inevitable.

A further problem has arisen as a result of enforcement procedures used in certain areas. While co-operative efforts on the part of enforcement officials and industry representatives were underway, prosecutions of industry leaders were also undertaken. Members of the industry have charged that these prosecutions were arbitrary and unnecessary, and demonstrated lack of good faith on the part of enforcement officials. In return, these officials have maintained that such prosecutions were justified by the inability of the industry to live up to its professions of compliance, and that in any case, they only represented the fulfillment of obligations clearly spelled out in law. Finally, industry representatives have alleged that in certain instances, the service of warrants for such violations was capriciously handled, and resulted in arrests and incarcerations which were unsuited to the community stature of the defendants, and to the nature of the violations.

AB 2828 was introduced at the request of the poultry industry to force at least a partial solution to these problems. In its original form, it would have prohibited imprisonment for any violation of the Containment chapter (Chapter 6) of the Weights and Measures Law unless the violation was proven to be willful. It would thus have eliminated jail sentences for nonwillful mislabeling, but not for actually selling short weight, since the latter is a violation of Chapter 1, rather than Chapter 6. Bureau and consumer representatives argued that AB 2828, as introduced, was too broad in scope and would have unnecessarily weakened enforcement of the law. As a result of such objections, the bill was amended on May 26 to restrict its operation to "handler[s] of perishable foods sold at wholesale for repackaging or reprocessing or which is not offered or exposed for sale at retail directly." Thus amended, the bill was reported favorably out of committee, and passed the Assembly with only two dissenting votes. It was vigorously opposed by the Consumer Counsel in a Senate committee hearing, however, and was therefore referred to interim study at the request of its author.

RECOMMENDATION

Do Not Pass

The author of AB 2828 is to be commended for requesting its referral to interim study. Research and public hearings have enabled the committee to examine the problem in much greater depth than was possible

during the 1961 General Session. The results of the committee's investigation indicate that AB 2828, as amended, makes no substantial contribution to the solution of the problems which prompted its introduction, and may indeed even compound them.

In the first place, the bill does not provide any substantial industry safeguards not already available under present law. In Chapter 6 of the Weights and Measures Division (5) of the Business and Professions Code, Section 12614 exempts discrepancies between actual and stated content if (a) they are due to shrinkage beyond the control of the seller acting in good faith, or (b) if the seller, acting in good faith, relied upon the statement of content placed upon the container by a previous handler, and did not alter the contents in any way. Therefore, practices of the poultry industry meeting the requirements of either (a) or (b) could not result in any violation of the law.

However, discrepancies failing to meet the requirements of either (a) or (b) would come perilously close to being "willful" violations under the provisions of AB 2828, since such discrepancies must be presumed to be neither beyond the control of the seller, nor the result of the transshipment of a container without knowledge of its content. The fact that the handler customarily weighs all containers or lots received, and exacts rebates from previous handlers for any short weight, would indicate that he has established knowledge of, and control over, the content of such containers. Since inaccurate markings made "in good faith" would not generally be violations of Chapter 6, anyone convicted of a misdemeanor under the chapter would presumably have had full knowledge of, and control over, the contents of any illegal container, and would have not been acting in good faith. Although no specific legislative definition of "willful" is included in AB 2828, it is likely that any violation occurring under these conditions would be adjudged "willful." Thus, for all practical purposes, no nonwillful violation could occur within the scope of the bill.

The question of whether shrinkage is actually beyond the control of the poultry industry for the purposes of Chapter 6 is a difficult one. The committee has evidence which would suggest that while shrinkage itself may be unavoidable, it is predictable, and therefore within the control of the industry. At the present time, several factors in the fresh meat industry, including some handlers of poultry, have adopted statistical quality control methods which allow for an overpack based upon predicted commodity life. By all accounts, these methods have been successful in delivering accurate weight to purchasers, and have had no adverse effects upon the cost structures of those involved. Therefore, the committee believes that the more widespread adoption of these methods might solve many of the problems which led to the introduction of AB 2828. As the matter stands now, however, the actual decision as to whether shrinkage is uncontrollable lies with the judiciary. In the past, shrinkage has tacitly been considered controllable. It is possible that upon a closer examination, a court might hold that shrinkage is beyond the control of the industry. However, should a court so rule, there would be no violation of Chapter 6, and the penalty distinctions in AB 2828 would remain meaningless.

In the second place, the bill does not attack several of the specific grievances of the industry which were discussed at the committee

hearing AB 2828 deals with jail sentences subsequent to conviction for misdemeanors, but apparently no one in the poultry industry has recently served a jail term for violation of Chapter 6. If this is so, it would indicate that the courts themselves have consistently displayed an understanding of the problems involved in this sort of violation, and have used their discretionary powers wisely. It might even be inferred that the passage of AB 2828 would tend to increase the number of jail sentences, for although the bill does not make them mandatory for willful violations, it does in fact create the presumption that such sentences are warranted if willful violation is proved.

The actual complaints at the hearing concerned the practice of arrest and incarceration prior to any court appearance, and the general arbitrariness of prosecution. In the first instance, the committee discovered that weights and measures officials have no legal control over the process by which warrants are served once they have been sworn out, and that the unfortunate incidents mentioned resulted from a lack of co-ordination between weights and measures officials and regular law enforcement officers. In the second instance, the problems were found to arise from the lack of co-ordination between state and local weights and measures officials, and the absence of any binding policy concerning the prosecution of violations. The committee has had adequate opportunity to review the problems of state-local relationships in connection with other bills, and hopes that the passage of AB 572 will eliminate conflicts in this area as well as others.

In conclusion, the committee urges the abandonment of AB 2828, and the introduction of legislation which more directly attacks the problems of the poultry industry in the matter of delivering accurate weight. Should statistical quality control methods prove impractical, and courts unsympathetic, the committee might consider legislation requiring that the weight of wholesale poultry be determined by actual test at the retailer's dock, if the responsibility for performing the test and furnishing the necessary equipment could be equitably placed. Until other alternatives have been exhausted, however, the committee regards such legislation as undesirable because of the fact that the shortcomings in the practice of test-weighing at the retailer's dock have been responsible for many of the industry's current problems. Finally, the committee believes that legislation clearly defining the rights of all businessmen and the duties of all law enforcement officials in the prosecution of weights and measures violations might be desirable, but feels that the recommendation of such legislation is beyond the scope of the committee's responsibilities in the present instance.

B. ADMINISTRATION

It is common knowledge that the Weights and Measures Division (5) of the Business and Professions Code is not enforced uniformly throughout the State of California. The committee has made no study of uniform enforcement, but testimony taken in various connections by the committee substantiates this belief. The reason for the existence of nonuniform enforcement is that enforcement is largely a county function, supervised by county officials and financed by county funds. However, certain pressures for uniformity exist within the system, and

these pressures have noticeably increased within the last few years. Diverse groups, including those representing consumer, labor, and industry interests, have indicated an interest in uniform enforcement, and several methods of effecting it have been put before the Legislature.

As the law now stands, county sealers of weights and measures and their staffs are county employees. The State Sealer of Weights and Measures can appoint deputy state sealers, who are state employees, to perform the duties of the county sealer only if the county is unable to appoint its own sealer. However, the Department of Agriculture has been granted "general supervision" over weights and measures in the State, "where not otherwise provided by law" (Section 12100, B & P C). In addition, the department is specifically required to do certain things in the process of exercising such supervision. It is required to "investigate conditions in the various counties and cities in respect to weights and measures, and to the sale of goods, wares and merchandise, commodities and food-stuffs in containers" (Section 12101).

Furthermore, the law specifies the proper relationships between the department, its executive agents and the county sealers. Section 12103.5 specifies that the duty of enforcing weights and measures law "and carrying out its provisions and requirements is vested in the director and in each sealer acting under the supervision and direction of the director." Section 12104 requires the department to "issue instructions and recommendations that shall govern the procedure to be followed by such officers in the discharge of their duties." Finally, the department is required, "at least once in two years," to "inspect the work of the local sealers," and is permitted to inspect "the weights, measures, balances or any other weighing or measuring devices of any person" (Section 12105).

The foregoing would seem to be an adequate expression of the intent of the Legislature concerning central administration of the weights and measures laws. However, the only statutory weapon by which the department might compel compliance with its supervisory orders is that found in Section 12214. This section provides for the dismissal of any county sealer for "neglect of duty, misconduct, or incompetence in office." Upon receiving evidence of such violations on the part of a county sealer, the director may, with the head of the Sealers' Association, appoint an impartial third person, who, with them, will comprise a trial board with power to remove the sealer. The mechanics of the process are so cumbersome (especially where the issue of state versus local authority is involved), and the remedy so extreme, that the present state sealer has no recollection of any county sealer having been dismissed in this manner. In the few instances where trial board action has been attempted, the issues have been personal rather than departmental, and proceedings have eventually collapsed. While there is no legal impediment to the department's using Section 12214 to enforce local compliance with its directives, it has not been departmental policy in the past and is not likely to become so in the future.

Authority of the State Sealer of Weights and Measures (AB 3124)

Some proponents of uniform weights and measures enforcement have felt that nothing short of direct state enforcement of all weights and measures laws would result in uniformity. AB 3124, as introduced, aimed at the objective of state enforcement, but in a somewhat back-handed manner. The bill would have abolished the whole of the article in the Weights and Measures Division (Article 2 of Chapter 2) which authorized the existence and prescribed the duties of county sealers, without erecting a comparable structure of state sealers. It would have also erased from law important sections relating to enforcement practices, including that which AB 545 proposes to amend. Although AB 3124 did propose a new section providing for the substitution of "state sealer" for any reference in the law to "county sealer," it provided neither the money to pay the salaries of any such state sealers, nor the money to appropriate existing weighing and measuring equipment, most of which is presently owned by the counties. AB 3124 was ultimately amended to eliminate the abolition of Article 2 (the county sealer sections) and to add a new section providing that the state sealer "shall have general supervision of the enforcement by county sealers of the state laws regulating weights and measures."

RECOMMENDATION

Do not pass.

Committee hearings produced some support for the amended bill on the grounds that it represents an expression of the principle of central control. That principle, however, is already fully expressed in the existing law. From the standpoint of central control, what is lacking is not the principle, but rather sufficient teeth in the law to transform principle into practice. Without entering into a further discussion of the merits of central control, the committee finds that AB 3124 is without visible effect, and that its passage would therefore be pointless.

State Subventions to County Sealers of Weights and Measures (AB 572)

One reason for the lack of uniform enforcement of weights and measures law in California has been the disparity in status of the office of Sealer of Weights and Measures in various counties. There are three basic categories of county sealers in California. In 26 counties, the position is a full-time job, paying an average of \$7,700 a year. In 21 counties, the county sealer also holds the position of county agricultural commissioner. In the counties where there is no budgetary distinction made between the two functions of such an official, his average salary is \$8,200 a year. However, in the three counties where such a distinction is made, the function of commissioner is clearly dominant; these individuals receive an average of \$8,460 a year as commissioners, and \$1,400 as sealers. The 11 remaining counties are served by deputy state sealers, who are hired and supervised by the State, and paid by the counties. Four of the deputy state sealers also

serve as agricultural commissioner of their county, two others serve in a second county by contractual arrangement, and another two work in a single county on a part-time basis. The average salary of a full-time deputy state sealer is \$4,750 a year. However, those sealers who are also commissioners receive \$6,550 a year, and in the two such counties where the duties of the offices are budgetarily distinguished, an average of only \$480 is allotted to the individual as a sealer. The two part-time sealers receive slightly in excess of \$2 an hour for their work.

As is to be expected, the most populous counties employ separate sealers. Of the 23 counties with a population exceeding 100,000, only five (Orange, Sacramento, Contra Costa, Stanislaus, and Humboldt) employ a combination sealer-commissioner. The smallest county to employ a separate sealer is Sutter County, which has a population of 33,380 and ranks 37th in the State. In the medium-sized counties, the combination sealer-commissioner is the most popular form of office. Of the 28 counties whose populations range from 10,000-100,000, 15 employ combination sealer-commissioners, and in three others, the commissioner serves as a deputy state sealer. Finally, the six least populous counties are all served by deputy state sealers, and only two counties served by deputy state sealers have a population in excess of 15,000.

These statistics indicate that there has been a rough correlation between the populousness of a county and the amount of work it expects its sealer to perform. This is as it should be. However, the rapid increase in the State's population, coupled with the modernization of weights and measures law and enforcement practices, have conspired to multiply the amount of work necessary for proper weights and measures enforcement in every county. Apparently many counties have been unable to keep abreast of the increasing demand for such enforcement, and have weakened the protection for their own citizens, as well as for everyone in the State.

AB 572 was introduced for the purpose of encouraging more uniform enforcement by providing for state subventions to the salaries of county sealers of weights and measures comparable to those currently being received by county agricultural commissioners. The bill is modeled on Section 63.5 of the Agricultural Code, and more specifically, upon AB 573. It would permit the Director of Agriculture to enter into a "co-operative agreement" with the board of supervisors of any county for the purpose of increasing the salary of the county sealer. Like the county commissioner agreements, these pacts would be subject to two limitations:

- (1) That the subvention to the county from the State not exceed (a) \$5,000 per year, or (b) two-thirds of the sealer's salary, and
- (2) That the county not reduce the salary of the sealer below the base salary, or lowest step in any existing salary range, as of January 1961.

The Department of Agriculture has stated that, were AB 572 enacted, it would follow the policy of providing up to two-thirds of any salary increase given to a sealer up to the statutory maximum, if the sealer's office was either a separate one, or budgetarily distinguished

from that of the county commissioner. This would make subventions available to all separate sealers, but would bar all but three of the combination sealer-commissioners from receiving subventions under both sealer and commissioner agreements. The department has further stated that if any county currently without a sealer, or with a combination sealer-commissioner, establishes a separate sealer's office, it would underwrite two-thirds of his salary with a maximum initial state participation of \$3,000, and two-thirds of any increase up to the statutory maximum. The experience with the commissioner subventions would indicate that over a 10- to 15-year period, most counties would take full advantage of these agreements, with an ultimate annual cost of some \$250,000 to the State. However, immediate costs will fall far short of this figure, for some counties cannot increase the salaries of county officials for a four-year period, while others will not want to establish a separate sealer's office, or will only desire to give their sealer a small raise.

RECOMMENDATION

Do Pass

The committee is of the opinion that the passage of AB 572 is absolutely essential to the proper enforcement of weights and measures law in California. In the first place, the bill should improve the professional standards of sealers by encouraging the establishment of adequately compensated independent sealer's positions in all counties, as well as by improving the pay of existing independent sealers. While the practice of paying the county sealer less than the county commissioner was established prior to the approval of commissioner subventions in 1947, the existence of these subventions has acted to keep sealer salaries subordinate in a time when the justification for doing so has all but disappeared. As the committee has noted in its analysis of AB 573, the impact of state legislation on the capacities of the county commissioner is an adequate justification for increasing the state subvention to his salary. How much more true must this then be in the case of the county sealer, whose tasks are almost entirely prescribed by state legislation, and whose problems increase in direct proportion to the increase in population? The day of the "cow counties" is over in California; indeed, many of the prime agricultural counties are also among the fastest growing urban counties in the State, and the needs of most have increased to the point where a full-time sealer is a necessity.

Unfortunately, a side effect of the Commissioner Subvention Law has been the indirect modification of the principle of county payment of county sealers, and a 50 percent increase in the number of combination sealer-commissioners. Since 1947, the tendency has been for counties to use state funds to augment the salaries of combination officeholders in their capacities as commissioners, without making comparable increases in their salaries as sealers, and to appoint commissioners as sealers in order to get a competent man without expending additional county funds. In counties where the duties of a sealer are at all demanding, these practices have led to one of two undesirable results. If the commissioner-sealer has split his time equally between both jobs, some state money (the commissioner subvention) has been spent

for a purpose for which it was not intended; if he divides his time in the manner which three county budgets indicate that he should (the three counties which distinguish his functions budgetarily grant him about one-seventh of his income as a sealer), he must spend less than six hours a week as a sealer, which seems clearly insufficient in all but the smallest counties. Neither alternative makes attractive public policy, and when the confusion of function inherent in joint officeholding is considered, it seems apparent that the establishment of separate full-time sealers in all counties, except those demonstrating a minimal need for them, would be desirable.

As far as the committee can determine, such action would not adversely affect any legitimate interests, if both AB 572 and AB 573 were enacted. The passage of AB 573 would protect the existing combination officeholders against a loss of salary through the loss of their function as sealer. It would appear that very little of their salary has actually been budgeted for that function, and that an increased state subvention of \$1,700 for commissioners would enable most counties to more than make up the difference. Furthermore, it must be noted that the passage of AB 573 will make the passage of AB 572 doubly important, since the further increase of commissioner subventions without provision for sealer subventions would quite probably continue the increase in combination offices and backdoor subventions to county sealers by this means. The committee concludes that the passage of both bills will be a particular boon to counties of intermediate size, and will enable them to have adequate weights and measures enforcement without sacrificing existing standards of agricultural enforcement.

Perhaps the most important consideration in favor of AB 572 is that it constitutes a practical solution to the problem of uniform enforcement of weights and measures law throughout the State. The committee has previously taken cognizance of the fact that state-supervised enforcement has been established as a principle in law, but that no effective methods have existed for realizing it. The committee feels that in the "co-operative agreement" with a subvention, it has found such a method, and is confident that, using financial assistance as persuasion, the State Sealer will be able to establish more harmonious relationships with the various boards of supervisors, and through them, with their employee, and his delegate, the county sealer.

The committee is attracted to this solution to the problem of uniform enforcement because it has already worked well in alleviating a similar situation which existed prior to 1947 with the county commissioners, because it would preserve a vital element of local control, without which the equitable administration of any law becomes difficult, and because it would be considerably less expensive to the taxpayers of the State than the state-administered enforcement suggested in the initial version of AB 3124. Complete state control would probably cost the State an additional \$1,000,000 annually in salaries, as well as initial investments of \$750,000 for equipment, and \$1,500,000 for real property and buildings now owned by the counties. It would seem the course of prudence to experiment with "co-operative agreements," and the relatively small sum that they involve, as a means to the end of uniform enforcement, before plunging into state administration.

PART III. PUBLIC HEALTH

Regulation of the Growth of Castor Beans (AB 359)

The castor bean plant (*Ricinus communis*), is a shrub-like perennial which, although not native to California, is widely grown in the State, particularly in areas where killing frosts are infrequent. It is cultivated both commercially and ornamentally, and as an "escape," occurs with some frequency in untended areas. Unfortunately, the plant is highly poisonous to both animals and man. The shiny and attractive beans contain a powerful toxalbumin, ricin, which can be fatal even if consumed in relatively small amounts, as well as a less-fatal toxin, ricinine. The remainder of the plant also contains these toxic substances to a lesser degree. In addition, the plant possesses an allergen, unrelated to the toxins, which violently affects some people who come in contact with it.

The poisonous nature of the plant is beyond dispute, but susceptibility to the toxic elements in it apparently differs among various people. Fatalities resulting from the ingestion of only a few beans have been recorded; on the other hand, natives in Africa and India reportedly consume the bean in moderate quantities as a regular item of diet without suffering any ill effects. It is also possible that different varieties of the plant at different stages of growth also vary in their toxic capacity. It is difficult to obtain comprehensive information on the incidence of castor bean poisoning in California, but it apparently occurs with some frequency, although fatalities are rare. Evidence does indicate that castor beans account for an extremely small percentage of all poisonings in the State, man-made compounds being the major offender in this regard. Among California plants, however, the castor bean ranks only with the oleander and the poison hemlock as a threat to public health. Innumerable other plants in California are of comparable toxicity, but are less likely to be ingested by human beings.

The use of castor beans as ornamentals in densely populated locations has been the source of most of the health problems associated with the plant. In several of the State's urban areas, castor bean poisonings have led to remedial local action. The Poison Information Center at Children's Hospital in Los Angeles has worked, through television and other media, to inform citizens in the Los Angeles area of the poisonous nature of the castor bean. The Hayward Area Safety Council has worked to educate both parents and children, and to outlaw the growth of the plant. The latter campaign has resulted in the passage of castor bean abatement ordinances by seven municipalities in southern Alameda County, and in the introduction of A B 359, modeled on these ordinances, in the State Legislature.

The commercial production of castor beans has not raised any important health problems, and is far more important to the California economy and the national welfare than the ornamental use of the

plant. The oil of the bean has many commercial uses, including printing, dyeing, and the manufacturing of paints, plastics, medicines, and textiles. As a lubricant, it is of tremendous importance to national defense. The federal government has recognized the strategic importance of the crop for some time, and has attempted, in various ways, to encourage greater production in the United States. During the Korean War, the government instituted price supports for castor beans, although these were abandoned in 1955. At present, Dr. Leroy Zimmerman is conducting an extensive research program on castor beans for the United States Department of Agriculture at the Davis campus of the University of California, and recent federal legislation has encouraged their growth on acreage removed from production through other crop control programs.

In California, as in other parts of the country, the castor bean is grown as an annual rather than as a perennial, since it is only through mechanical harvesting that it can be produced to compete in the world market, where its price is set. As recently as 1958, 13,400 acres of castor beans, more than 50 percent of the country's production, were grown in California. Although California production has since declined, it is expected that the development by the USDA of a variety better suited to California conditions, and plantings pursuant to other crop control programs, will result in a marked increase in California production in the near future.

AB 359 would add Chapter 5 (Sections 14950-14953) to the Health and Safety Code. The bill would make it illegal for any owner or manager of real property to (a) "willfully and knowingly" plant, encourage or harbor any castor bean upon it, or (b) fail to remove all castor beans within 48 hours after having been given legal notice of their existence upon his premises. The provisions of the law would not apply to (a) plants or seeds kept for "educational, scientific, or research activity," (b) commercial cultivation of castor beans, provided that the field is "completely enclosed or is inaccessible so as to effectively restrict children from entry upon such premises," or (c) possession of plants or beans for sale, provided that such beans are (1) displayed and sold in sealed packages, and (2) marked as "poisonous."

The existence of any condition in violation of the chapter would automatically constitute a "public nuisance." Any state or county health officer would be authorized to investigate such a condition, to give notice of it, and if the notice were not complied with, to summarily abate it. The notice (Section 14951) would be in writing, and might be given by personal service, by registered or certified mail, or by conspicuous posting upon the premises.

RECOMMENDATION

Do Not Pass

While it is apparent that the castor bean constitutes a health hazard of some proportions in California, the evidence before the committee fails to indicate that the hazard is so unusual that it should be the subject of sweeping state legislation. Testimony and research both demonstrate that the problem is primarily a local one, and that it can, in all probability, be solved most efficiently at the local level, by city or

county action. The results produced by the Hayward Area Safety Council in southern Alameda County would seem to justify this assumption.

Furthermore, were state action deemed necessary, AB 359 would not be an appropriate vehicle for it. The bill itself illustrates the difficulties of trying to translate municipal ordinances directly into state law. Regulations which inflict no hardship at the local urban level may become totally unfair or unworkable when applied on a statewide basis. This is especially true with regard to AB 359's provisions concerning agriculture and enforcement.

The requirement for enclosure of commercial production acreage created no problems in the municipal ordinances, for the simple reason that no commercial production of castor beans is likely to occur in incorporated areas. On the state level, such a requirement would probably result in the termination of castor bean production in California. With the price of castor beans set by the world market, the expense of enclosing commercial acreage would be prohibitive, especially since the practice of rotating castor beans with other crops would make the expense a continuing one. Since the committee received no information that commercial production has created health hazards, and since the proponents of AB 359 themselves recognize that the problem is mainly urban, there would appear to be no reason to place any restrictions on commercial producers now or in the future.

Again, in an urban area, enforcement of castor bean abatement ordinances has presented few problems. As ornamentals, the plants are confined in small numbers and on small plots, so that public education on the problem usually leads to inexpensive and voluntary compliance by the owners themselves. The case might be quite otherwise at the state level. The removal of volunteer plants on large acreages of uncultivated property might put a heavy financial burden upon the owners of such acreages. Furthermore, the 48-hour time limit on abatement would be unreasonable in such cases, and the provision for giving notice by posting might easily result in the owner's failing to receive notice until after the deadline had passed.

Finally, and most important, the success of existing local ordinances would appear to be, to a considerable extent, due to the public information campaigns which preceded the enactment of the ordinances. When public awareness precedes legislation, enforcement is relatively easy. Without a statewide education campaign, the enforcement of any state castor bean abatement act would be difficult and costly. To pass such a law without providing the funds for an extensive public information program, and a subsequent eradication program, would be to defraud the public by giving state government a responsibility which it would be unable to carry out. To outlaw the castor bean without providing the machinery necessary to actually abolish it would be to provide a sense of security where none in fact existed.

In conclusion, the committee wishes to reiterate its belief that the castor bean does constitute a health problem in some urban areas, and that, as an ornamental, it serves no function that other plants might not serve with a greater degree of safety. Nurserymen have stated that it is an insignificant item in their trade, and could be eliminated without adverse consequences. Therefore, the committee sees no bar

to the further study of state castor bean abatement legislation by a competent committee, such as public health, provided that such legislation be limited to ornamentals and volunteers in no way affecting agricultural production, and that public education and enforcement provisions commensurate with the intent of such legislation accompany it. Until proper study can produce legislation meeting these requirements, the problem will be best handled as it has been in the past, locally.

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"Bird Hospitals" and Licenses in Ornithological Medicine (AB 1792)

For many years, there was very little demand for professional medical services for pet birds, since they constituted a very small percentage of California's domestic animal population. Veterinarians were preponderantly occupied with the care of animals of economic and commercial importance, and few had any specialized knowledge of, or interest in, nonedible birds. Under these circumstances, the occasional medical needs of pet birds were usually met on an empirical basis by bird fanciers and retailers. In the course of time, a number of lay "bird hospitals" were established in the metropolitan areas of the State to give this care to birds on a full-time basis. It seems to be an established fact that, through lengthy experience, the operators of these establishments have developed a great deal of practical knowledge about the care and treatment of birds. Many veterinarians have themselves given tacit endorsement to the competence of these operators by referring pet birds to them for treatment.

As the number of pet birds in California has increased, and the practice of veterinary medicine grown more specialized, some veterinarians have devoted a greater percentage of their time to the medical problems of pet birds. This trend was accelerated by the inauguration of a Department of Avian Medicine in the School of Veterinary Medicine at the University of California at Davis. This department offers a course in Poultry Pathology (which includes much material on pet bird pathology) to medical students, and various short refresher and advanced training courses to practicing veterinarians. The California Veterinary Medical Association, along with other bodies within the profession, also holds periodic conferences at which papers and programs on pet bird practice are presented. Finally, individual members of the profession have enhanced their own understanding of avian medicine by private research, and have invested in the equipment and facilities necessary to maintain an extensive pet bird practice. For these reasons, the profession feels that today it is fully able to meet the medical needs

of California's pet bird population, and that medical treatment of birds in lay "hospitals" is no longer necessary or desirable.

AB 1792 is the outgrowth of an unsettled question concerning the applicability of the provisions of Division II, Chapter 11 of the Business and Professions Code to practice of avian medicine by unlicensed operators of lay "bird hospitals." Although statutes forbidding the practice of veterinary medicine on animals without a license have been in existence since 1927, many persons assumed, in the absence of a legislative definition of "animal," that the term excluded birds, and that therefore the operators of "bird hospitals" need not be licensed veterinarians. As recently as 1955, the operator of one "bird hospital" was informed in writing by the Secretary of the California Board of Examiners in Veterinary Medicine that it was not necessary for him to have any kind of license in order to practice medicine on birds. In 1959, however, the Board of Examiners submitted this same question to the Attorney General for determination. The resulting opinion (No 59/316) held that birds, not having been specifically excluded, were "animals" within the meaning of the law, and that therefore anyone who gives medical treatment to birds without a veterinarian's license does so in violation of the law.

In the wake of this opinion, AB 1792 was introduced to permit the continued existence of "bird hospitals" by regulating them as a separate entity under the Veterinary Medicine laws. As amended, the bill would create a "special license in ornithological medicine" which limits the holder to treating "nonedible birds," the holder of such license being subject to all the provisions of the chapter on Veterinary Medicine. The Board of Examiners would be required, until 1963, to grant such licenses to all applicants who had practiced ornithological medicine, by themselves, or in some active association with a "bird hospital" for a period of at least three years prior to December 1, 1959, although retail pet shops (places selling anything other than bird supplies and bird food) were specifically excluded from the definition of "bird hospitals." The board would also be required to grant such licenses to all who applied and passed a special examination on ornithological medicine to be given by "an ornithological board."

RECOMMENDATION

Do not pass.

The committee is in full sympathy with the predicament of the existing "bird hospitals" in California. While acknowledging that the Attorney General has probably interpreted the letter of the law correctly, the committee feels that the Board of Examiners in Veterinary Medicine, and by extension, the government of the State of California, having permitted "bird hospitals" to operate under the same law for many years, have a moral obligation to do everything possible to permit the continued existence of all established "hospitals." The committee believes that such an obligation is not unreasonable, because it is of the opinion that, in the past, most "bird hospital" operators have done a satisfactory job with limited formal training in a neglected field of medicine. The fact that these "hospitals" have a large number of satisfied clients was obvious to all who attended committee hearings or read committee mail; equally revealing is the fact that the committee's re-

search was not able to uncover a single formal complaint in the files of the Board of Examiners alleging the mistreatment of birds against a "bird hospital."

The committee desires to achieve its end of keeping "bird hospitals" in business without resort to legislation, if such a course is possible. Because SB 1238, passed in 1961, liberalized the definition of administering treatment to animals, and because the Executive Secretary of the Board of Examiners is of the opinion that most "bird hospitals" are presently complying with the law, there is reason to believe legislation is unnecessary. However, if future events show that legislation is indispensable, the committee recommends a "grandfather clause" granting licenses to practice ornithological medicine on nonedible birds to all operators and active associates of "bird hospitals" who can demonstrate three years of practice prior to December 1, 1959, and who can pass an examination in applied ornithological medicine.

The committee does not think it desirable to create any provisions for the licensing of new "bird hospital" operators. It recognizes that any grandfather clause will give present operators a virtual monopoly throughout their lifetimes, but believes that the veterinary profession is now nearly competent to handle the medical needs of California's pet bird population. Although the past efforts of veterinarians in this field have admittedly been inadequate, an outmoded public image of the veterinarian as a general practitioner accounts for the erroneous belief that no veterinarians have specialized, or will specialize, in pet birds.

The committee also rejects the contention that a practical knowledge of ornithological medicine is all that is necessary to treat birds and protect public health. The committee recognizes the contributions of self-taught ornithologists to the field of veterinary medicine, and acknowledges that practical training has often been of great value in the absence of more comprehensive academic preparation. However, the committee also believes that a general training in basic medical science such as is provided by the University of California is becoming more and more indispensable to the proper conduct of any type of veterinary medicine. While it hopes that both lay ornithologists and professional veterinarians will co-operate to share their knowledge for the benefit of all, the committee believes that to permit any more than a temporary exception to the maintenance of professional standards in the field of veterinary medicine would adversely affect the interests of pet birds, their owners, and the public at large.

PART IV. FAIRS AND EXPOSITIONS

Assembly Bill 2443 and Assembly Bill 2476 were originally referred to a Subcommittee on Fairs and Exhibitions. However, for reasons that will be related below, it was deemed unnecessary to hold hearings on these bills.

Local Regulation of Commercial Enterprises at Fairs (AB 2443)

The problem that provoked the introduction of this bill is that of determining whether a commercial enterprise authorized by a state or district fair to operate for the duration of that fair upon its grounds is subject to local regulation and licensing. The legal aspects of this question are currently unclear, but a test case is pending that should provide at least a partial answer. The policy implications of the problem, which in practice amounts to robbing Peter (the fair) to pay Paul (local government), have been subjected to thorough study by the Joint Committee on Fairs, Allocation, and Classification. On the basis of an extensive survey and hearing, that committee concluded that the problem existed in isolated instances, and was best subject to settlement by negotiation when it arose.

RECOMMENDATION

Do not pass

The committee accepts the conclusions of the Joint Committee on Fairs, Allocation, and Classification, and refers all interested parties to that committee's report for a more extensive discussion of the subject.

Cattle Judging at Fairs (AB 2476)

The objective of AB 2476 was to provide a method of ensuring the impartial selection of cattle judges for any fair receiving a state subvention. The bill's author has informed the committee that interest in the passage of this legislation has waned to such an extent that the need for it is questionable. Also, a brief survey of the bill indicates that it might solve one problem only to create others.

RECOMMENDATION

Do not pass

The committee recommends that the present legislation be abandoned, and that new legislation be introduced when and if the problem reoccurs.

PART V. SPECIAL STUDIES

Regulation and Operation of Cotton Trailers and Other Implements of Husbandry on Commercial Highways

The California Legislature recognized long ago that implements used by the farmer in pursuit of his occupation must occasionally be operated upon public highways. In the belief that the application of rules and regulations necessary to the safe operation of passenger and commercial vehicles to such implements would be grossly unfair to the farmer, and nonessential to the maintenance of public safety, the Legislature expressly exempted "implements of husbandry" from many of the provisions of the Vehicle Code. This basic exemption has been continued to the present day, and while the updating of statutes to keep pace with agricultural and transportation technology has caused headaches for farmers, law enforcement officials, and legislators alike, few would argue that the principle behind the exemption is not still a sound one.

The fundamental definition of an "implement of husbandry" is "a vehicle which is used exclusively in the conduct of agricultural operations" (Section 345, Veh C). As a general rule, a vehicle "which is designed primarily for the transportation of persons or property on a highway" is not considered an implement of husbandry, even though it may be using the highway as an essential part of an agricultural operation (Section 345). The Legislature has, however, admitted the justice of certain exceptions to this rule particularly in the field of implements used solely for transporting other implements of husbandry from field to field, or farm produce to the point of first handling. One such exception is that of the cotton trailer, which is specifically designated as an implement of husbandry provided that it is "used on the highways for the exclusive purpose of transporting cotton from a farm to a cotton gin, and returning the empty trailer to such farm" (Section 350).

Cotton trailers come in various shapes and sizes, but historically, 20-foot trailers have predominated. With the switch from hand to machine picking, harvested cotton became fluffier, and the capacity of the normal 20-foot trailer was reduced to about 3 bales. In order to expedite harvest and ginning operations, it became standard practice to pull cotton trailers from the field to the gin in tandem by means of a pickup truck. Although larger single trailers are still in some use, most ginning and weighing operations are synchronized to handle 20-foot trailers in tandem. It can be fairly assumed that the purpose of the Legislature in specifically designating cotton trailers as implements of husbandry was to permit them to operate in their accustomed manner upon California highways.

It has been called to the attention of the committee that two items of legislation enacted by the 1961 Legislature have interrupted the customary operation of cotton trailers. Assembly Bill 1599 (Chapter 643) added Section 21715 to the Vehicle Code, which reads as follows.

No passenger vehicle, or commercial vehicle under 4,000 pounds, shall draw or tow more than one vehicle in combination, except that an auxiliary dolly may be used with the towed vehicle

This bill was reported out of committee and passed both houses of the legislature on the basis that it was necessary to eliminate the dangerous practice of pulling two house trailers, or a house trailer and a boat trailer, behind a passenger or light commercial vehicle. Upon the commencement of cotton harvesting in the fall of 1961, it was discovered that Section 21715 effectively prohibited the established practice of pulling two cotton trailers behind a light pickup, although all evidence indicates that because of its careful conduct and limited nature, this practice has never posed a highway safety problem.

Since the fall of 1961, the cotton industry and legislative committees have explored several possible modes of compliance with Section 21715. All are based upon the premise that the cotton trailers might legally be pulled by a pickup of over 4,000 pounds in weight, but each has been found to entail further complications. In the first place, one-half ton pickups, the most popular type of farm vehicle, generally have a registered weight of less than 4,000 pounds. In order to comply with Section 21715, an owner of such a vehicle would have to build up the unladen weight of his vehicle to 4,000 pounds or more through the addition of accessories, and then pay an additional \$13 annually to reregister it in the 4,001-5,000 pound class. The owner of a vehicle already registered in this class, such as a three-quarter ton pickup, could legally tow two cotton trailers except that its length, when added to that of the two cotton trailers, generally causes the combination to exceed the statutory maximum of 60 feet provided for such combinations (Section 35401, Veh C). This problem, in turn, has been partially overcome through the grace of individual county road commissioners, who are empowered to issue over-length permits for city and county roads, but no similar permits have been made available for those farmers who can reach gins only by traveling over state or federal highways. Thus, while stopgap measures have temporarily alleviated the problem and permitted the harvesting of the cotton crop, no equitable remedy for the hardship worked upon the cotton producer by Section 21715 has yet been achieved.

In 1961, the Legislature also created a new driver's license classification system by the passage of AB 2463 and AB 2229 (Chapters 1614 and 1615). The previous licensing system distinguished only between operator's licenses, endorsed operator's licenses, and chauffeur's licenses, and the normal operator's license permitted the possessor to operate any vehicle or combination of vehicles except (1) a motor vehicle having an unladen weight of more than 12,000 pounds, or (2) a motor vehicle towing a vehicle having a gross weight in excess of 6,000 pounds, "except special mobile equipment or an implement of husbandry" (Section 12500, 1959 Veh C). The new law, in contrast, creates four progressively more comprehensive license categories (Section 12804, Veh C).

Class D Any single motor vehicle having not more than two axles or any such motor vehicle towing any other vehicle having a gross weight of 6,000 pounds or less

Class C. Any single motor vehicle having not more than two axles or any such vehicle towing any other vehicle.

Class B. Any single motor vehicle or any such vehicle towing one other vehicle

Class A. Any vehicle or combination of vehicles

Under the old law, the operator of a pickup truck pulling two cotton trailers had need of nothing more than his normal operator's license and required no special examination of his competency to handle his combination, a situation apparently well justified by the excellent safety record of such combinations. Under the new law, the operator of the same combination is required to qualify for a Class "A" license, the most comprehensive of all licenses. The Department of Motor Vehicles may apparently either require such an operator to pass all "A" licenses tests and acquire an unlimited certification as an "A" driver, or accept an employer's certificate of driving experience in lieu of an examination for the "A" license. However, the department is understandably reluctant to grant a comprehensive "A" license to a driver on the basis of his competency with cotton trailers, and so has administered the employer's certificate provision in such a way that the average cotton trailer operator is unable to qualify under it. It is also understood that the department is attempting to discover the authority to issue restricted licenses within each category, but it is doubtful that even this provision would provide a satisfactory solution for the operators of cotton trailers, who have proven adept at their particular task, but have no need to master the complexities of heavy trucking operation.

RECOMMENDATION

The committee recommends that Section 21715 be amended to exclude implements of husbandry and farm trailers from its provisions, that maximum length for combinations of implements of husbandry not incidentally operated on the highways be increased to 70 feet, and that a Class "D" driver's license, requiring no special examination, shall permit the operation or towing of implements of husbandry or farm trailers where such operation or towing requires a driver's license.

The committee concludes that legislation passed at the 1961 session has inadvertently made it impossible for agricultural producers in general, and cotton growers in particular, to transport their products to the point of initial handling in their customary manner. It also concludes that the practices devised to enable producers to comply with such legislation have occupied the time and increased the expenses of the producers involved without measurably increasing the public safety. For this reason, the committee recommends that three items of legislation be introduced for the purpose of permitting these agricultural producers to resume their operations as they existed prior to the 1961 session.

First, the committee recommends that Section 21715 be amended to provide that it shall not apply to the drawing or towing of implements of husbandry or farm trailers. It is the opinion of the committee that this section was never specifically intended to apply to agricultural operations, and that if its extended application to such operations had

been recognized at the time, it would never have been written into law in its present form. Since agricultural compliance with the section has been costly and has served no public purpose, the committee finds that amending the section to exempt implements of husbandry and farm trailers offers the only reasonable path towards a resolution of the problem.

Secondly, the committee finds that the imposition of a 60-foot maximum length limitation on implement of husbandry combinations is unreasonable in the light of existing laws and agricultural technology. While this situation was not created by 1961 legislation, the problems of compliance with Section 21715 have brought its inconsistencies to the committee's attention. In turn, these inconsistencies, most notably the fact that some trailer combinations are permitted a maximum of 65 feet while operating upon federal and state highways, and the fact that any county road commissioner can issue a blanket overlength permit for operation on city or county roads, have prompted the committee to seek a uniform maximum length limitation for all implements of husbandry and combinations of implements of husbandry not specifically exempt from length limitations. The committee's conclusion is that a maximum length of 70 feet for such vehicles or vehicle combinations would best serve the general interests of public safety and agricultural production, and more specifically, fit the needs of California's number one agricultural crop, cotton.

Thirdly, the committee finds it desirable to amend the new driver's licensing classification system to reinstitute the former practice of requiring only the minimal operator's license for the operation or towing of implements of husbandry or farm trailers. Since no evidence was presented to indicate that the former licensing provisions with respect to the operation of such vehicles constituted a threat to the public safety, it would appear that this operation occurs under circumstances that obviate the need for any special licensing or examinations. The committee is definitely of the belief that the present requirement of an "A" license for the towing of two vehicles such as cotton trailers is unwise, for the Department of Motor Vehicles must either give the applicant a comprehensive examination that only a professional truck driver would be able to pass, or else legally certify the applicant for heavy trucking operations which he might be in fact unqualified to perform. Since little employee, and no farm operator, relief can be anticipated from the employer's certificate provisions of the law, the best solution for the problem will be to specifically entitle the holder of a Class "D" license to operate or tow any implement of husbandry or farm trailer, singly or in combination, for which a driver's license is mandatory, and to provide that no special examination for such operation be required.

If further study should reveal that these, or other similar specific measures, are inadequate to protect the principle embodied in the implement of husbandry exemption, the committee would then urge a comprehensive review of the definition of implement of husbandry and all related provisions, to the end that efficient agricultural production consistent with the public safety might be maintained.

Conflicts Between Bees and Agricultural Chemicals

Bees and pesticides are both essential to California Agriculture.¹ Bees are the chief pollinating agent for numerous crops, while pesticides are widely used to control insect damage. Problems arise because some pesticides that eliminate harmful insects are also fatal to bees. Since California uses one-fifth of the nation's pesticides, and is inhabited by one-tenth of the nation's bees, conflicts between bees and agricultural chemicals have occurred frequently within the State. While it will never be possible to reconcile these two interests perfectly, the Legislature has, in the past, attempted to lay down some ground rules that would permit these two important factors in farm production to coexist with a minimum of friction.

In California, both the beekeeper and the chemical applicator bear obligations to see that agricultural pesticide application does not injure domestic bees. Under the Bee Diseases Law, as revised by SB 34 at the 1961 session of the Legislature, beekeepers must:

- 1) register each apiary with the county commissioner or director of agriculture (Sections 279, 279 1, Ag C)
- 2) notify the appropriate county commissioner of the movement or relocation of any colony of bees into the State (Section 274) or within the State (Section 275)
- 3) post a sign with his name or registration number on each apiary (Section 279 2).

Unless the beekeeper has done these three things, he is not entitled to recover damages for any injury to his apiary through pest control operations (Section 279 25). Senate Bill 34 made no important change in the principle of the existing law, which had been in operation for over a decade. There has always been some failure to comply with these regulations because of the evidence compliance might afford tax collectors, because of the practice of placing apiaries on land without first obtaining the owner's consent, because of possible damage suits against the beekeeper, and because of the general nuisance involved in compliance.

The applicator, on his part, is regulated under two different laws; the Agricultural Pest Control Business Law (Sections 160 *et seq* Ag C) and the Agricultural Chemicals Law (Sections 1010 *et seq* Ag C). Under the former law, all commercial applicators are required by regulations in Title 3, Chapter 4 of the Administrative Code, "when using a method or device, or a material containing any substance, known to be harmful to persons, animals (including honey bees), crops, or property", to "exercise reasonable precautions to protect persons, animals, crops and property from damage and to confine the material applied substantially to the premises, crops, animals, or things intended to be treated." (Sec 3093) Section 3096 provides that

All persons engaged for hire in the business of pest control shall apply pesticides, which are harmful to bees, on blossoming crops in

¹ Background information on bees in California may be found in J. E. Eckert, "Introduction to Beekeeping," California Agricultural Experiment Station, Leaflet 14, Revised (1959), and "Honeybees in Crop Pollination," California Agricultural Experiment Station, Leaflet 32, Revised (1959).

which bees are working only during the hours or under the conditions, if any, provided in regulations of the commissioner, and when using material containing any substance known to be harmful to bees, shall give notice within a reasonable time prior to treatment allowing 48 hours to enable the owner to protect the bees. Notice shall be given in the following manner:

(a) If the apiary is located on the property to be treated, or on property where the material appears likely to drift in harmful amounts, notice shall be given to the owner of the apiary, if the name and address of the owner is conspicuously posted at the apiary or is otherwise known to the operator; and if not known, then to the commissioner.

(b) If the material is to be applied to plants or crops in bloom, or appears likely to drift in harmful amounts to plants or crops in bloom, notice shall be given to the commissioner and to the owners of all apiaries shown on the records of the commissioner to be located within one mile of the property to be treated.

(c) Notice shall be given by collect telephone or telegraph message or other means provided by the owner of the apiary and at his expense. If no such means is provided, notice may be given by postcard mailed to the address, if any, posted in the apiary, otherwise to the last known address shown in the records of the commissioner.

(d) Notice to the commissioner, when required, may be given in person or by telephone during his regular office hours, or by mail. The information contained in the notification shall be available to interested persons applying at the office of the commissioner.

The Pest Control Law does not apply to farmers spraying their own crops. However, those who engage only incidentally in spraying for the benefit of their neighbors, while exempt from the license requirements, must secure permits, and are subject to all the other provisions of the chapter. Thus this law affords some protection to the beekeeper from all applicators except the individual farmer.

The Agricultural Chemicals Law (see especially Sec. 1080, Ag. C.) provides that the Director may 1) specifically list any chemicals which he finds dangerous to persons, animals, or crops, and 2) regulate the use of such chemicals. Regulations on such specifically enumerated chemicals apply to anyone who uses them, including farmers. In Section 2461 of Title 3, Chapter 4 of the Administrative Code, 14 chemicals are enumerated. They include 4 arsenic compounds (no longer widely used), 9 organic phosphorous compounds (where most of the problems now occur), and finally, a subsoil chemical, chloropierin (which functions as a tear gas if it escapes from the ground). They do not include a number of other chemicals deemed highly toxic to bees by the University of California.²

The regulations provide for supervision by permit (or other means) of the application of the enumerated chemicals (Sec. 2463). Regulations also require that such chemicals or containers not be left accessible to honey bees (Pest Control regulations have a similar pro-

² See L. D. Anderson and E. L. Atkins, Jr., "Pesticides Hazardous to Honeybees," OSA No. 72, University of California Agricultural Experiment Station.

vision), and that before any of the enumerated chemicals are applied, notice must be given to the owner of any animals (including honey bees) "known to be on the property treated or on nearby properties when the owner of such animals has previously made a request for such notice, and a reasonable time (not exceeding 48 hours) allowed to remove or otherwise protect such animals" (Sec 2462).

Taken together, it would appear that the Pest Control Law and the Agricultural Chemicals Law afford ample protection to the beekeeper. In many instances, this is, in fact, the case. However, the committee has discovered that protection is far from universal. The reasons for instances of inadequate protection are complex. In the first place, the existence of two separate laws devoted to what is fundamentally a single problem has created both legal and practical confusion. The two laws overlap in some areas, but leave others unprotected. Because the Pest Control Law includes all chemicals, but is limited to commercial applicators, while the Agricultural Chemicals Law includes all applicators, but is limited to certain chemicals, a commercial applicator using an enumerated chemical would have to comply with the regulations pursuant to both laws, while a farmer using an unenumerated chemical would not come under the provisions of either. Since it may be assumed that the individual farmer is less acquainted with the effects of agricultural chemicals and less adept in their application than a commercial applicator, this latter exemption gives cause for serious concern.

In the second place, the regulations pursuant to the two laws are themselves incongruous. This further complicates the situation of the commercial applicator using an enumerated chemical, who is subject to both sets of regulations. For example, the regulations issued under the chemicals law provide that the beekeeper must, in some manner, request that notice be given him prior to chemical application, in order to be entitled to any such notice (Section 2462, Ad C). The Pest Control Law regulations, however, require all applicators to give notice to all affected beekeepers without requiring any advance request for such notice from the beekeepers (Section 3096 Ad C). Similarly, the chemicals regulations provide that "a reasonable time (not exceeding 48 hours)" be allowed to remove or protect the bees. This provision implies that less than 48 hours can sometimes be deemed a "reasonable time" to remove bees, and fails to indicate whether the time begins to elapse from the time notice is sent or from the time it is received. The pest control regulations, however, provide for notice to be given "within a reasonable time prior to treatment allowing 48 hours to enable the owner to protect the bees." This presumably allows the beekeeper a minimum of 48 hours to protect his bees after he receives notice of the proposed chemical application. Finally, the pest control regulations permit different types of notice under different circumstances, so that uniform notification procedures even within a single set of regulations is not to be anticipated.

Testimony by representatives of the beekeepers called into question not only the utility of present regulations, but the whole concept of notification as a protection for bees. It was argued that reliance of present laws upon the notification system puts, upon the beekeepers, responsibilities of protecting bees that properly belong upon chemical

applicators. It was contended that most bee damage is the result of the misapplication of agricultural chemicals upon fields adjacent to those where bees are operating, or upon fields at times when bees are attracted to them. Therefore to place primary reliance on the notification system to protect bees is to tacitly ignore misapplication as a cause of bee damage. Consequently, the notification procedure, if technically adhered to by the chemical applicator, tends to absolve him from the financial consequences of misapplication. Although the Agricultural Chemicals Law specifically states that adherence to notification requirements does not automatically relieve the applicator of his responsibility for any damage resulting from his work, it is alleged that the courts do not look favorably upon the appeals of a beekeeper who fails to remove his bees following receipt of such a notice.

Other testimony pointed out that for various reasons, beekeepers had been historically negligent in protecting their bees even when proper notice was given, and that their lack of co-operation has in some instances given an applicator little choice but to proceed with his task in spite of its effect upon the bees. It was further noted that while drift and misapplication are sometimes problems, the bees themselves often range several miles from their hives, and appear in areas where the most conscientious applicator has no reason to suspect their presence. Finally, it was argued that to place responsibility for preventing bee damage solely upon the applicator is as unfair as to place it solely upon the beekeeper, and that a third party, whose co-operation is vitally necessary to the success of any bee protection program, and who has so far escaped much responsibility in the matter, is the farm operator himself. The farmer who calls an applicator in as a specialist to produce a desired result is often concerned too completely with price and crop effect, and too little with side effects, yet because the applicator performs his services as an agent of the farmer, he must accede to the farmer's wishes or risk losing the job. Therefore, any realistic bee protection program must include the farmer as a responsible party as long as he exerts influence over the application of agricultural chemicals.

RECOMMENDATION

The committee recommends that the Department of Agriculture correlate the regulations pursuant to the Agricultural Pest Control Business and Agricultural Chemicals Laws, that it include a larger number of pesticides toxic to bees in the regulations pursuant to the Agricultural Chemicals Law, and that counties strengthen their own regulatory programs through the use of local initiative.

The committee concludes that there is substantial room for improvement in the existing system of beekeeper notification. The most immediate need for improvement lies in the regulations issued by the Department of Agriculture pursuant to the agricultural pest control business and agricultural chemicals laws. These two sets of regulations are so inconsistent that it is difficult to understand how any applicator or beekeeper could properly understand his rights and duties under them, let alone conduct his operations according to their provisions. The committee therefore recommends that the Department of Agriculture conduct a thorough review of these two sets of regulations

with the object of eliminating their inconsistencies, and making them easier for all parties to comply with. It may be fairly said that whatever the inherent shortcomings of the notifications system as a bee damage prevention measure may be, it will not have been given a fair trial until such time as it is made readily comprehensible.

Secondly, the committee recommends that the Department of Agriculture consider the enumeration of further pesticides under the provisions of the Agricultural Chemicals Law. The University of California currently classifies a significant number of nonenumerated pesticides as "highly toxic" to bees. Were more of these pesticides regulated under the law, the danger to bees from unregulated applications by farm operators would be considerably reduced.

Thirdly, the committee has discovered that in some areas of the state where conflicts between bees and agricultural chemicals are potentially great, friction has been reduced to a minimum by vigorous and intelligent action on the county level. Through the use of local ordinances and the discretionary powers of the county agricultural commissioner, workable regulations have been established, and co-operation between the bee and agricultural chemical industries has been achieved. The committee recognizes that the nature of the problems varies greatly from area to area, and therefore recommends that the county commissioners be granted additional power and financial assistance through county ordinances in those counties where conflicts are now the most acute. The State owes the commissioners a realistic and comprehensible law to work under, but each county must see to it that its own problems receive the attention they deserve. It is the committee's belief that if its suggestions are heeded, no legislation on the subject will be necessary.

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APPENDICES

APPENDIX A

COMMITTEE HEARINGS HELD

- September 18, 19-----Room 1138, State Building,
107 South Broadway, Los Angeles.
AB 545 (Mills)
AB 2828 (Don A. Allen)
AB 1792 (George A. Willson)
HR 233 (Carrell)
- October 9, 10-----Rooms 1200, 1194, State Building,
350 McAllister Street, San Francisco.
AB 1364 (Knox)
AB 3124 (Meyers)
AB 572 (Winton)
AB 573 (Winton)
AB 359 (Bee)
AB 653 (House)
AB 3045 (Meyers)
HR 428 (Brutschgi)
- October 26, 27-----Council Chambers, City of Bakersfield
City Hall, Truxtun and Eye Streets,
Bakersfield
AB 793 (Williamson)
AB 794 (Williamson)
HR 392 (Williamson)
AB 359 (Bee)
Cotton Trailers
- December 5, 6-----Room 4202, State Capitol Building,
Sacramento
AB 793 (Williamson)
AB 794 (Williamson)
HR 392 (Williamson)
Bees and Agricultural Chemicals

APPENDIX B

PERSONS TESTIFYING AT COMMITTEE HEARINGS

— A —

Jean Andrews, Owner, Birdland Bird Hospital.

— B —

C. O. Barnard, Executive Secretary, Western Agricultural Chemicals Association

Robert J. Beckus, Manager, Dairy Institute of California.

Jack Brandt, Member, Fresh Plum Advisory Board

Roy Brant, Beekeeper.

Esther Brown, California Bird Protective Association.

Kenneth Brown, Sealer of Weights and Measures, County of Marin, and Chairman, Legislative Committee, California Association of Weights and Measures Officials

Emro Bruch, Program Supervisor, Seed Inspection, California Department of Agriculture

Robert Bunch, President, Kern County Agricultural Chemicals Association, and Director of the Board, Aerial Applicators Association

Ralph Bunje, Manager, California Canning Peach Association.

Stuart Burk, Sealer of Weights and Measures, County of Solano, and Chairman, Northern California Division, National Scalemen's Association.

Alfred Bussell, Castor Bean Grower.

— C —

Arodd Clark, D V M, California Veterinary Medical Association.

George Cohan, Los Angeles Meat Dealers Council.

Frank H. Connor, Sheriff's Office, County of Los Angeles (retired).

Paul Couture, Couture Farms.

Howard Crom, Beekeeper.

George Crum, President, Freestone Peach Association.

— D —

Stephen D'Arrigo, D'Arrigo Brothers of California.

Rita Del Mar, Legislative Representative, Humane Affiliates

* Dr. W. E. Domingo, Director, Oilseeds Production Division, Baker Castor Oil Company

Samuel Dubin, Temple Poultry Company.

— E —

* Charles Edwards, President, Turkey Growers of California, Inc., and Turkey Growers of America, Inc.

Arthur B. Emmes, O D, Chairman, Special Castor Bean Control Committee, Hayward Area Safety Council.

* Submitted written testimony but did not appear in person.

— F —

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- Henry Fukuba, Farmer.

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- Maud Gallop, California Bird Protective Association
- * Maury Gettleman, President, Los Angeles Meat Dealers Council.
- Gladys Gill, California Bird Protective Association.
- Merle Goddard, Director of Industry Relations, California Grocers' Association.
- * Maury Griss, GMC Farms.

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- Mrs. Richard S. Hans, Hayward Area Safety Council.
- Lloyd Harvey.
- Fredrick H. Hawkins, Cannery League of California.
- W. F. Houston, Chairman, Legislative and Pesticide Committee, California State Beekeepers Association.
- Kenneth Humphreys, Executive Secretary, California Veterinary Medical Association.

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- William A. Kerlin, State Sealer of Weights and Measures and Chief, Bureau of Weights and Measures, California Department of Agriculture
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- Howard Koyle, Owner, Koyle's Bird Haven.
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- * Gordon Lyons, Executive Manager, California Beet Growers Association, Ltd.

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- * Carl Muller, Chairman, Bushberry Advisory Board.

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- Carl Nall, Executive Secretary, Pacific Dairy and Poultry Association.
- Milton Natapoff, Chairman, Subcommittee of the State Board of Agriculture Regarding Complaint of Charles Edwards Against the California Turkey Promotion Advisory Board.
- Mrs. Helen Ewing Nelson, Consumer Counsel, State of California.

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Geoffrey Peyser, General Counsel, Wine Institute.
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- Dorothy Shippee, Humane Education League, Inc.
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- Joseph R. Smith, Vice President, Pacific Vegetable Oil Corporation.
- John P. Stanley, Director of Commodity Services, California Farm Bureau Federation
- Emil Steck, General Counsel, Dairy Institute of California.

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ASSEMBLY INTERIM COMMITTEE REPORTS
1961-62

VOLUME 18

NUMBER 4

FINAL REPORT
of the
**ASSEMBLY INTERIM COMMITTEE ON
LIVESTOCK AND DAIRIES**
to the
CALIFORNIA LEGISLATURE
(House Resolution No. 361-13)

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LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON LIVESTOCK AND DAIRIES
SACRAMENTO, January 7, 1963

HON JESSE M UNRUH, *Speaker of the Assembly*
and Members of the Assembly
Assembly Chamber, Sacramento

GENTLEMEN Enclosed is the report of the Assembly Interim Committee on Livestock and Dairies pursuant to and in conformance with provisions of House Resolution 361-M of the 1961 General Session.

During the interim from July 17, 1961, your committee has held eight meetings throughout the State. At these meetings testimony was heard on a variety of subjects related to problems of the dairy industry. In total, witnesses from both the production and distribution sides of the industry, industries which supply the dairy industry, and labor organizations, as well as representatives of the Department of Agriculture and the Giannini Foundation of Agricultural Economics, University of California, were heard in more than 150 appearances. This testimony covered ten major problem areas of concern to the dairy industry.

A summary of our interim activities and the results thereof are summarized in the preface of this report.

Respectfully submitted,

FRANK P. BELOTTI, *Chairman*
ALAN G. PATTEE, *Vice Chairman*

WILLIAM T. BAGLEY
CARL A. BRITSCHGI
MYRON H. FREW
PAUL J. LUNARDI
ROBERT T. MONAGAN

CARLEY V. PORTER
JACK SCHRADER
HAROLD T. SEDGWICK
CHARLES H. WILSON
GORDON H. WINTON, JR.

ACKNOWLEDGMENTS

The committee would like to acknowledge its debt to various organizations and individuals for their unfailing co-operation and assistance in the accumulation of the data and testimony represented by this report. In this we are particularly grateful to the Committee Secretary, Mrs. Elizabeth Spaulding, for her continued efficient and loyal service.

We are indebted to Agriculture Director Charles A. Paul for the help which his staff, including Donald A. Weinland, assistant to the director, Chief Louis C. Schater of the Bureau of Milk Stabilization, and Chief Al Reynolds of the Bureau of Dairy Service, have given this committee in the past 18 months.

Your committee is also indebted to the following for their co-operation and assistance: Dairy Institute of California, California Farm Bureau Federation, California State Grange, Northern California Milk Dealers Association, Western Dairymen's Association, Protected Milk Producers Association, California Milk Producers' Federation, Associated Dairymen, Consolidated Milk Producers of San Francisco, Petaluma Cooperative Creamery, Pacific Dairy and Poultry Association, Northern California Milk Dealers Association, Danish Creamery Association, California Edible Oils Committee, Consolidated Milk Producers of Tulare County, Central Milk Agency, Challenge Cream and Butter Association, Dairymen's Cooperative Creamery Association, Manufacturing Milk Producers Association, California Farm Research and Legislative Committee, California Teamsters Legislative Council, California Association of Agricultural Laboratories, American Council of Independent Laboratories, as well as a number of individual producers and distributors who contributed testimony.

We are also grateful for the continued assistance of Legislative Counsel A. C. Morrison and Kent DeChambeau of his staff.

Particular acknowledgment and thanks are extended to the University of California for making available the services of Dr. D. A. Clarke, Jr., Dr. Olan D. Forker, and Mrs. Miriam Revzan, members of the staff of the Giannini Foundation of Agricultural Economics, College of Agriculture, who attended the hearings and provided assistance in the preparation of reports.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

A. UNFAIR PRACTICES IN THE SALE OF MILK AND MILK PRODUCTS

Findings

In recent years, it has become increasingly difficult for some producers to obtain and maintain favorable contracts, that is to say, contracts which provide for a relatively high percentage of Class I utilization. For many years, the value of favorable contracts has been recognized. In many instances, this value has been capitalized in the form of "shipping rights." Under circumstances in which these shipping rights could be transferred from one individual to another, the transferring shipper—that is, the producer who decided to decrease or cease production entirely—could normally expect to receive payment for the transfer of this "right to market." The dollar value of such shipping rights has varied from time to time and is largely affected by current conditions with respect to the supply and demand of Grade A milk.

The increased pressures evident in recent years stem primarily from two sources: (1) the widening differential between Class I prices and the prices of milk for manufacturing purposes and (2) the increase in the relative proportions of Grade A milk that cannot find a Class I outlet and must therefore be used for manufacturing purposes. At the present time, the difference in returns, per hundredweight of milk, between Grade A milk sold through Class I outlets and that sold for manufacturing purposes amounts to more than \$2.

As a consequence, producers who do not have access to Class I outlets have resorted to various means to obtain more favorable contracts. The devices that have been used include the provision of "loans" to distributors, the purchase from distributors of replacement dairy stock at prices substantially in excess of their market value, and many others. Many individuals within the industry consider these means of obtaining more favorable contractual relations as "unfair practices." Currently, the Agricultural Code lists only distributors and retail stores as persons subject to unfair trade practice regulation under the Milk Stabilization Law. Among other things, Assembly Bill 1259 would have added producers to the list of those persons subject to these regulations.

Closely related to the above is the matter of growth of vertical integration by distributors who also operate milk-producing herds. Under current procedures of the Bureau of Milk Stabilization, these distributors can, if they so desire, deduct their entire production from Class I sales and essentially force independent producers who ship to their plants to carry all of their non-Class-I usage. This practice has the effect of decreasing the blend returns to the independent producers and at the same time increasing the differential between the price received by such a producer-distributor and that which he pays for the remainder of his total supply.

Recommendations

In principle, the committee agrees that the provisions relating to unfair trade practices be extended to cover producers as well as other parties immediately concerned with the Milk Stabilization Law. Therefore, it recommends that legislation be prepared for consideration at the 1963 Regular Session. However, in making this recommendation, the committee is aware that this change will not solve the existing problem. The committee further urges that the Department of Agriculture, in conjunction with the duly appointed industry advisory committees, immediately and aggressively expand their efforts to find a more permanent solution. The economic pressures created by the growing discrepancy in returns for the various uses for milk produced in California, together with the drastic technological changes that have occurred in milk production, pose a serious threat to the milk price stabilization structure.

A large majority of the witnesses, representing both production and distribution, who appeared at committee hearings during this interim period stated that they felt there continued to be a need for state-operated milk price stabilization in California. The present milk price stabilization legislation was adopted during the early 1930's in the heart of the great depression when we simply produced more milk than could find a satisfactory outlet. At that time, this surplus created pressures too great for the existing industry structure to withstand, and these pressures took the form of practices which resulted in demoralization of the industry. Ironically, a parallel can be seen between present conditions in California and those which existed prior to the adoption of the Young and the Desmond Acts, which were especially designed to bring about industry stability.

Assuming that today's critical problems in the dairy industry stem from surplus, we must ask the following questions:

1. Can the industry and the pricing agency survive with current procedures under present and probable future pressures?
2. If not, what readjustments in industry thinking are needed to bring about a greater degree of steadiness in our milk stabilization program?

B PRODUCTION AND MARKETING OF MANUFACTURING MILK**Findings**

Prices paid to producers for milk for manufacturing purposes in California have been at low and generally unsatisfactory levels for some years. Despite the fact that these low prices have forced many producers out of the manufacturing milk production business, there remain approximately 4,500 dairymen who are caught in this continuing cost-price squeeze. The question being considered by this committee is whether this detrimental situation can be alleviated by legislative means.

Currently, of the total commercial milk production in California, approximately 40 percent is utilized in the manufacture of dairy products other than fluid milk, fluid cream, and related fluid byproducts.

At present, slightly less than half of the milk for manufacturing uses is produced for manufacturing, or Grade B, milk, while the remainder is supplied from "excess" Grade A production. Since either grade can be used with perfect substitutability as a raw product ingredient for any of the manufactured products, these two sources of supply of milk for manufacturing compete directly for the "market" for dairy products.

The Grade A portion of this supply, however, comes under the price jurisdiction of the Bureau of Milk Stabilization, while the manufacturing grade milk does not. The fact that prices for this latter part of the total supply are determined in the absence of governmental regulation has led to a feeling on the part of some that there is an opportunity to enhance returns to producers of manufacturing milk through the enactment of further legislation designed to bring all milk prices under state control. Such legislation was introduced in the 1959 Legislature (Senate Bill 1167) and also in the 1961 Legislature (Senate Bill 40). In both instances, these bills were referred to this committee for further study.

Shortly after the organization meeting of this committee, the Department of Agriculture entered into a contract with the Giannini Foundation of Agricultural Economics, University of California, to undertake a research project on the pricing of milk for manufacturing uses. This project is designed to investigate procedures that might be used to establish prices for milk for manufacturing purposes. At the present time, work on this study is still under way, and no results have as yet been determined.

Recommendations

This committee recommends that the problem of the level of manufacturing milk prices continue to receive study by the Department of Agriculture and its advisory committees. When the results of the Giannini Foundation study become available, these committees and the department may have a better basis for analyzing the possible effects and consequences of further legislation designed to bring manufacturing milk under state-administered pricing procedures.

Due to the effect and nature of this problem, your committee requests that the Giannini Foundation compile and submit a progress report of its findings by March 15, 1963.

C PURCHASE OF OLEOMARGARINE FOR STATE INSTITUTIONS

Findings

Under the present wording of the Agricultural Code, the Director of Finance is required to purchase butter from CCC stocks for use in state penal and charitable institutions whenever surplus supplies are available from government holdings. The question under consideration by this committee (Assembly Bill 358) was whether this law should be amended to read that butter for such purchases could be purchased only at prices comparable or below those currently prevailing for oleomargarine.

An investigation to determine the relative quantities of butter and margarine purchased by the State for use in charitable and penal institutions revealed that a relatively small proportion of the total was in the form of butter. There were only two periods within the past seven fiscal years when the CCC had surplus stocks of butter available.

Recommendations

Several witnesses appeared at meetings and presented testimony in opposition to this proposed change, while no witnesses testified in its favor. Despite the fact that legislation of this type had been presented in several previous sessions of the Legislature in addition to that in 1961, little interest has been expressed in favor of such a change. Further, the majority of the committee feel that the proposed change is undesirable for two reasons: (1) the extra nutritional benefits to be derived from the use of butter and (2) the contribution that the present law makes to the economic well-being of the dairy industry. Therefore, this committee does not approve the subject matter content of Assembly Bill 358.

D. COST OF LABOR IN THE PRODUCTION OF MILK

Findings

On the basis of testimony received at its various meetings, the committee learned that labor constituted a high percentage of the total cost elements entering into both the production and distribution of milk. Approximately 20 percent of the total cost of producing milk on dairy farms represented labor costs, while nearly half of the cost involved in milk processing and distributing was in the form of payments for wages. Furthermore, the relative proportion of labor cost to total expense has remained relatively stable over the past few years.

Recommendations

As explained by the author of this resolution, its purpose was to explore facts rather than to propose legislation. Therefore, this committee has no recommendations with respect to legislation concerning the cost of labor in either the production or the distribution of milk at this time.

E. ESTABLISHMENT OF A SINGLE GRADE FOR ALL MILK

Findings

This resolution was introduced to the committee relatively late in the interim period. Consequently, only a few witnesses were heard on the subject.

Nevertheless, it quickly became apparent to this committee that the problems involved in the possible establishment of a single grade of milk are exceedingly complex. While a move in this direction might prove to be beneficial in the long run, drastic and immediate changes could have serious repercussions on both the production and processing sides of the industry. On the one hand, dairy farmers without adequate funds to upgrade their production facilities might be forced out of business. On the other hand, increased costs of production of milk for

manufacturing purposes which result in high raw product costs to processors might seriously interfere with the competitive balance between California processors and those located elsewhere in the United States

Recommendations

In view of the complexities of this problem and its ramifications, this committee recommends more substantial study of the subject. Members of this committee will continue to be interested in any further information and data that industry members may be able to present.

F. OTHER PROBLEMS

1 Unregulated Grade A Milk

Findings

This committee has been informed that substantial quantities of milk produced under Grade A conditions but in excess of existing contracts have been sold in California markets at prices below those established by the Bureau of Milk Stabilization. Several witnesses have appeared at meetings of this committee to testify to this fact and to make the argument that the existence of such unregulated milk has a demoralizing influence on the entire price structure.

At the request of this committee, an opinion was obtained from the office of Legislative Counsel as to whether legislation could be enacted which would bring all Grade A milk under price regulation. This opinion, which appears in other sections of this report, was in the affirmative.

Recommendations

The committee concurs with the conclusion of the witnesses who testified that the existence of unregulated Grade A milk supplies threatens the stability of the price structure of the California dairy industry. In view of this, it is recommended that legislation be introduced in the 1963 session which would effectively eliminate the present "loopholes."

2 Inspection of Dairy Farms and Milk Products Plants

Findings

This problem was the subject matter of a bill proposed to the 1961 Legislature. The bill was approved by both houses but failed to receive the signature of the Governor. It is the feeling of this committee, as apparently it had been the feeling of the Legislature during the last session, that a higher degree of uniformity should be established in inspection procedures and in the incidence of payment for inspection.

Recommendations

The committee recognizes that many problems exist in the establishment of such uniform standards. Therefore, it urges the Department of Agriculture to continue to make use of its best judgment to assure adequate consumer protection through proper inspection while, at the same time, eliminating duplications and costly inefficiencies. The majority of this committee favor the reintroduction of the subject matter of this problem before the 1963 Regular Session of the Legislature.

3 Extension of Statute Allowing Low-fat (2 10) Milk

Findings

The 1961 session of the Legislature adopted legislation which permitted the production and sale of a low-fat, high solids-not-fat milk. The legal specifications for this milk are that it must contain not less than 1.9 percent but no more than 2.1 percent of milk fat and not less than 10 percent milk solids-not-fat. Since the effect of this "new" product on the market could not be determined in advance, its sale had been authorized only until the end of the 1963 session, at which time authorization will expire unless extended.

Witnesses appearing before this committee generally agreed that it is still too early to determine the net impact of the sale of this new product.

Recommendations

This committee recommends that further study be made of the effect of the sale of low-fat milk. If extension of the authorization to sell low-fat milk is found to be desirable, appropriate legislation should be prepared in sufficient time to allow full consideration and debate during the 1963 legislative session.

4 Licensing of Laboratories Doing Chemical Analysis for Residues in Feedstuffs

Findings

At the present time, there appears to be substantial variation among commercial laboratories in the procedures used in sampling and testing for pesticide residues in hay.

Because of the importance to dairy farmers of obtaining feedstuffs comparatively free of pesticide residue, it is vital that they be assured of the "safe" residue content of the hay they purchase. Inadequate and improper sampling and testing procedures will result in substantial economic losses to milk producers.

Recommendations

This committee recommends that appropriate legislation be prepared which will provide for the licensing of laboratories performing chemical analyses for residues in feedstuffs. This legislation should specify standards for sampling and testing procedures as well as the required qualifications of laboratory personnel performing such tests.

In addition to the provision of standards for testing existing residues, this committee is interested in the many other aspects of pesticide control. It therefore requests the Director of Agriculture make a report to the committee prior to the end of March 1963, the purpose of this report being to inform committee members of the status of control procedures designed to minimize the accidental contamination of alfalfa and other feedstuffs, the current standards of tolerance for residual hydrocarbons in the various feeds used by dairymen, and other problems related to maintaining present zero tolerance levels in milk.

**5 Exemption of Producer Associations from Provisions of the Agricultural Code
Specifying Date of Payment**

Findings

This subject was introduced during the final hearings held by this committee during the interim period. Two witnesses were heard on this subject, neither of whom represented the views of the producer associations which would be affected by the proposed changes. The essence of their testimony was that this device had been used primarily to the competitive disadvantage of non-co-operative members.

Recommendations

Further study of the varied aspects of this problem appears desirable. The problem seems to be a further manifestation of the pressures increasingly felt by producers in seeking a market for their surplus milk. This committee would like to review the legislative history which led to the provision of this specific exemption and to consider the possible ramifications of the proposed amendment, particularly in light of changed conditions in production and marketing in recent years.

**6 Recommendations for Legislative Changes of the Advisory Committees to the
Department of Agriculture**

Findings

The four milk study committees appointed by the Director of Agriculture have made recommendations for 13 items of legislation for the 1963 session. These committees are Manufacturing Milk Producers, Manufacturing Milk Processors, Market Milk Producers, and Market Milk Processors and Distributors.

It is the understanding of this committee that all 13 recommendations have been unanimously accepted by all segments of the industry. These recommendations appear in full in another section of this report.

Recommendations

It is recommended that these 13 items be presented to the 1963 Regular Session. At the request of this committee, the Legislative Counsel has prepared *pro forma* bills which would accomplish the changes proposed by the study committees. Copies of these bills also appear in the appendix to this report.

This committee would like to commend all four study committees for the very serious attention they have given to the problems of the dairy industry. It is greatly to the credit of these committees that they have reached unanimous decisions on all 13 items presented. This committee is further aware that the study committees are working on several other problems which have not as yet been resolved. It is the hope of this committee that the continued efforts of the study committees will result in the resolution of these problems and recommendations for appropriate legislation.

COMMITTEE ACTIVITIES

HISTORY OF HEARINGS

During the interim from June 17, 1961, through January 7, 1963, your Committee on Livestock and Dairies has held eight meetings, as follows:

On August 9, 1961, your committee met in Monterey to organize for interim work. The committee held an informal discussion concerning the subject matters then assigned for study. These included:

- 1 A B 358 (Rees, 1961), relating to the purchase of colored oleomargarine for state institutions.
- 2 H R 429 (Britschgi, 1961), relating to the study of the cost of labor in the production of milk.
- 3 A B 1259 (Porter, 1961), relating to unfair practices in the sale of milk and dairy products.
- 4 H R 244 (Belotti, 1961), relating to the production and marketing of manufacturing milk.

It was agreed to hear all measures assigned to the committee at *each* of its hearings, to be held in various parts of the State. The committee also indicated its interest and concern for all other related problems of the dairy industry, with the result that a number of other important subjects came under consideration at each of the several hearings.

On October 4, 1961, your committee met in Anaheim to hear witnesses from the State Department of Agriculture and from industry relating to A B 1259 and A B 358. Five witnesses testified regarding A B 1259, and four witnesses were heard on A B 358.

On October 5, 1961, your committee met in Anaheim to hear seven witnesses testify regarding H R 429 and six witnesses regarding H R 244.

On January 30, 1962, your committee met in Petaluma and obtained testimony from 12 witnesses relating to A B 1259, H R 244, and H R 429 during a session which lasted well over five hours.

On September 11, 1962, your committee met in Stockton for the purpose of hearing testimony from witnesses relating to A B 358, A B 1259, H R 244, and H R 53. Five witnesses were heard on A B 358, seven witnesses testified on A B 1259, and two witnesses were heard on H R 244. This was the first hearing on H R 53, relating to the sale of milk, including the proposal to establish a single grade for milk produced in California, 14 witnesses were heard regarding this subject. In all, 28 witnesses were heard during the session, which lasted about six hours.

On September 12, 1962, your committee met in Tulare for the purpose of hearing testimony relating to H R 429, H R 244, A B 1259, and H R 53. They also heard witnesses on the following additional subject matters: (1) unregulated Grade A milk, (2) inspection of

dairy farms and milk products plants, (3) extension of statute allowing low-fat (2 10) milk, and (4) licensing of laboratories doing chemical analysis for residues in feedstuffs

One of the witnesses who testified at this hearing presented a comprehensive statement of the problems involved in the marketing of milk in California. The items emphasized were (1) the level of fluid milk prices in relation to manufacturing milk prices, (2) the need for or desirability of further consolidation of marketing areas, (3) the desirability of equalization of Class I utilization on a broader basis than currently exists, and (4) the establishment of more precise standards or "guidelines" for setting Class I prices

Twelve witnesses gave testimony on H R 244, six witnesses were heard on A B 1259, and eight witnesses testified regarding H R 53. On the subject of "unregulated Grade A milk," 10 witnesses were heard, 7 were heard on the subject of "inspection of dairy farms and milk products plants" (the subject matter essentially of Senate Bill 906), 10 witnesses spoke on the subject of "extension of statute allowing low-fat (2 10) milk", and, finally, 9 witnesses were heard on the subject of "licensing of laboratories doing chemical analysis for residues in feedstuffs." A total of 63 witnesses were heard during a well-attended meeting lasting seven hours. Approximately 75 persons were in attendance and gave evidence of considerable interest.

On September 14, 1962, your committee met in San Diego for the purpose of hearing testimony relating to A B 1259, A B 358, H R 244, H R 53, and the following additional subjects: (1) unregulated Grade A milk, (2) inspection of dairy farms and milk products plants (the subject matter of Senate Bill 906), (3) licensing of laboratories doing chemical analysis for residues in feedstuffs, and (4) exemption of producers associations from the provision of the Agricultural Code which specifies the date of payment. Although A B 1259, A B 358, H R 244, and H R 53 were included on the agenda for this hearing, no additional testimony was offered. Previous hearings had provided ample opportunity for all interested parties to be heard, but anyone who still wished to be heard would have the opportunity to testify at the final hearing scheduled for November 9. On the subject of "unregulated Grade A milk," two witnesses gave testimony, and two witnesses also were heard on the subject of "inspection of dairy farms and milk products plants," one of them at considerable length. Five witnesses testified on the subject of "licensing of laboratories doing chemical analysis for residues in feedstuffs", and two gave testimony on the final subject of the hearing, "exemption of producers associations from the provision of the Agricultural Code which specifies the date of payment." In total, 11 witnesses gave testimony at this meeting.

On November 9 your committee met in Sacramento for the primary purpose of hearing recommended milk legislation for 1963 offered by the advisory committees to the Director of Agriculture. These committees are Manufacturing Milk Producers, Manufacturing Milk Processors, Market Milk Producers, and Market Milk Processors and Distributors. In addition, this meeting provided a final opportunity for witnesses to be heard on the various proposals, resolutions, and other subjects of study which had been before your committee for consideration. This was the concluding hearing for the 1961-62 interim.

A representative of the Department of Agriculture presented the report of the advisory committees on "recommended milk legislation—1963," indicating that all 13 proposals constituting the report had been unanimously agreed upon by all four committees. He further stated that a number of vital issues had not yet been resolved and remained before the committees for further study. These included the regulation of Grade A milk, unfair practices problems, continued authorization for low-fat milk, higher minimum solids nonfat content for regular milk, authorization for handler pools for Class I milk, permitting the pooling of Class I usage among two or more plants, and market or area stabilization pools.

Several witnesses were heard in comments upon the substance of the formal report on recommended legislation. Witnesses were also heard on other subjects, as follows: four testified regarding A B 1259, four were heard on H R 244, three gave testimony relating to "unregulated Grade A milk", two spoke on "extension of statute allowing low-fat (2 10) milk", two, on the "licensing of laboratories doing chemical analysis for residues in feedstuffs", and one witness gave testimony regarding H R 53. A total of 20 witnesses were heard in this final hearing of your committee.

In summary, your committee has heard witnesses in 156 appearances during about 31 hours of session in seven California cities. It has heard testimony on two bills—A B 358 and A B 1259, three resolutions—H R 429, H R 244, and H R 53, and five additional subjects referred to it for study—unregulated Grade A milk, inspection of dairy farms and milk products plants, extension of statute allowing low-fat (2 10) milk, licensing of laboratories doing chemical analysis for residues in feedstuffs and exemption of producers associations from the provision of the Agricultural Code which specifies the date of payment.

The large number of witnesses appearing and the animated discussions which took place at each meeting attest to the high degree of interest generated by the problems under consideration. It was obvious that the industry felt that these problems were of great importance and required solution. Many of the issues discussed were controversial in nature and highly indicative of the impact of the many changes which have been taking place in recent years and currently in the dairy industry in California.

Chapter One

UNFAIR PRACTICES IN THE SALE OF MILK AND DAIRY PRODUCTS

(A B 1259—PORTER, 1961)

The Proposal

Assembly Bill 1259 would repeal Section 4280.1 and would amend Section 4280 of the Agricultural Code. The unfair practice designated in Section 4280.1, so repealed, would be incorporated in Section 4280 without change of wording. Section 4280 would be further amended in three ways: (1) As it now reads, each stabilization and marketing plan is required to contain provisions for prohibiting distributors and retail stores from engaging in certain unfair practices which are set forth in detail. The amendment would make these prohibitions applicable to producers as well. (2) The proposal adds as a designated unfair practice the making or renewal of any money loan by any person or distributor for the purpose of inducing such distributor to contract for the purchase of fluid milk from a producer unless such loans are found by the director to be free from coercion or undue influence. (3) It also adds as a designated unfair practice the payment or gift of money or offer or promise of any payment or gift of money to any distributor for the purpose of inducing such distributor to contract for purchase of fluid milk from a producer and designates any such contract as void. A further amendment to Section 4280(e) had been incorporated into the bill after its introduction and was intended to clarify the meaning of the required minimum price with a Class I guarantee.

In brief, Assembly Bill 1259 would make three important changes in the unfair practice provisions of the milk stabilization law:

- (a) It would make all of the unfair practice provisions applicable to producers as well as distributors and retail stores.
- (b) It would prohibit, under certain situations, the making of loans by a producer to a distributor to contract with the producer for the purchase of milk.
- (c) It would outlaw payments or gifts by a producer to a distributor for the purpose of inducing the distributor to contract with the producer for the purchase of fluid milk.

During the course of the hearings, the point was made clear that this was a bill introduced by producers and that the controversy largely revolved around the different interests of various groups of producers.

History and Statement of the Problems Relating to "Unfair Trade Practices" by Producers

The problem at issue concerns whether milk producers (dairymen) shall be subject to penalty for carrying on designated unfair trade practices under the California milk stabilization laws. The basic question at issue is whether, through the use of loans or other means, pro-

ducers may be able to "buy" a favorable milk contract with a distributor and, further, whether this practice should be outlawed by legislation

The economic incentives for the use of such devices to obtain favorable contracts have increased rapidly during recent years as a result of two factors. First, the increasing "spread" between the price of milk for fluid purposes and that for manufacturing uses and, second, the relative increase in the amount of market grade milk which is going into manufacturing purposes. Since 1950, the "spread" between Class I prices and prices for manufacturing milk has ranged from a low in 1951 of \$1.26 per hundredweight to a high in 1960 of \$2.29 per hundredweight. During the same period, the average Class I utilization of Grade A milk has dropped from a level of approximately 85 percent at the beginning of this time period to a low of less than 75 percent at the end. (See Table 1.)

Historically, Grade A milk in California has been priced on an "individual plant pool" basis. Under this procedure, producers shipping to plants with high class I utilization receive higher average or "blend" prices than do those shippers who supply plants having a lower level

TABLE 1
Grade A Production, Class I Utilization, Class I Prices, Blend Prices
Manufacturing Milk Prices, and Price Differentials
California, 1950-1961

Year	Grade A production	Class I utilization	Percent of class I utilization	Class I prices ^a	Blend prices ^b	Manu- facturing milk prices ^c	Price differentials	
							Class I over manu- facturing ^d	Blend over manu- facturing ^d
	1	2	3	4	5	6	7	8
	thousand pounds			dollars per hundredweight				
1950...	3,706,792	3,125,213	84.3	4.66	4.35	3.26	1.40	1.09
1951...	3,892,145	3,358,123	85.8	5.21	5.00	3.98	1.26	1.02
1952...	4,081,307	3,552,797	88.1	6.91	5.64	4.46	1.45	1.18
1953...	4,396,521	3,681,008	83.7	5.70	5.29	3.96	1.74	1.38
1954...	4,580,344	3,768,013	82.3	5.13	4.62	3.33	1.80	1.29
1955...	4,801,353	4,029,142	83.9	5.13	4.61	3.36	1.76	1.25
1956...	5,153,501	4,354,381	84.5	5.27	4.74	3.47	1.80	1.27
1957...	5,689,458	4,549,739	80.0	5.47	4.75	3.53	1.87	1.22
1958...	5,830,569	4,623,018	79.3	5.44	4.68	3.36	2.08	1.32
1959...	6,275,934	4,756,790	75.8	5.61	4.74	3.45	2.16	1.29
1960...	6,278,623	4,803,703	76.5	5.67	4.77	3.38	2.29	1.39
1961...	6,456,117	4,818,957	74.6	5.67	4.71	3.49	2.18	1.22

^a Annual figures are simple averages of monthly price data for the Los Angeles and San Francisco marketing areas. These prices are quoted on an f.o.b. plant basis, 3.8 percent milk.

^b Annual averages. Prices are affected to some extent, by fluctuations in the average milk-fat content of the milk purchased from producers, because they relate to milk of average test rather than to milk of some standard test.

^c F.o.b. plant, San Joaquin Valley plants, 3.8 percent milk.

^d 3.8 percent milk.

Sources:

- Cols 1 and 2 California Crop and Livestock Reporting Service, "California Dairy Industry Statistics for 1961" (Sacramento 1961), Table 18, p. 33.
- Col 4 Idem, "Dairy Information Bulletin" (Sacramento, monthly issues).
- Col 5 Idem, "California Dairy Industry Statistics for 1959" (Sacramento 1959), Table 21, p. 34, and Idem, "California Dairy Industry Statistics for 1961," Table 15, p. 30.
- Col 6 California Crop and Livestock Reporting Service, special computations.

of Class I utilization. This means, therefore, that a disparity exists in average returns to producers directly correlated with the varying plant utilizations. When the percentage of Class I utilization is high for the State as a whole, the average prices for market milk paid by all plants tend to be relatively uniform. On the other hand, when Class I utilization drops and an increasing amount of market milk is used for manufacturing purposes, there tends to be a much greater disparity in paying prices between plants with high and those with low percentages of Class I utilization. The magnitude of this disparity is made greater as the differential between Class I and manufacturing prices increases. That these disparities have increased in recent years is shown in Table 2. In this table, the average test of milk fat and the average prices paid by all market milk plants in Alameda, San Joaquin, Tulare, and Los Angeles Counties are shown for several months beginning late in 1955 through early 1962. In October 1955, the average or blend prices paid by plants located in Alameda and San Joaquin counties were quite comparable, especially when provision is made for the differential milk fat tests. In that same month, prices for milk received at plants in Tulare and Los Angeles counties were \$4.15 and \$4.99 per hundred-weight, respectively. This latter differential of 84 cents reflected in part the transportation differential—the cost of transferring milk from the southern San Joaquin Valley to Los Angeles—and in part the respective differential utilizations of the plants in the two areas. By May 1962, this differential had risen to \$1.20 per hundred-weight, an increase of approximately 50 cents when provision is made for the somewhat higher level of milk fat content in the Tulare computations. Virtually all of this difference in relative returns between these two time periods is explained in terms of differential utilizations received.

Thus, it can be seen that there is a substantial economic incentive for an individual producer or an association of producers to take any available steps to find the most favorable outlet for their milk. In 1960, for example, producers received \$2.29 per hundred-weight more for the milk they produced which found a Class I use than they received for milk used for manufacturing purposes. In relative terms, this amounts to a return more than two-thirds greater in the Class I than in the manufacturing categories.

During the course of hearings on this subject, a distributor testified that he had received a "loan" of \$7,500 from a producer in return for which this distributor gave the producer a 300-gallon contract. Based on the above price differences, and assuming that the producer in question would otherwise have had to sell his milk through manufacturing outlets, the "loan" would have resulted in an increase in this producer's gross returns by approximately \$20,000 per year.

The critical nature of this problem and its growing importance result largely from the fact that the "burden of surplus" falls on a relatively small percentage of the total milk producers of this State. The incidence of this surplus burden is not necessarily concentrated geographically. Instead, distribution of this surplus problem depends entirely upon the use of milk at the receiving plant and the availability of more favorable outlets to producers.

TABLE 2
Test and Price Data for Market Milk Plants, by County

County ^a	October 1955		May 1956		October 1958		May 1959		October 1961		May 1962	
	Average test	Average price	Average test	Average price	Average test	Average price	Average test	Average price	Average test	Average price	Average test	Average price
	Percent- age of milk fat	Dollars per hundred- weight	Percent- age of milk fat	Dollars per hundred- weight	Percent- age of milk fat	Dollars per hundred- weight	Percent- age of milk fat	Dollars per hundred- weight	Percent- age of milk fat	Dollars per hundred- weight	Percent- age of milk fat	Dollars per hundred- weight
Alameda.....	3 75	4 71	3 64	4 60	3 74	4 95	3 50	4 42	3 77	4 96	3 60	4 37
San Joaquin.....	3 69	4 61	3 58	4 39	3 71	4 94	3 64	4 69	3 77	5 44	3 63	4 79
Tulare.....	3 66	4 15	3 43	3 78	3 59	4 19	3 42	3 67	3 55	3 95	3 50	3 78
Los Angeles.....	3 64	4 99	3 51	4 88	3 57	5 07	3 42	4 88	3 59	5 25	3 45	5 07
Difference, Los Angeles over Tulare.....	--	84	--	1 10	--	88	--	1 21	--	1 27	--	1 29

^a County of plant location

Source California Crop and Livestock Reporting Service, special computations

By far the major proportion of milk produced under Grade A standards in California is sold to plants which have relatively high Class I utilization. For the purpose of further illustration of the problem and its relation to recent changes in relative prices and utilization, the following hypothetical example is presented.

It is assumed that 75 percent of all the milk available for Grade A uses is sold by producers who average 85 percent Class I utilization. This particular utilization figure has been selected primarily on the grounds that this was the approximate average utilization of all Grade A milk in California in the period from 1950 through 1956. (See Table 3.) Under this assumption it is possible to compute the total amount of Class I milk as well as the total quantity of milk available for manufacture that is accounted for by the group of producers having what can be termed "favorable" contracts. Further, computations can also be made of the available Class I and manufacturing milk supplied by the producers of the remaining 25 percent of the milk. Calculations can thus be made, by years, of the average or blend prices at the prevailing levels of Class I and manufacturing returns. A comparison of these two sets of averages is shown in Table 3.

TABLE 3
Hypothetical Example Indicating Differences in Average Returns by
Producers Receiving 85 Percent Class I Utilization and
Those With an Uncertain Utilization

Year	Average price, 3.8 percent milk	
	85 percent class I	Uncertain class I usage
	Dollars per hundredweight	
1950.....	4.45	4.41
1951.....	5.05	5.09
1952.....	5.69	5.87
1953.....	5.44	5.35
1954.....	4.86	4.60
1955.....	4.86	4.79
1956.....	5.00	4.96
1957.....	5.18	4.79
1958.....	5.13	4.65
1959.....	5.29	4.49
1960.....	5.33	4.55
1961.....	5.84	4.45

It is interesting to note that under the above assumptions the average returns by these two hypothetical groups were relatively the same in the period from 1950 through 1956. This, of course, is a reflection of the fact that utilization of all Grade A milk during this period ran close to the 85 percent level. The point to be made, however, is that returns to producers who have been able to maintain favorable contracts since 1957 have continued upward, whereas those producers not so fortunate in maintaining Class I utilization have suffered a decline in average returns.

Arguments

Assembly Bill 1259 was proposed in response to complaints that the practice has become prevalent for producers to make certain loans, payments, or gifts to distributors in return for a milk purchase contract and that this practice constitutes a hardship for certain milk producers.

Because of the complexity of the problems involved in the original bill, it had been suggested that it might be desirable to divide the three categories covered by the proposal into three separate bills. This suggestion grew out of testimony which indicated that such a breakdown would facilitate the pinpointing of the specific problems to be dealt with, as well as the legislative action to be taken on each of them. It was hoped that better overall legislation might thus be achieved. When asked for an opinion in the matter, a department representative stated that Assembly Bill 1259 could feasibly be divided into three separate bills, one for each of the objectives indicated.

Few witnesses who testified were in agreement on all parts of the proposed bill. The opinion was expressed that, that portion of the amendment which would include producers under present provisions for unfair practices would make it possible for the Department of Agriculture to control these practices more adequately. It was felt by many that other portions of the bill might tend to prohibit certain bonafide transactions between producers and distributors and that such legislation would be very difficult to administer and enforce in an equitable manner.

One problem which the bill posed, as it was written, lay in the ability to distinguish between a valid loan by a producer and one which would be considered an unfair practice. Enforcement would be extremely difficult, particularly since a producer rarely produced specific information when making a complaint of unfair practices out of fear of losing his contracts as a result. There was testimony to the effect that some loans made by producers required no repayment, and the question of the legality of such loans was raised. The committee decided to ask for an opinion from the Legislative Counsel regarding this. The questions and the answers are quoted in full.

"You have asked the three questions stated and considered below relating to fluid milk which is subject to a stabilization and marketing plan formulated by the Director of Agriculture pursuant to Chapter 17 (commencing with Section 4200), Division 6 of the Agricultural Code

"QUESTION NO. 1

"Is it legal for a distributor of milk who purchases milk from a particular producer to accept a loan from the producer upon the condition that it need not be repaid if the distributor purchases a stated quantity of milk from the producer at the Class 1 minimum fluid milk price?

"OPINION NO. 1

"The acceptance of the loan under the circumstances described would not, in our opinion, be illegal unless the purpose of the transaction is to evade prohibitions in the law against the acceptance by distributors of secret rebates or refunds or the selling of milk at less than the minimum price

"ANALYSIS NO. 1

"Chapter 17 (commencing with Section 4200) of Division 6 of the Agricultural Code * provides for the stabilization and marketing of fluid milk and fluid cream through the formulation of stabilization and marketing plans by the Director of Agriculture. Among other things, it requires each stabilization and marketing plan to contain provisions prohibiting distributors and retail stores from engaging in designated unfair practices (Sec. 4280) These provisions apply only to distributors and retail stores and do not apply to producers

"Subdivision (a) of Section 4280 designates as an unfair practice:

" '(a) The payment, allowance or acceptance of secret rebates, secret refunds, or unearned discounts by any person, whether in the form of money or otherwise '

"There is nothing in this language nor in any of the other unfair practices provisions of the law that, in our opinion, prohibits a distributor from accepting a legitimate loan from a producer.

"Nor do we find anything in the law that prohibits a loan made upon the condition here involved, i e, that it need not be repaid if the distributor purchases a stated quantity of milk at the Class 1 fluid milk minimum price.

"The transaction in question would, however, in our opinion, be within the scope of the secret rebate or secret refund prohibition if the intent of the transaction should, in fact, be the avoidance of that prohibition. The existence of the condition would have evidentiary value in determining whether such an intent was actually present

"Chapter 17 also requires every distributor to pay the established minimum price to producers for their milk (Secs 4280, 4280 1, 4283)

"Under the transaction in question, we assume that the producer is being paid the established Class 1 minimum price for his milk. In view, however, of the condition that if a stated quantity of such milk is purchased at the Class 1 price, the loan made by the producer to the distributor need not be repaid, the sum total of the financial dealings between the producer and the distributor is that although the producer receives the minimum price for his milk, his net return is that price less the amount of the loan. It might therefore be contended that as a consequence the producer receives less than the minimum price for the milk in violation of the law

* All section references are to the Agricultural Code

"The law, however, is not phrased in terms of the total financial dealings between distributors and producers. Rather, it relates directly to the price paid for milk (subd (e), Sec 4280). It does not, in other words, regulate beyond requiring the minimum price to be paid the producer without regard to the net effect of the financial dealings between the parties.

"If a loan or any other financial dealings between a distributor and a producer are for the purpose, and have the effect, of returning to the producer less than the minimum price, and this can be proven, the transaction would, in our opinion, be illegal. The fact that the loan is to be repaid only on the condition that a stated quantity of milk is not purchased at the Class 1 minimum price would be relevant as evidence in proving the illegal purpose of the transaction. Any determination in this regard would be one of fact to be determined by an appropriate court.

"QUESTION NO. 2

"Would the answer to the first question be any different if the loan mentioned is not a required condition of the milk contract but rather is voluntary?"

"OPINION AND ANALYSIS NO. 2

"No. The fact, however, that the loan is required before a contract will be given the producer, coupled with the fact it need not be repaid if a designated amount of milk is purchased at the Class 1 minimum price, might indicate that the transaction is not a legitimate business loan but rather is a subterfuge to avoid the minimum price provisions of the law.

"QUESTION NO. 3

"Would the fact that repayment of the loan is not required if the contract for the purchase of the milk remains in effect for two years make the transaction illegal?"

"OPINION AND ANALYSIS NO. 3

"No. We do not believe that the situation, legally, in this regard would be any different from that involved in the first question. Again, however, such a provision in the contract would be relevant evidence of the real purpose and effect of the loan, should any question on that point arise."

A major question arose with regard to the treatment of co-operatives as producers or as distributors. For example, would a capital contribution by members of a co-operative be construed as loans and be outlawed within the construction of the proposed bill?

A suggestion was made that, rather than prohibit loans by producers to distributors, a disclosure of such loans should be required instead. It was felt that prohibition of such loans constituted an interference with the exercise of free enterprise, disclosure, on the other hand, would establish some measure of control and ought to be as far as the State should be allowed to go in the matter.

The belief was expressed that, as it was written, the bill might create more problems than it would solve. Some felt that the provisions regarding loans might be acceptable if they were applied to all segments of the industry alike. The consensus seemed to be that the sections of the bill relating to loans would be almost impossible to administer because of the difficulty of distinguishing valid loans from those made expressly for the purpose of obtaining business. In the belief that loopholes would be found even in the most carefully drawn bill on this subject, several witnesses suggested that the ultimate solution to the problem of unfair practices may require changes in present pooling procedures.

There was also the opinion expressed that the issue regarding loans or gifts as unfair practices could more readily be resolved as the subject of additional rules and regulations promulgated under the present authority of the Director of the Department.

Mr. O. Grover Steele, representing the Dairymen's Cooperative Creamery Association, presented before the committee a comprehensive statement of considerable length which reviewed the various problems involved. He stated that there was urgent need for a new basic approach to producer stabilization in the dairy industry and offered five propositions for further consideration:

1. Producer price levels have been allowed to "overreach bounds permissible" for achieving long-run stability. Producer price levels must be realistic and should reflect a "defendable" relationship with prevailing manufacturing milk prices. When prices are above these levels, overproduction is encouraged and "subsidized surplus" has an adverse effect on the market for manufacturing milk.
2. A consolidation of marketing milk areas would facilitate adjustment to technological and commercial changes.
3. Equalization of Class I usage on a two-pool basis (Northern and Southern California) would relieve inequality pressures on fixed minimum prices to producers and would eliminate some underlying causative factors for vertical integration, unfair practices, chaotic bidding for federal and local contracts, and trafficking in shipping rights.
4. The "guidelines" of our present producer stabilization law are too broad and too permissive to protect public or industry against abuses and pressures by "vested interests."
5. At present price levels, technological and commercial developments will bring about expansion of milk supply which will outstrip foreseeable expansion in demand and will increase problems of unequal Class I usage, unrealistic Class I prices, etc. Positive action is required.

In connection with arguments regarding this bill, the subject of vertical integration arose and was described as an "unfair practice" constituting a threat to one of the basic principles of the milk stabilization law, that of equal raw product cost to all distributors in any given marketing area. Distributors who also operate their own herds have been permitted, if they so desired, to deduct their total production from Class I sales. This, of course, reduces the Class I utilization of independent producers who supply these plants. It was contended that the growing practice of distributors commencing or expanding their production of milk has been to the economic detriment of other producers shipping into their pool.

It was in the course of hearings on this bill that the suggestion was made that ultimately there should be developed a single standard or grade of milk at a single price. This suggestion later became the subject matter of House Resolution 53.

Chapter Two

PRODUCTION AND MARKETING OF MANUFACTURING MILK

(H R 244—BELOTTI, 1961)

The Subject

In accordance with House Resolution 244, the Assembly Interim Committee on Livestock and Dairies was directed to study the problems relating to the production and marketing of manufacturing milk. One proposed solution to these problems had taken the form of Senate Bill 40 of the 1961 Regular Session. The present resolution was aimed at a further effort to arrive at a solution of the problems in which it was recognized that a great number of variables must be considered.

History and Statement of the Problem

The problem at issue centers around the generally unsatisfactory level of returns to California dairy farmers for milk produced for manufacturing uses. The question at issue concerns whether the plight of these dairymen can be alleviated by legislative means. Legislation designed to solve or to assist in the solution of ways to increase manufacturing milk prices was introduced and discussed at considerable length in both the 1959 and the 1961 legislative sessions—Senate Bill 1167 and Senate Bill 40, respectively.

A comprehensive discussion of the complex nature of this problem and its interrelationships with other problems besetting the dairy industry was presented in the final report of this committee for the 1959-60 interim period. However, a brief restatement of the background of this problem seems appropriate at this point.

Milk that is available for manufacturing purposes in California comes from two sources. First, there is the supply produced by manufacturing milk producers. This milk is not eligible for use in so-called "fluid" (Class I) purposes and therefore must find outlets in the form of manufactured dairy products. In this discussion, manufactured dairy products include all those milk derivatives which are not legally required to be produced from Grade A raw product supplies. The second source of milk for manufacturing uses is the excess of Grade A milk over market requirements for the Class I products, including fluid milk, fluid cream, and most of the related items referred to as "fluid byproducts." In recent years, the relative proportion of milk available for manufacture from these two sources has changed drastically. In 1950, for example, over 75 percent of the total was reported from manufacturing milk sources, but by 1961, this proportion had dropped to less than 50 percent.

With the exception of a brief period in the early 1950's, when manufacturing milk prices rose in response to the increased demand resulting from the Korean crisis, the prices received for milk for manufacturing purposes in California have remained relatively constant. These prices,

computed on the basis of 3.8 percent milk fat and f.o.b. San Joaquin Valley plants, were \$3.26 per hundredweight in 1950 and \$3.49 per hundredweight in 1961, respectively. During this 12-year period, prices of other products, including input factors such as feed, labor, and equipment, which are costs to dairymen, as well as the prices of class I milk, increased at a more rapid rate than did the prices of milk for manufacturing purposes. This, of course, has led to an increasing cost-price squeeze on California dairymen producing such milk.

In addition to this dilemma, an additional problem has developed in recent years that has posed a threat to the continued stability of the price structure in the California dairy industry. This has been referred to as the problem of "unregulated Grade A milk." Under existing law prices for Grade A milk purchased by distributors are subject to price regulation through the Bureau of Milk Stabilization of the Department of Agriculture. The law further states that each distributor must have a contract with each of his producer-suppliers. The basic conditions of these contracts must stipulate (1) the total amount of milk to be purchased for any period and (2) the quantity within this total amount that will be paid for Class I. The first of these quantities has become known as the "contract," while the latter is commonly termed the "Class I guarantee." In the past, it has been the practice of distributors to accept the total production of his suppliers, regardless of whether this exceeded the amount specified in the contract. Normally, under these procedures such "over-contract" milk was paid for at the prevailing lowest class price. More recently, however, there have been questions as to (1) whether a distributor is, in fact, required to take supplies in excess of contracted quantities and (2) whether such over-contract milk comes within the jurisdiction of the state pricing agency. As a result of this latter question, there have been reports that over-contract milk, under the assumption that it is "unregulated," has been sold at prices substantially below the lowest use price established by the Bureau of Milk Stabilization, which, in turn, is normally at levels consistent with prices paid for manufacturing grade milk supplies.

As a consequence of the above—the relatively low rate of return for manufacturing milk and the problem of unregulated Grade A milk supplies—several producer associations have raised the question of the feasibility of some type of state-administered program which might be expected to have a salutary effect on their economic well-being.

Summary of Testimony

It was brought out at the hearings that producers of manufacturing milk in California are in an unsatisfactory economic situation because of the disparity between the production cost and the price received. Senate Bill 40 had been drafted with the purpose of covering all milk for manufacturing uses with a classified price system similar to that in use for Grade A milk. By so doing, it was hoped that this would bring about improvement in returns to producers who supply milk for manufacturing purposes. At the same time, it was pointed out that the regulation of all milk would tend to eliminate problems caused by unregulated Grade A milk supplies. A representative of the Department

of Agriculture had expressed the opinion that Senate Bill 40 was workable and could serve satisfactorily as enabling legislation for the industry to establish minimum prices for Grade B or milk for manufacturing purposes.

As a result of extensive hearings and heated debates on Senate Bill 40 while in committee during the 1961 session, it was decided that testimony on this resolution would be limited to new evidence, thereby avoiding repetition of arguments previously presented.

Approximately 40 percent of the total commercial milk production of California is utilized for manufacturing purposes. Of this amount, about half is supplied from "excess" Grade A production and the remainder from Grade B or manufacturing milk. Thus, these two sources of supply of milk for manufacturing are in direct competition for the "market" for dairy products. Inasmuch as the Grade A portion of this supply comes under the price jurisdiction of the Bureau of Milk Stabilization but the Grade B, or manufacturing, portion does not, certain inequities appear to have resulted in the returns to some producers of manufacturing milk.

It was the opinion of some producers that the bleak situation of the manufacturing milk producer is not only his own problem but is also the concern of the market milk producer. The following program was offered as a possible solution:

- 1 To authorize the application by the Director of Agriculture of marketing quotas to all fluid milk producers in California, based on production and sales in the years 1961 and 1962.
- 2 To authorize the pooling of returns for all such quota fluid milk on a statewide basis.
- 3 To authorize the pooling of all overquota fluid milk and all manufacturing milk on a statewide basis, with all manufacturing milk accounted for as Class II usage and all overquota fluid milk accounted for as Class III usage.

Such a quota program met with much opposition as too highly restrictive of free enterprise.

The belief was expressed by some that the present milk stabilization law was serving the industry well but that it might need some adjustment to bring about equity to all producers. This was preferable in the minds of some producers to enacting a new statute for the control of manufacturing milk. The problems facing the producers of manufacturing grade milk in California, some believed, were similar to those faced by such dairymen in other parts of the United States. The market for their milk has become more limited and the prices they receive have dropped considerably. Increasing quantities of manufactured dairy products have been purchased by government at support prices which were reduced on April 1, 1962, by 29 cents per hundred-weight of milk.

It was reiterated that the intent of the milk stabilization law is to provide an adequate supply of milk to the consumer at a reasonable price. However, if producer prices are set too high in some areas because of high costs, it would seem that the consumer is penalized and the intent of the law is subverted. Perhaps the law should be reworded,

it was suggested, so as to supply the consumer with milk at the *lowest* reasonable price

Opposition to the regulation of manufacturing milk was expressed by a representative of the Dairy Institute of California, who gave the following reasons

- 1 The existing milk stabilization law already delegates authority to the Director of the Department of Agriculture to establish minimum prices on all Grade A milk, and it is important that he exercise authority under the present law rather than encourage further amendments to the Agricultural Code
- 2 The establishment by the State of minimum prices for Grade A milk has been largely successful and has been justified as being in the public interest, however, the same cannot be done for Grade B, or manufacturing milk, because the conditions and scope of the market are quite different.
- 3 As a result of the federal price support program on dairy products, there are unlimited supplies available from out-of-state sources, and it is not in the public interest to force higher prices upon consumer when purchasing products upon which he has already paid taxes for federal purchase and storage

He further contended that dairy processors generally believe, contrary to contentions of the architects of Senate Bill 40, that the plan contained in the bill is completely and totally unworkable and would become a liability rather than an asset to the dairy industry

In conjunction with this study by your committee, and with the support of the committee, the State Department of Agriculture entered into a contract with the University of California, Giannini Foundation of Agricultural Economics, to carry on research relating to the pricing of milk for manufacturing uses

The present research project is designed to investigate procedures which might be used to establish minimum prices for milk for manufacturing uses. The specific objectives of the research are

- 1 To analyze and evaluate the basis for establishing different use (price) classifications for milk for manufacturing purposes and to determine the appropriate number of classes for such milk in California markets
- 2 To develop procedures for estimating appropriate price levels for milk used for dairy product manufacture
- 3 To devise a method whereby payments for milk for manufacture can be "pooled" to provide uniform returns to all producers

Work on this research project is still in progress and has not yet reached the point at which conclusions or recommendations can be made

Chapter Three

PURCHASE OF OLEOMARGARINE FOR STATE INSTITUTIONS

(A B 358—REES, 1961)

The Proposal

Assembly Bill 358 would have amended Section 656 of the Agricultural Code, which presently authorizes the purchase of colored oleomargarine for use in state institutions whenever the State is informed in writing that government holdings of butter cannot be purchased or acquired by the State. As amended, the bill would authorize the purchase of colored oleomargarine for use in state institutions *only* if federal-government-held butter could not be acquired at the same price or lower than oleomargarine, or without cost, of the quality, in the quantities, and upon delivery terms consonant with the State's need. In short, the amended section would permit *no* butter to be purchased for use of state institutions unless such butter purchases could be made at prices comparable or below current prices for oleomargarine.

Legislation of a similar nature had been introduced at several regular sessions of the Legislature and had failed in each case. Although it was generally felt by committee members that the subject matter of Assembly Bill 358 was not of vital significance, it was decided that, in fairness to the author, testimony relating to it should be heard. Nine witnesses were heard at three hearings of the Committee on Livestock and Dairies—Anaheim, October 4, 1961, Stockton, September 11, 1962, and Sacramento, November 9, 1962. Most of these witnesses simply indicated opposition to the bill.

History and Statement of the Problem Relating to the Use of Butter in State Institutions

This issue concerns an amendment to Section 656 of the Agricultural Code. Currently, this section reads as follows:

"Section 656. No imitation milk product shall be used in any of the charitable or penal institutions that receive assistance from the State, provided, however, that whenever the State is informed in writing that government holdings of butter cannot be purchased or acquired by the State the Department of Finance may purchase for use in state institutions colored oleomargarine when requested to do so by the director of the department having control of any state institutions for which such product is intended."

The proposed changes to be made by Assembly Bill 358 would effectively amend this provision so that *no* butter could be purchased for use of such institutions unless such butter purchases could be made at prices comparable or below current prices for oleomargarine.

Similar bills had been proposed at the 1951 Legislative Session (Assembly Bill 2717) and at the 1959 Regular Session (Assembly Bill 1479) but in both cases aroused little interest, nor has there been much interest expressed in the current bill.

Arguments

Among the arguments presented in opposition to Assembly Bill 358 were the following

- 1 Increase in production of butter between April 1961 and April 1962, production increased 47 percent; during the first four months of 1962, production of butter was 19.8 percent greater than in the corresponding period of 1961
- 2 Government stock of butter at the end of May 1962 was 337 million pounds, compared with 48 million pounds in commercial holdings
- 3 Estimates for 1962 indicated that butter production for that year will approximate 1,600 million pounds and that consumption will be 1,400 million pounds (at the 1961 per capita rate of 7.5 pounds), thus adding a further 200 million pounds to government stocks

Although a representative of the California Edible Oils Committee appeared at several of the hearings, he indicated that his organization took no stand on this bill.

Statistical data presented in testimony indicated that in the past seven years relatively little butter had been purchased by the State for use in charitable and penal institutions. Presumably, the State has been informed in writing that government holdings of butter could not be purchased during most portions of this period. The attached Table 4 indicates, however, that some butter has been purchased in the last fiscal year, specifically during the period of April through June 1962. Also indicated on this table is the fact that during the period beginning with fiscal year 1957-58, approximately 3.5 million pounds of butter have been donated to state institutions by the Surplus Property Agency.

TABLE 4
Purchases of Oleomargarine and Butter for, and Donations
of Butter to, State Institutions

Fiscal year	Purchases of oleomargarine and butter for state institutions				Donations of butter to state institutions
	Colored oleomargarine		Butter		
	Pounds	Dollars	Pounds	Dollars	Pounds
7/1/55-6/30/56-----	345,484	58,699 51	--	--	"
7/1/56-6/30/57-----	921,392	180,400 84	--	--	"
7/1/57-6/30/58-----	551,039	98 193 29	154,070	103 757 71	874,926
7/1/58-6/30/59-----	400,540	57 845 97	--	--	1,038,716
7/1/59-6/30/60-----	1,156 121	188 031 36	--	--	292,858
7/1/60-6/30/61-----	1 348 249	209 932 35	--	--	507,500
7/1/61-6/30/62 ^b ---	826,247	134 396 93	239,070	162,502 98	687,722
Total-----	5,549,122	928,318 35	393,140	266,350 69	3,401,722
7/1/62-----	--	--	59 700	61,161 00	--

^a Data for butter donations not available for 1955-56 and 1956-57 fiscal years.

^b Oleomargarine, purchased July 1961 through March 1962; butter purchased during period April through June 1962.

Sources: Purchases from state purchasing agent; Butter donations from Surplus Property Agency, California Department of Education.

Chapter Four

COST OF LABOR IN THE PRODUCTION OF MILK

(H R 429—BRITSCHGI, 1961)

The Subject

The Assembly Interim Committee on Livestock and Dairies was directed to study all of the factors involved in the cost of labor in the production of milk. In the course of its study, testimony was heard on the subject at four hearings of the committee—Anaheim, Petaluma, Tulare and Sacramento.

History and Statement of the Problem Relating to the Cost of Labor in the Production of Milk

House Resolution 429 by Mr. Britschgi is stated as follows:

“Resolved by the Assembly of the State of California, that the Assembly Committee on Rules is hereby directed to assign to an appropriate interim committee the study of all factors involved in the cost of labor in the production of milk, and to direct such committee to report thereon to the Assembly not later than the fifth legislative day of the 1963 Regular Session.”

Summary of Testimony

The hearings brought out the fact that labor is the principal element in the costs of milk processing and distribution. Based on a sample of California plants, labor costs represented nearly 45 percent of distribution costs of wholesale sales and almost 65 percent of the total expense of making retail sales. This is consistent with studies made in other parts of the United States where payments for labor averaged about one-half of the gross margins of milk distributors.

It was pointed out that this high percentage of labor costs was not unusual for an industry where services are an important part of the function performed. Analyses of the cost components of the bread industry, for example, would probably show similar results. An interesting sidelight of the hearings was that it was evident that industry and labor in California enjoyed favorable relations, in contrast with other parts of the nation.

Assemblyman Carl A. Britschgi, sponsor of the resolution, indicated greater concern with the cost of labor in distribution than in production, stating that one of the basic problems involved is the time lag between industry cost changes and price changes established by the Bureau of Milk Stabilization.

Statistical data were presented by the Department of Agriculture which showed that, since 1956, labor costs per hundredweight of milk produced in California have declined, while wage rates have increased. In milk distribution during the same period, labor costs per quart of

milk delivered have increased less rapidly than wage rates. These differential rates of increase are the result of growths in efficiency in both milk production and distribution. The statement prepared by the Department of Agriculture follows:

**"LABOR COST IN THE PRODUCTION OF MILK—DATA PREPARED BY THE DEPARTMENT
OF AGRICULTURE FOR THE LIVESTOCK AND DAIRIES INTERIM
COMMITTEE ON HOUSE RESOLUTION 429
OCTOBER 5, 1961**

"In 1956 the department prepared data for an interim committee study on the subject of labor cost in the production of milk. The data presented at that time has been brought up to date. A comparison of this current data with 1956 data reveals that an outstanding increase in labor efficiency has occurred on the dairy farm during the last 6 years. Table I [5] and Table II [6], which are attached hereto, contain this data for 4 important milk production areas of the State. Wage rates have increased approxi-

**TABLE 5
Milk Production Costs per Hundredweight of 3.8 Percent Milk for Designated
Areas of California, July 1, 1960, to June 30, 1961**

	San Joaquin Valley	Sacramento Valley	North Bay	Metropolitan Los Angeles
	Dollars			
Costs of wages in producing a hundredweight of 3.8 percent milk				
Average wage rate for milkers and laborers ^a				
Rate.....	410	390	380	528
Cost per hundredweight.....	74	88	89	84
Average wage of milkers.....	439	420	402	570
Average wage of laborers.....	347	325	342	400
Percent of total costs represented by cost of labor.....	16	18	18	16
Feed costs				
Average feed costs per hundredweight.....	2 54	2 45	2 69	2 84
Percent of total costs.....	54	50	53	54
Other costs ^b				
Average other costs per hundredweight.....	1 40	1 59	1 40	1 39
Percent of total costs.....	30	32	29	30
Total milk production costs ^c	4 73	4 97	5 08	5 24

^a Family members are included at the rate paid hired employees. Prerequisites are included for example, housing, milk utilities, etc.

^b Other costs, i.e. herd replacement, taxes and insurance, depreciation, operating expenses, and return on investment.

^c F.o.b. producer's location, no standing cost included.

Source: California Bureau of Milk Stabilization Standard Production Cost Survey.

mately 12 percent in the Southern California area and approximately 11 percent to 18 percent in the major Northern California areas since 1956. Despite these wage increases, the labor cost on the farm per hundredweight of milk produced has declined 2 percent in the Southern California area and from 16 percent to 20 percent in the 3 Northern California areas.

"Similar data for labor cost in milk distribution were prepared in 1956. These data have been brought up to date as of 1961 and are included in Table III [7] and Table IV [8] which are attached hereto.

"Despite the fact that wage rates in fluid milk distribution have increased 23 percent to 35 percent since 1956, labor costs per quart wholesale have increased approximately 12 percent and for milk delivered on retail home delivery routes the increase has been approximately 22 percent. These data indicate that labor efficiency has also improved substantially in fluid milk distribution since 1956."

TABLE 6
Milk Production Costs per Hundredweight of 3.8 Percent Milk for Designated
Areas of California, July 1, 1955, to June 30, 1956

	San Joaquin Valley	Sacramento Valley	North Bay	Metropolitan Los Angeles
	Dollars			
Costs of wages in producing a hundredweight of 3.8 percent milk				
Average wage rate for milkers and laborers ^a				
Rate.....	347	330	335	409
Cost per hundredweight.....	92	1 05	1 06	86
Average wage of milkers.....	365	335	325	475
Average wage of laborers.....	309	280	235	355
Percent of total costs represented by cost of labor.....	19	21	20	18
Feed costs				
Average feed costs per hundredweight.....	2 06	2 06	2 86	2 91
Percent of total costs.....	55 1	53	54 7	55 9
Other costs ^b				
Average other costs per hundredweight.....	1 17	1 22	1 22	1 32
Percent of total costs.....	24 2	24 3	23 3	22 5
Total milk production costs ^c	4 82	5 01	5 22	5 20

^a Family members are included at the rate paid hired employees. Prerequisites are included, for example housing, milk utilities, etc.

^b Other costs are herd replacement, taxes and insurance, depreciation, operating expenses, and return on investment.

^c Full producer's location no standing cost included.

Source: California Bureau of Milk Control, Cost Surveys.

TABLE 7

Percentage Analysis of Total Distributors' Costs Excluding Raw Product, Margins, and Tax Allowances—Average for Eight Plants, 1961^a

	Wholesale		Retail	
	Average cost per quart, fiber—dollars	Percent of labor to total	Average cost per quart, glass—dollars	Percent of labor to total
Processing costs				
Labor.....	0092	24 80	0115	47 72
Other.....	0279	75 20	0126	52 29
Total.....	0371	100 00	0241	100 00
Delivery costs				
Labor.....	0173	69 76	0721	75 74
Other.....	0075	30 24	0231	24 26
Total.....	0248	100 00	0952	100 00
General and administrative costs				
Labor.....	0079	45 14	0131	51 98
Other.....	0096	54 86	0121	48 02
Total.....	0175	100 00	0252	100 00
Total labor costs.....	0344	43 32	0907	66 92
Total other costs.....	0450	56 68	0478	33 08
Total distributors' costs.....	0794	100 00	1445	100 00

^a Includes two plants each in Alameda-Contra Costa, Sacramento, Fresno, and Los Angeles marketing areas, based on 1959 and 1960 cost studies adjusted to 1961 wage rates.

TABLE 8

Percentage Analysis of Total Distributors' Costs Excluding Raw Product, Margins, and Tax Allowances—Average for Eight Plants, 1956^a

	Wholesale		Retail	
	Average cost per quart, fiber—dollars	Percent of labor to total	Average cost per quart, glass—dollars	Percent of labor to total
Processing costs				
Labor.....	0068	20 80	0091	43 13
Other.....	0259	79 20	0120	56 87
Total.....	0327	100 00	0211	100 00
Delivery costs				
Labor.....	0167	89 29	0574	72 38
Other.....	0074	30 71	0219	27 62
Total.....	0241	100 00	0793	100 00
General and administrative costs				
Labor.....	0071	52 99	0125	51 65
Other.....	0063	47 01	0117	48 35
Total.....	0134	100 00	0242	100 00
Total labor costs.....	0306	43 59	0790	63 40
Total other costs.....	0396	56 41	0456	36 60
Total distributors' costs.....	0702	100 00	1246	100 00

^a Includes two plants each in Alameda-Contra Costa, Sacramento, Fresno, and Los Angeles marketing areas.

A comparison of data for California with the results of a U.S. Department of Agriculture study of the cost components of milk distribution in the United States indicated that labor costs in California are probably a smaller percentage of the total cost component than is indicated in the U.S. Department of Agriculture study. It was suggested that the probable answer to why unit labor costs have not been increasing as fast as wage rates is the very high rate of adoption of labor-saving equipment in the dairy industry. As a result of this, interest and depreciation on capital equipment are now much larger components of cost than they once were. This trend seems to have worked in favor of the large distributors. This comparison is given in Figure 1.

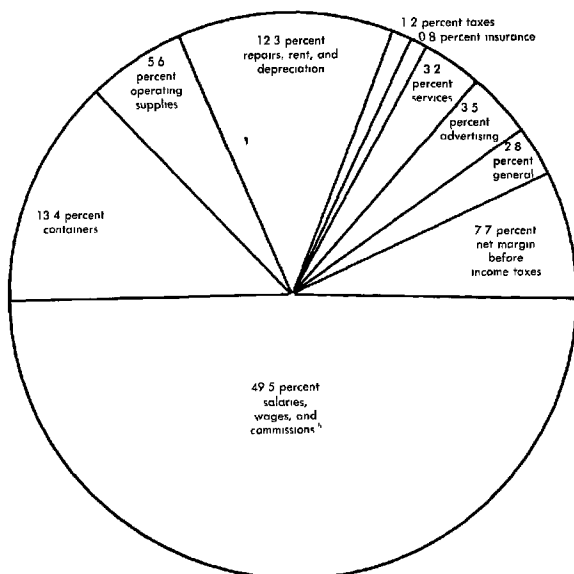


FIGURE 1
Distribution
Gross Margin: Component Costs for Selected Dairy Firms, 1959^a
(January to June average)

^a Records of between 75 and 83 privately owned and chiefly single-plant firms were used. They are selected as "typical" firms. Very small firms, very large firms, national chains, and producer-distributors are not included.

^b Includes state unemployment, federal old age, workmen's compensation, and employee benefits.

SOURCE: U.S. Department of Agriculture, *Milk Distributors Sales and Costs*, April-June 1968, p. 4.

A representative of the California Teamsters Legislative Council reviewed some of the changes in the dairy industry in the last 25 years and pointed out that since the 1930's there have been substantial improvements in working conditions as well as the development of beneficial labor relations. Although there has not been a large increase in the amount of milk delivered per driver per day, he suggested that it must be kept in mind that delivery is now on an every-other-day or every-third-day basis. This means that the total number of customers served per driver has been greatly increased. Stating that changes in labor costs in the milk industry have not been very different from those in other related industries involving food distribution, he expressed pride in the fact that 49.5 percent of the distribution margin is represented by wages and salaries.

The problem was raised by Assemblyman Britschgi regarding the general lack of knowledge about what charges go into the price of a quart of milk, particularly the labor cost component. More public information on this subject was considered desirable.

Chapter Five

ESTABLISHMENT OF A SINGLE GRADE FOR ALL MILK PRODUCED IN CALIFORNIA

(H R 53—BRITSCHGI, 1962)

The Subject

In accordance with House Resolution 53, the Assembly Interim Committee on Livestock and Dairies was directed to study the problems faced by the milk producers of California as a result of the lowering of the level of price supports on milk by the federal government. To be included in such a study is an investigation of the effects and feasibility of legislation to provide for a single grade of milk and to raise the standards of all dairy products in California.

History and Statement of the Problem

House Resolution 53 called for a study of the probable effects and feasibility of legislation designed to:

- 1 Provide one grade for all milk produced in California, including the methods by which this could be accomplished over a period of time so that no producer would be adversely affected by requiring an immediate change
- 2 Raise the standards of all dairy products by requiring that they be produced from a higher grade of milk, to ensure a proper market and return for the producer of this better grade of milk

As has previously been indicated in this report, two grades of milk are produced in California. Milk produced to Grade A standards, referred to as market milk, may be used for fluid products such as whole milk, skim milk, fluid cream, and related fluid byproducts. Manufacturing grade milk, on the other hand, may be used only for the production of those dairy commodities which are processed into products such as butter, cheese, evaporated milk, and ice cream.

There are two major criteria by which these grades of milk are distinguished. First, Grade A milk must meet rigorous sanitary standards with respect to such things as the maximum bacterial count and the amount of sediment, as well as other quality factors, including flavor. Second, the conditions of milk production differ between the two grades of milk. The production of Grade A milk must be under specifications established by the Department of Agriculture relating to the type of barn that must be used, the storage of feed and other possible contaminants, and the provision for a separate milk storage room which must also meet rigid specifications with respect to type of equipment. In short, there is a substantial difference in the amount of original investment in production and milking facilities which results in added cost to the Grade A milk producer.

There is merit to the argument that all dairy products should be produced from high-quality milk. Further, the question may well be

asked If it is necessary to protect the interest of consumers by requiring that the milk they drink come from Grade A sources, why should not the milk from which they obtain their ice cream be of equally high quality?

It has been relatively easy to maintain California's high standards for milk for fluid purposes. The total supply of milk for Class I purposes is produced within the state boundaries, and, consequently, California inspection services can effectively enforce Grade A milk requirements. On the other hand, since California is deficit in the production of many manufactured dairy products, those products manufactured from California produced supplies must compete in the market directly with those produced in other states. It is apparent that attempts to enforce restrictive standards for dairy products shipped into California markets from out-of-state sources would hardly be feasible.

It is true that many major milksheds, particularly those in the metropolitan areas of the Northeast, presently operate under conditions under which virtually all of the milk produced is of a single grade. Two major factors are responsible for this situation. First, the sanitary requirements, particularly those relating to production conditions, are usually not as stringent as those imposed by the California Agricultural Code, and the cost of "conversion" to meet market milk requirements is therefore not as great in those areas as in California. Second, most of those markets operate under procedures involving either a marketwide or individual-handler pool rather than the individual plant pool basis used in California markets. These wider based pooling provisions make it easier for producers to find an outlet for total produced supplies.

Summary of Testimony

A representative of the Department of Agriculture pointed out that House Resolution 53 deals with the possible proposal of some *uniform* standards of milk and dairy products and presented statistical data which showed that production of Grade A milk had risen from 41.8 percent of the total in 1935 to 80.7 percent in 1961. (See Table 9.)

The resolution had been proposed in an earnest effort to simplify milk production in California and to raise its standards through the establishment of a single grade. It was hoped by this means to clarify confusions now existing in the Grade A market and to avoid similar confusion in the Grade B market. However, objections were raised to the development of a single standard grade of milk in California on the ground that this would penalize the manufacturing milk producers too drastically. All of them would be subjected to considerable hardship, and some of them would be put out of business entirely because of resulting increased costs. It was suggested that, since manufacturing milk must face competition from manufactured products of other states having lower standards (hence, lower costs), there should be some means of protecting our producers against the importation of products not meeting the same standards. At the same time, there was also some opposition to the setting up of any barriers to the importation of dairy products from other states.

TABLE 9
Commercial Production of Market and Manufacturing Milk
1935-1961

Year	Market milk		Manufacturing milk		Total
	Million pounds	Percent of total	Million pounds	Percent of total	Million pounds
1935-----	1,681	41.8	2,200	58.2	3,781
1940-----	2,083	46.3	2,414	53.7	4,497
1945-----	3,126	58.4	2,230	41.6	5,356
1950-----	3,706	65.6	1,947	34.4	5,653
1955-----	4,801	89.2	2,136	30.8	6,937
1960-----	6,279	80.2	1,552	19.8	7,831
1961-----	6,456	80.7	1,544	19.3	8,000

Source: California Crop and Livestock Reporting Service

It was learned that the U.S. Department of Agriculture is currently developing standards for manufacturing milk which might be applied uniformly by all states on a voluntary basis. The question was raised as to whether it would be possible to enact legislation which provided that all dairy products sold to consumers in California be made from Grade A milk and no milk or milk products could be imported into California from states which did not meet this requirement. The question was put to the Legislative Counsel for an opinion, which he gave in the following language:

"QUESTION

"You have asked whether the Legislature could require all dairy products sold to consumers in this State to be made from Grade A or other comparable grade of milk whether made in this State or elsewhere.

"OPINION

"Yes, if the requirement does not unduly burden interstate commerce or otherwise violate constitutional guarantees.

"ANALYSIS

"Grade A raw milk is defined by Section 469 of the Agricultural Code * as

" 'Grade A raw milk is market milk which conforms to the following minimum requirements:

" '(1) The health of the cows and goats shall be determined at least once in two months by an official representative of a milk inspection service approved or established by the director;

" '(2) It shall be produced on dairy farms that score not less than 80 percent on the dairy farm score card,

" '(3) It shall be cooled immediately after being drawn from the cow or goat to 50 degrees Fahrenheit or less, and so maintained until delivery to the consumer, at which time it

* All section references are to the Agricultural Code.

shall contain not more than 15,000 bacteria per milliliter. All persons who come in contact with Grade A raw milk must exercise scrupulous cleanliness and must not be afflicted with any communicable disease or be in a condition to disseminate the germs of any communicable diseases liable to be conveyed by milk. The absence of such germs in all such persons may at the discretion of an approved or established milk inspection service be determined by bacteriological and physical examination in such manner as may be prescribed by the director and by such person or laboratory approved in writing by the department, conducted at the time of employment and every six months thereafter in a manner approved by the director.'

"Grade A pasteurized milk is defined by Section 470 as:

"Milk for Grade A pasteurized milk is market milk which conform to the following minimum requirements. The health of the cows or goats shall be determined at least once in six months by an official representative of a milk inspection service approved by, or established by, the director. The milk shall be cooled immediately after being drawn from the cow or goat to 50 degrees Fahrenheit or less and maintained in transit at not to exceed the following temperatures upon arrival at the milk products plant, viz., 52 degrees Fahrenheit if transported by tanker, 60 degrees Fahrenheit if transported in cans, provided, however, it need not be cooled to 50 degrees Fahrenheit or below if such market milk is delivered to the milk product plant within four hours after production, and provided further, that such market milk complies with the bacteria standard herein specified and is cooled immediately upon arrival at the milk products plant to 50 degrees Fahrenheit or below unless the process of separation or pasteurization begins immediately. It shall be produced on dairy farms that score not less than 70 percent on the dairy farm score card adopted by the department and it shall contain not more than 75,000 bacteria per milliliter before pasteurization.'

"Market milk' is defined by Section 451 as:

"Market milk is milk which is supplied to the consumer in the natural fluid state, or prepared for human consumption without being converted into any other form or product and shall conform to the standards provided therefor in Chapter 3 of this division. Except as otherwise specifically provided "market milk" includes "market cream"'

"As stated in *In re McNeal*, 32 Cal App 2d 391, 395-396

"A statute which is enacted under the police power for the avowed purpose of regulating the manufacturing and marketing of a common food product in the interest of public health and general welfare should be upheld unless it clearly appears to be unconstitutional . . .'

The same court also quoted (p 396) the following from *Schmidinger v Chicago*, 57 L Ed 364, 368

“ ‘This court [Supreme Court of the United States] has frequently affirmed that the local authorities entrusted with the regulation of such matters and not the courts are primarily the judges of the necessities of local situations calling for such legislation, and the courts may only interfere with laws or ordinances passed in pursuance of the police power where they are so arbitrary as to be palpably and unmistakably in excess of any reasonable exercise of the authority conferred’

“Legislation requiring all dairy products sold to consumers in this State to be made from Grade A or other comparable grades of milk could, in our opinion, be so drafted as to clearly relate to the protection of the health of the citizens of this State and thus constitute a valid exercise of the police power (*Powell v Pennsylvania*, 32 L. Ed 253; *Pacific Coast Dairy v. Police Court*, 214 Cal. 668, *Dean Milk Company v. Madison*, 95 L. Ed 329, 333-334, and see 22 Am. Jur 850 et seq.).

“The application of this requirement to dairy products made outside this State as well as those made in this State may raise the question of burdening interstate commerce. However, it is well recognized that a state may protect the health of its citizens by reasonable nondiscriminatory legislation applicable both to interstate and intrastate commerce (*Reid v Colorado*, 47 L. Ed 108, 115); and may exclude milk from the State if necessary safeguards of health have been omitted in its production (*Baldwin v. Seely*, 79 L. Ed 1032, 101 A L R 55, 61, *Dean Milk Company v. Madison*, above).”

It was the argument of some that any action at the present time with respect to the establishment of a single grade of milk would be premature and might precipitate further problems. The industry seems to be moving in the direction of a single grade of milk in the normal course of events, by 1975, it was projected, 95 percent of all milk produced would be Grade A—and without legislation.

The suggestion was made that, in the course of research now being done on problems of manufacturing milk, due consideration also be given to the effect of differential factor costs on the California dairy industry.

Chapter Six

OTHER PROBLEMS

UNREGULATED GRADE A MILK

The Subject

The problem of unregulated Grade A milk developed two or three years ago as the supply of milk increased. Initially, the supply of surplus was minor but has now grown in quantity so that excessive amounts are being moved into manufacturing outlets at price levels which cause problems with respect to manufacturing plant prices for regular Grade B manufacturing milk. The question has been raised as to whether the Bureau of Milk Stabilization has the authority to regulate the minimum price of milk moving to manufacturing plants not licensed as fluid milk distributors. Varying legal opinions have been obtained regarding the authority of the bureau to act in the matter, so that a clarification measure seems to be in order. Thus, if it is determined that this milk should be regulated, the milk stabilization law should be amended accordingly, if it is determined that there should be no regulation, then this should be made explicitly clear.

Summary of Testimony

Some witnesses argued that the present milk stabilization law gave the bureau authority to regulate all Grade A milk, therefore, no further legislation was needed. The only problem relating to this issue lay in obtaining a more adequate definition of "distributor" to include a person who purchases fluid milk solely for manufacturing and sells only the manufactured product.

Producers' representatives for the most part felt that the milk stabilization act has failed to achieve stability when it fails to regulate all Grade A milk—that any market milk handled through unregulated channels undermines the principles of the act. These argued for clarifying legislation which would (1) price all Grade A milk under the present classified pricing method based upon usage and (2) place those buyers of Grade A milk who are not now subject to audit, bond, etc., by the Bureau of Milk Stabilization under the same control as conventional milk distributors. By this means, inequities arising from unregulated outlets would be eliminated.

The above arguments focused attention on the advisability of pricing Grade A milk used in manufacturing and the question of whether existing provisions in the Agricultural Code are adequate to provide price jurisdiction over all Grade A supplies. Clarification of the definition of "distributor" in the present law appears to be necessary before this can be decided. At present a distributor is defined as any person who handles market milk, but it is not clear whether this covers persons who handle Grade A milk for manufacture into products for sale as products. For purposes of clarification, an opinion was asked of the

Legislative Counsel on this matter. The question and the answer thereto, as well as the analysis, follow:

"QUESTION

"You ask whether the language of Section 4216 of the Agricultural Code could be changed to make it absolutely certain that a person is a distributor if he purchases fluid milk solely for manufacturing and only sells the manufactured product rather than selling the milk in its fluid state.

"OPINION

"In our opinion the answer is in the affirmative.

"ANALYSIS

"Section 4216 * provides, in part, as follows:

" '4216 "Distributor" means any person, whether or not such person is a producer or an association of producers, who purchases or handles fluid milk or fluid cream for sale, including brokers, agents, copartnerships, co-operative corporations and incorporated and unincorporated associations . . . '

"The question is whether the language 'who purchases or handles fluid milk or fluid cream for sale' means only for sale in its original form as fluid milk or fluid cream, or whether it means for sale in any form into which it may be converted by the original purchaser.

"The question has not been decided by the courts and judicial decisions provide grounds for arguing for either construction.

"The Director of Agriculture, by Chapter 17 (commencing with Section 4200) of Division 6 of the Agricultural Code, is authorized to provide for the stabilization and marketing of fluid milk and fluid cream, including the minimum prices which must be paid to producers for such milk or cream. However, such minimum price provisions are specifically made applicable only to 'distributors' (see Secs. 423C, 4230.5, 4231 and 4280).

"The problem in interpreting the definition of distributor can be illustrated by an examination of two cases.

"In *United Milk Producers v. Cecil* (1941), 47 Cal. App. 2d 758, 767, the court approaches the interpretation of this definition (of distributor) from the standpoint that the milk control laws should be construed to guarantee to the producer the prescribed minimum price, irrespective of how he places his fluid milk upon the market, on the basis that unless the producer is so protected, the supply of wholesome milk for the public is endangered (see Secs. 4201 and 4204, and *Jersey Maid Milk Products Co. v. Brock*, 13 Cal. 2d 620, 654; *Knudsen Creamery Co. v. Brock*, 37 Cal. 2d 485, 491).

"Applying this line of reasoning to the situation in question, it could be concluded that, irrespective of the form in which a producer's fluid milk reaches the market, the producer is guaranteed the minimum price. Thus, whether the milk is ultimately sold as

* All section references are to the Agricultural Code.

liquid milk or in the form of a manufactured product, the purchaser for such sale is a distributor of that milk and must pay the producer the applicable minimum price

"Under this construction the producer of fluid milk would receive a prescribed price for all milk produced under the prescribed standards for market milk. This construction would effectuate the purpose of milk regulation as stated by the court in the *Cecil* case.

"On the other hand, in the case of *In re Willing* (1939), 12 Cal 2d 591, the court, discussing the definition of distributor as found in Section 735 3, the predecessor of Section 4216, stated (at pp 596-597)

"The other exemption upon which petitioner relies in support of his claim of unconstitutionality—the exemption of those purchasing milk from producers for manufacture into dairy products—results from the fact that section 737 5 requires a bond and license of "distributors." *The term distributor, as defined by Section 735 3, subdivision f, refers to distributors of fluid milk and cream, and does not include those who manufacture and sell dairy products.* . . . (Emphasis added)

"Neither of these cases, in our opinion, is decisive of this issue for in neither case was the decision of the court on the question here posed. The *Cecil* case is distinguishable in that the issue of the case was not concerned with fluid milk used solely for manufacturing but rather the price to be paid by a co-operative marketing association for fluid milk generally. And the statement of the court in *In re Willing* as to the interpretation of the term 'distributor' was made in discussing an issue which the court disposed of by holding that the petitioner in the case could not properly raise the issue.

"Thus, any question as to whether a person who purchases fluid milk solely for manufacturing is purchasing or handling fluid milk for sale and would therefore be held to be a distributor within these provisions, could be eliminated by legislation amending the definition of distributor in Section 4216."

INSPECTION OF DAIRY FARMS AND MILK PRODUCTS PLANTS

The Subject

The matter of establishing uniform inspection of dairy farms and milk products plants has been under consideration for a number of years. It was the subject of Senate Bill 906 (1961), a proposal to establish administrative authority for all milk inspection with the State. The inspection was to be conducted by the director through approved milk inspection services or other authorized agents functioning under the supervision of the director. Senate Bill 906 was passed by both houses of the Legislature in 1961 but was not signed by the Governor.

Summary of Testimony

There was general approval of some form of legislation calling for uniform inspection throughout the State under control of the Department of Agriculture. Such a program would eliminate duplications in inspection and would constitute a part of the State's quality program, primarily in the public interest.

Mr. Russell D. Richards, representative of the California Farm Bureau Federation, which had sponsored Senate Bill 906, urged the drafting of a similar bill and pointed out that the objectives sought through such legislation are

- 1 To have an inspection system in California that would afford complete protection to the consumers of milk and dairy products
- 2 To make provisions whereby an inspection program can be developed and can evolve that will operate with a maximum degree of efficiency and economy

Mr. Richards further outlined the principles governing such legislation, as follows:

- 1 That milk inspection is primarily in the interest of public health and secondarily a service to the industry
- 2 That the cost of milk inspection should be sustained out of the State General Fund
- 3 That the responsibility for the administration of the milk inspection program should rest with the State Department of Agriculture.

Some differences were evident in the suggested methods by which state inspection should be financed, some believing that the industry should pay the cost, others that the expense should be paid out of the State General Fund, as above stated. One proposed plan regarding responsibility for inspection and inspection costs is detailed here.

1. All inspection shall come under the jurisdiction of the Department of Agriculture
2. Inspection costs.
 - a. The plant shall bear the cost of providing sampling, analyzing, and recording the results with the department
 - (1) The plant laboratory technicians are to be licensed by the State of California
 - (2) The state inspector is to be requested to take check samples.
 - (3) The dairy plant is to be licensed and scored by the state inspector
 - b. The State shall assume the cost of policing and enforcing laws governing the dairy plants
 - c. Dairy plants without facilities for sampling and reporting shall make arrangements with the department for cost of plants
 - d. Cost of inspection of processing plant's price on consumer level shall remain the responsibility of the department.

EXTENSION OF STATUTE ALLOWING LOW-FAT (2 10) MILK***The Subject***

Authorization for the production and marketing of the 2 10 milk product terminates at the conclusion of the 1963 session of the Legislature. If production and marketing of this product is to be continued, the extension of such authorization would be required.

Summary of Testimony

A representative of the Department of Agriculture stated that statistics available since the product went on the market on April 1, 1962, show an increasing acceptance of the product without apparently making inroads into the market for fluid milk or skim milk. It would seem, therefore, that the product is not proving to be a substitute for fluid milk.

The general consensus was that the product had obtained consumer acceptance and had become established. Some question arose over its pricing at 1 cent below the price of whole milk, but it was understood that this was a temporary arrangement until enough time had elapsed to determine the level of sales volume. Revision would then be made as required by the situation.

**LICENSING OF LABORATORIES DOING CHEMICAL ANALYSIS
FOR RESIDUES IN HAY*****The Subject***

Because of "zero" tolerance standards established in 1960 by the U. S. Department of Agriculture for milk and dairy products, producers eagerly seek to purchase feedstuffs which are as free as possible from chemical residues. Consequently, they now require hay dealers to furnish them with certification that the hay being purchased has been tested and found to be within maximum official tolerances for pesticide residues in feedstuffs fed to dairy cattle. To meet this requirement, hay dealers have been using the services of a number of independent commercial laboratories in the State. These laboratories are not presently licensed by the Department of Agriculture, nor are there any uniform regulations concerning their sampling and testing procedures. As a result, considerable variation exists in the techniques employed by the various laboratories.

Summary of Testimony

Since the sampling techniques and testing procedures vary from one laboratory to another and since such variances could possibly contribute to milk producers' confusion and financial loss, it was argued that the Legislature should require that all laboratories doing chemical analysis for residues in hay be licensed by the Department of Agriculture. Such a licensing procedure should assure the technical ability of sampling and testing personnel in their use of approved sampling and testing equipment. Furthermore, it was argued, standard procedures of analytical methods ought to be established on a uniform basis. Some question arose, however, as to whether the Department of Agriculture or the Department of Public Health was the appropriate state agency to do the licensing and patrolling.

Representatives of the West Coast Hay Dealers Association cited present inconsistencies in sampling and testing procedures. Some laboratory testers, they said, are competent, others incompetent. With uncertain standards, hay dealers have no assurance that they are not in violation of the Agricultural Code. They argued that, since they are under state regulation regarding the tolerance levels of hay sold, they should be protected by state licensing of laboratories which do the testing.

Representatives of two different associations of laboratories cautioned against too hasty legislation on this issue and suggested that commercial laboratories would co-operate in every way with university extension and the state health department on samples, tests, etc. However, if licensing were ultimately to be required by the Department of Agriculture, they suggested that individual technicians and supervisors might be licensed to do certain kinds of analyses but that laboratories as a whole ought not to be licensed.

A representative of the Department of Agriculture expressed the concern of the department and the director regarding the problem and their wish to be helpful to both growers and milk producers. It was his opinion, however, that the department could not administer a testing program without further legislation, nor did it have any power under the existing statutes to license either laboratories or their personnel.

EXEMPTION OF PRODUCER ASSOCIATIONS FROM THE PROVISION OF THE AGRICULTURAL CODE WHICH SPECIFIES THE DATE OF PAYMENT

The Subject

Section 4280(e) of the Agricultural Code is concerned with the conditions of contracts entered into with producers or associations of producers when purchases of fluid milk exceed 200 gallons monthly. Item (4) of these conditions states "the date and method of payment for such fluid milk, which shall be that payment shall be made for approximately one-half of the milk delivered in any calendar month not later than the first day of the next following month and the remainder not later than the 15th day of said month." A modifying sentence states "The provisions of this subdivision relating to dates of payment shall not apply to contracts for the purchase of fluid milk from non-profit co-operative associations to producers."

Summary of Testimony

Mr. Albert E. Weber, representing the Protected Milk Producers Association, presented the request that the above modification, which in effect allows a producer co-operative to sell milk on credit, be eliminated from the Agricultural Code. The arguments in favor of this action included the following:

1. A basic tenet of the milk stabilization law in maintaining stability of the milk industry is the assurance that "raw product" costs are equal to buyers in a given market. Allowing a producer co-operative to extend credit—up to 90 days at present—for the payment of milk delivered to a buyer in a given market provides

this buyer with a lower raw product cost equal to the earnings of money due but not paid the co-operative. It is contended that the co-operative thus enjoys an unfair competitive advantage in the market.

- 2 It is further argued that a producer co-operative enjoying this inequitable marketing situation actually would not be returning the established Class I price to their members. The time allowed for distributor payment must be covered by a loan secured by the co-operative to assure member payment. The cost of this loan would be a charge against the producer price.

To allow this practice to continue, it was contended, will cause this "exception" to become the "rule" in the sale of milk by producer co-operatives and could encourage other milk producers who could not utilize a like "privilege" to seek other means to equalize this sales advantage now enjoyed by some producer co-operatives.

A representative of the Central Milk Sales Agency expressed agreement with the above argument that, by means of the "exception," co-operatives have a competitive advantage, furthermore, such uncontrolled methods of payment bring about unequal raw product costs within a marketing area.

No representatives of producer co-operatives that would be affected by this proposed change in legislation were heard on this subject.

Chapter Seven

MILK LEGISLATION FOR 1963 RECOMMENDED BY THE ADVISORY COMMITTEES TO THE DEPARTMENT OF AGRICULTURE

"There are four milk-study committees appointed by the Director of Agriculture for the purpose of reviewing the administration of the Milk Stabilization and Marketing Laws and making recommendations to the director for improvement in the administration of these laws. These committees are Manufacturing Milk Producers, Manufacturing Milk Processors, Market Milk Producers, Processors and Distributors.

"Recommendations for 1963 legislation which have been made by these committees consist of the following

"1 Amend Section 4270 to facilitate the consolidation of milk marketing areas. This subject has been mentioned at previous interim committee meetings. The particular proposal would remove the veto power over the consolidation of a marketing area now provided in the law which permits 35 percent of the producers who attend the public hearing on the matter to block the consolidation.

"2 It is recommended that the reference to refrigeration facilities furnished by a distributor for storage purposes be deleted from Section 4160(e). This section covers records required to be kept by distributors. At the 1961 session the furnishing of refrigeration facilities for storage purposes by a distributor to a wholesale customer was prohibited. Thus, this amendment is needed to conform with the 1961 change.

"3 Amend Section 24 of the Agricultural Code to remove the requirement that the Chief of the Dairy Division of the State Department of Agriculture shall be a veterinarian. The purpose of this amendment is to assist in more effective administration and enforcement of the Milk Stabilization and Milk Marketing Laws. The Bureau of Dairy Service, which administers the provisions of the law relating to milk inspection and quality standards for milk and dairy products, is now in the Division of Animal Industry in the department. It is desirable that this bureau be transferred to the Division of Dairy Industry so that the functions of milk inspection and dairy products quality standards be under one head with the agency administering the Milk Stabilization Law. There is not now a veterinarian in the Bureau of Dairy Service or the Bureau of Milk Stabilization or Dairy Division. Thus, under the present language in the law there is some doubt as to whether this proposed organizational change can be made unless the act is amended. There are several important reasons for the change. A veterinarian is not necessary for the Dairy Industry Chief. Dairy service functions are proper functions for the Dairy Industry Division in the department. The personnel of the two bureaus, for the most part, is dealing with the same industry people. This change was recommended by the Department of Finance. The law is not clear on this subject.

The milk industry wants a closer bond between the two bureaus which are both administering laws and regulations applicable to milk production and marketing

"4 Amend Section 455 to remove the solids not fat maximums for cream This section provides certain maximum limits for solids not fat in the different types of cream These maximum requirements are no longer important or needed It is believed that the original purpose of the solids not fat limitation was intended to prevent the addition of solids to a low fat cream in order to attain a more viscous body, thereby possibly deceiving the purchaser into believing that he had purchased a richer product Increasing viscosity can be accomplished by mechanical means, therefore, the solids not fat limit does not serve any present purpose

"5 Amend Section 466 to change the word 'skimmed' to 'skim' in two places where used in the section This is a technical change to conform with other provisions of the code The term 'skimmed' is not used elsewhere in the code In other sections the term used is 'skim milk or nonfat milk'

"6 Amend Section 562 to eliminate the permit required by processors who use eggs or unsalted butter in ice cream and ice milk These permits, now required, are no longer needed because the definition of ice cream and ice milk specifies that butter used must be wholesome and made from sweet cream, also that eggs or egg products be clean and wholesome This change would not affect the required quality standards, but would only eliminate the requirement for a permit to use these two products in ice cream and ice milk

"7 Repeal Section 580 This section prohibits imitation ice cream or imitation ice milk from being manufactured, processed, frozen, handled, distributed or sold in any place where ice cream or ice milk is manufactured, processed, frozen, handled, distributed, or sold The section is unenforceable due to court decisions which have ruled that 'place' is too vague, indefinite and uncertain to be constitutionally applied to wholesalers and retailers *Market Basket v Jacobsen*, 134 CA2d 73, 285 P2d 344

"8 Amend Section 682 to add the words 'nonfat milk solid testers' after the word 'pasteurizers' in line one This is a change to conform to 1961 amendments, relating to nonfat milk solid tester's license In 1961, provision was made for the licensing of nonfat milk solid testers, however, the initial sentence relating to applications for licenses was not changed at that time

"9 It was recommended that a new section be added each to Chapter 16 and Chapter 17 to authorize the director to make an assessment up to 10 percent to cover the cost of collecting unpaid fees which are due or payable under the Milk Stabilization Law The purpose of the amendment is to stimulate the payment of fees on the due date and to authorize the director to assess a portion of the collection cost against those persons who are delinquent and who add substantially to the cost of collecting assessments

"10 Amend Section 4148 to extend the effective date for prices filed by distributors for dairy products from five days to seven days. The purpose of this amendment is to improve enforcement of the price filing provisions of the act. Under the present law, oftentimes prices filed at the commencement of a three-day weekend or possibly heavy filings immediately preceding a regular weekend preclude the bureau from effectively checking the prices out for legality prior to the date they become effective. Except for holidays, the proposal will provide a full work week to check out price filings before they become effective.

"11 Amend Section 637 to clarify the definitions for flavored milk and flavored milk drink. The present definitions have caused considerable difficulty with regard to interpretations as to what is meant by 'ingredients that cause it to *distinctly differ* from milk in appearance and other characteristics' (Emphasis added).

"12 Amend Section 637.5 to clearly provide that solids which are added to yogurt are required to be 'market' milk solids. Under the definition, yogurt is a market milk product, but the present definition of the standard does not clearly state that if milk solids are added to the product they shall be market milk solids.

"13 Amend Section 4383 and Section 4384 to increase the maximum assessment to be paid by distributors and producers to cover the cost of administration and enforcement of the Milk Stabilization Act. The Reserve Fund is being rapidly depleted and an increase in assessments is mandatory in order to continue operations at the present level. The present assessment rate is two mills per pound of milk fat assessed against the producer and two mills per pound of milk fat assessed against the distributor. The recommended proposal is to increase the rate from two mills per pound of milk fat to three mills per pound of milk fat. It is also proposed to repeal a portion of Section 4383 which is no longer applicable. This portion of the section dates back a number of years when there was authorization in the law for stabilization and marketing plans for fluid cream separate and apart from stabilization and marketing plans for fluid milk. . . ."

"Prepared for presentation to the Assembly Livestock and Dairies Interim Committee Meeting, Sacramento, California, November 9, 1962." [See the Appendix for copies of the proposed bills.]

APPENDICES

APPENDIX 1

An act to amend Section 4270 of the Agricultural Code, relating to marketing areas

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

SECTION 1 Section 4270 of the Agricultural Code is amended to read

4270 The director shall designate marketing areas which he deems necessary or advisable to effectuate the purposes of this chapter, and wherein he finds the conditions affecting the production, distribution and sale of fluid milk, fluid cream and fluid skim milk are reasonably uniform. The director shall have the power to establish additional areas or to modify areas theretofore established when he deems the establishment or modification of such areas necessary or advisable to effectuate the purposes of this chapter. When the director finds, after a public hearing in and for each particular marketing area under consideration for consolidation, that conditions of production and distribution are reasonably uniform in two or more such marketing areas wherein stabilization and marketing plans and minimum wholesale and minimum retail prices are in effect, he may consolidate the areas: ~~provided that at said hearings more than thirty-five (35) percent of the producers present who supply the areas proposed to be consolidated do not object to such consolidation~~

LEGISLATIVE COUNSEL'S DIGEST

Consolidation of milk marketing areas

Amends Sec 4270, Ag C

Eliminates provision that milk marketing areas may not be consolidated if more than 35 percent of the producers present at the hearing on the consolidation object

APPENDIX 2

An act to amend Section 4160 of the Agricultural Code, relating to records

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

SECTION 1. Section 4160 of the Agricultural Code is amended to read

4160 Every distributor or manufacturer of milk, cream or dairy products shall keep the following records

(a) A record of all milk, cream or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, and deductions or charges made, and the use to which such milk or cream was put

(b) A record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold.

- (c) A record of the wastage or loss of milk or dairy products
- (d) A record of the items of handling expense.
- (e) A record of all refrigeration facilities rented or furnished for storage purposes to wholesale customers, showing types and sizes of the same, the location of said facilities, and the original or duplicate original of all agreements covering rentals charged therefor
- (f) A record of all conditional sales of equipment or other property, the location of said property, and the original or duplicate original of all conditional sales contracts pertaining thereto
- (g) A record of all moneys loaned prior to the effective date of this amendment to wholesale customers, the terms and conditions of said loans, and the original evidence of the indebtedness based on said loans
- (h) Such other records as the director may deem necessary for the proper enforcement of this chapter

LEGISLATIVE COUNSEL'S DIGEST

Records of distributors and manufacturers of dairy products

Amends Sec 4160, Ag C

Eliminates from the list of records required to be kept by distributors or manufacturers of dairy products records of all refrigeration facilities furnished for storage purposes to wholesale customers

APPENDIX 3

An act to amend Section 24 of the Agricultural Code, relating to the administration of dairy inspection and control law

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

SECTION 1 Section 24 of the Agricultural Code is amended to read

24 The chief of the division of the department having jurisdiction over livestock and poultry disease control; and meat inspection ~~and dairy inspection and control~~ shall be a graduate of a recognized college of veterinary medicine, licensed to practice in this State

LEGISLATIVE COUNSEL'S DIGEST

Dairy inspection and control laws.

Amends Sec 24, Ag C

Eliminates the requirement that the chief of the division of the Department of Agriculture which has jurisdiction over dairy inspection and control be a licensed veterinarian

APPENDIX 4

An act to amend Section 455 of the Agricultural Code, relating to cream.

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

SECTION 1 Section 455 of the Agricultural Code is amended to read

455 (a) Cream is that portion of milk, rich in milk fat, which rises to the surface of milk on standing or is separated from it by centrifugal force. It shall be fresh and clean, and shall contain not less than 20 percent of milk fat ~~and not more than 78/100 percent of milk solids not fat in cream containing 20 percent of milk fat and correspondingly less solids for greater percentages of milk fat~~

The ratio of fat and solids not fat in cream shall be in the following proportions:

Fat, percent	Solids not fat, percent, not more than
20.0 to 30.0	7.8
30.1 to 35.0	7.5
35.1 to 40.0	7.0
40.1 and above	6.5

(b) Cream which does not conform to the requirements of market cream is manufacturing cream and may be repasteurized once

LEGISLATIVE COUNSEL'S DIGEST

Cream
Amends Sec 455, Ag C
Eliminates provision designating maximum amount of milk fat and solids not fat which may be in cream

APPENDIX 5

An act to amend Section 466 of the Agricultural Code, relating to the marking of dairy products

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

SECTION 1 Section 466 of the Agricultural Code is amended to read

466 All cream, ~~skimmed~~ *skim* milk, buttermilk, ice cream, butter, cheese, or other milk products sold, designated or advertised as certified shall be conspicuously marked with the name of the commission certifying it and certifying the milk from which such cream, ~~skimmed~~ *skim* milk, buttermilk, ice cream, butter, cheese and other milk product is obtained

LEGISLATIVE COUNSEL'S DIGEST

Marking of dairy products
Amends Sec 466, Ag C
Changes the word "skimmed" to "skim"

APPENDIX 6

An act to amend Section 562 of the Agricultural Code, relating to frozen dairy products

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

SECTION 1 Section 562 of the Agricultural Code is amended to read

562 All ~~manufacturers~~ of ice cream and ice milk who use butter, eggs or egg products in the manufacture of such products shall first secure from the department a permit to do so

Said permit shall be issued subject to such standards as set forth in this section for butter, and to the rules and regulations made by the director, and may be revoked for violation thereof, after hearing. Sweet butter for use in ice cream and ice milk is construed to be unsalted butter made from sweet cream free from undesirable flavor or odors, and having a rating of not less than 92 in accordance with the standards for quality of creamery butter as established in Sections 595 to 599, inclusive. Cream to which has been added ripener or starter, or cream which has been neutralized, is not construed to be sweet cream.

LEGISLATIVE COUNSEL'S DIGEST

Manufacturers of ice cream and ice milk who use butter, eggs, or egg products in manufacturing

Amends Sec 502, Ag C

Eliminates the requirement that manufacturers of ice cream and ice milk who use butter, eggs or egg products obtain a permit to do so

APPENDIX 7

*An act to repeal Section 580 of the Agricultural Code,
relating to imitation ice cream and ice milk.*

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

SECTION 1 Section 580 of the Agricultural Code is repealed

~~580. Imitation ice cream or imitation ice milk shall not be manufactured, processed, frozen, handled, distributed or sold in any place where ice cream or ice milk is manufactured, processed, frozen, handled, distributed or sold.~~

LEGISLATIVE COUNSEL'S DIGEST

Imitation ice cream and ice milk

Repeals Sec 580, Ag C

Deletes the prohibition against the manufacturing, processing, freezing, handling, distributing, or selling of imitation ice cream or imitation ice milk in any place where ice cream or ice milk is manufactured, processed, frozen, handled, distributed, or sold

APPENDIX 8

*An act to amend Section 682 of the Agricultural Code,
relating to licenses*

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

SECTION 1 Section 682 of the Agricultural Code is amended to read

682 Applications for tester's, sampler's and weigher's, technician's, ~~or~~ pasteurizer's, or nonfat milk solid tester's licenses shall be made to the director who shall examine each applicant for the license applied for as to his qualifications and knowledge of the law applicable to him. Each application must be accompanied by the fee as follows

- (a) For a tester's license, five dollars (\$5)
- (b) For a sampler's and weigher's license, one dollar (\$1)
- (c) For a technician's license, five dollars (\$5)
- (d) For a pasteurizer's license, one dollar (\$1)
- (e) For a nonfat milk solids tester's license, five dollars (\$5)

All such licenses expire on the 31st day of each December and may be renewed upon payment of a fee of one dollar (\$1) if the licensee has complied with all the requirements of the law and rules and regulations applicable to him

LEGISLATIVE COUNSEL'S DIGEST

Licensing of milk testers.

Amends Sec 682, Ag C

Makes the provisions re applications for tester's, sampler's and weigher's, technician's, or pasteurizer's license applicable to applications for a nonfat milk solids tester's license

APPENDIX 9

An act to amend Section 4148 of the Agricultural Code, relating to the marketing of dairy products

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

SECTION 1 Section 4148 of the Agricultural Code is amended to read

4148 Prices filed pursuant to Section 4147 shall be made in such office of the director as he shall designate. Such prices shall not become effective until the ~~fifth~~ seventh day after filing. Evidence of any sale of, or offer or agreement to sell such market milk, market cream or dairy products by a distributor at less than the prices theretofore filed with the director by such distributor pursuant to the provisions of this article shall constitute prima facie proof of a violation of this article. Offers and agreements to sell, as used herein, shall include offers and agreements which are conditional, or which shall become effective, upon the filing thereafter of amended prices by the distributor making such offer. Upon receipt of such filings or amendments, the director shall forthwith date, file and index the same in such manner that the information therein contained shall at all times be kept current and be readily available to any interested person desiring to inspect the same. Any other distributor in the marketing area may meet any such prices so filed, provided, that such distributor shall file with the director a schedule of prices not exceeding the prices so met by him within 24 hours after meeting the same.

LEGISLATIVE COUNSEL'S DIGEST

Filing of prices by distributors of dairy products

Amends Sec 4148, Ag C

Makes the seventh day after filing, rather than the fifth day after filing, the effective date for prices filed

APPENDIX 10

An act to add Sections 4191 and 43845 to the Agricultural Code, relating to fees

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

SECTION 1 Section 4191 is added to the Agricultural Code, to read

4191 Any manufacturer's fee payable under the provisions of Section 4190 shall constitute a personal debt of the manufacturer and shall be due and payable to the director upon the date set forth in Section 4190. If such manufacturer does not pay such fee upon the required date the director may file a complaint against such manufacturer in a state court of competent jurisdiction for the collection of such fee.

In the event any manufacturer fails to pay to the director the fees provided for in Section 4190, on or before the date specified in the section, the director may add to such unpaid fees an amount not exceeding 10 percent of such unpaid fees to defray the cost of enforcing the collection of such unpaid fees.

SEC 2 Section 4384 5 is added to said code, to read

4384 5 Any fee or assessment payable under the provisions of Sections 4383 and 4384 shall constitute a personal debt of the person by whom such fee or assessment is payable and shall be due and payable to the director upon the date set forth in Section 4384. If such person does not pay such fee or assessment upon the required date the director may file a complaint against such person in a state court of competent jurisdiction for the collection of such fee or assessment.

In the event any such person fails to pay to the director the fees or assessments provided for in Sections 4383 and 4384, on or before the date specified in Section 4384, the director may add to such unpaid fees or assessments an amount not exceeding 10 percent of such unpaid fees or assessments to defray the cost of enforcing the collection of such unpaid fees, or assessments.

LEGISLATIVE COUNSEL'S DIGEST

Milk manufacturers and distributors Collection of fees

Adds Secs 4101 and 4384 5, Ag C

Makes fees required of manufacturers of dairy products and distributors of fluid milk and fluid cream personal debts payable to the director, and authorizes the director to bring court actions to collect the fees.

Authorizes the director to make an assessment in an amount not exceeding 10 percent of unpaid fees to defray the cost of collecting such unpaid fees.

APPENDIX 11

*An act to amend Section 637 of the Agricultural Code,
relating to milk drinks*

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

SECTION 1 Section 637 of the Agricultural Code is amended to read

637 ~~Pasteurized market milk, pasteurized market cream, pasteurized skim milk derived from market milk, or milk solids derived from market milk, combined with fruit or fruit juices, chocolate, chocolate syrups, or other harmless syrups, with or without the addition of harmless coloring material, shall be used in the manufacture and sale of any mixed milk or cream drink. Such product shall be so colored or contain ingredients that cause it to distinctly differ from milk in appearance and other characteristics.~~

Flavored milk is pasteurized market milk to which has been added a syrup or flavor made from wholesome ingredients. Flavored milk shall contain not less than 3.5 percent milk fat and not more than 15,000 bacteria per milliliter; it shall be labeled "Grade A." Flavored milk shall be labeled with the name and address of the distributor or original bottler and with the name of the product which shall be the principal flavor, substituted for the word "flavored" in the phrase "flavored milk," for example, "chocolate milk."

Flavored drink or flavored dairy drink is a beverage consisting of pasteurized market milk or pasteurized market milk products to which has been added a syrup or flavor made from wholesome ingredients. Flavored drink or flavored dairy drink shall contain not more than 1.8 percent milk fat and not more than 15,000 bacteria per milliliter; it may be labeled "Grade A" if made from Grade A milk products.

Flavored drink or flavored dairy drink shall be labeled with the name and address of the distributor or original bottler and with the name of the product which shall be the principal flavor substituted for the word "flavored" in the phrase "flavored drink" or "flavored dairy drink," for example, "chocolate drink" or "chocolate dairy drink"

LEGISLATIVE COUNSEL'S DIGEST

Flavored milk or cream drinks

Amends Sec 637, Ag C

Deletes requirement that certain ingredients be used in the manufacture or sale of any mixed milk or cream drink

Defines flavored milk as pasteurized market milk to which has been added a syrup or flavor made from wholesome ingredients

States the percentage of milk fat and the number of bacteria which flavored milk may contain, and regulates the labeling of flavored milk

Defines flavored drink or flavored dairy drink as pasteurized milk or pasteurized milk products to which has been added a syrup or flavor made from wholesome ingredients

States the percentage of milk fat and the number of bacteria which flavored drink or flavored dairy drink may contain, and regulates the labeling of flavored drink or flavored dairy drink

APPENDIX 12

*An act to amend Section 637.5 of the Agricultural Code,
relating to yogurt.*

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

SECTION 1 Section 637.5 of the Agricultural Code is amended to read

637.5 Market milk or market milk combined with nonfat milk from market milk, with or without added market milk solids, flavoring or seasoning, which has been pasteurized and afterwards fermented by one or more strains of *Lactobacillus bulgaricus* (including yogurt strains), *Streptococcus thermophilus* and *Lactobacillus acidophilus* may be sold as yogurt, dietetic yogurt, mazun, or such names as may be characteristic for the product and approved by the director. Such product shall be free of molds, yeasts and other fungi, as well as coliform, and other objectional bacteria which may impair the quality of the product.

When offered for sale it shall be labeled with its name and with the name and address of the manufacturer or distributor and shall contain not less than 3.5 percent of milk fat, except dietetic yogurt shall contain not less than 2 percent of milk fat. Dietetic yogurt shall be labeled either "Dietetic yogurt" or "Low fat yogurt" in lettering at least as large as any other lettering on the label.

LEGISLATIVE COUNSEL'S DIGEST

Yogurt

Amends Sec 637.5, Ag C

Provides that the milk solids which may be added to yogurt must be market milk solids

APPENDIX 13

An act to amend Sections 4383 and 4384 of the Agricultural Code, relating to distributors of fluid milk and cream

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

SECTION 1 Section 4383 of the Agricultural Code is amended to read.

4383 Distributors who are subject to minimum wholesale and minimum retail prices for fluid milk as established by the director shall pay to the director on all milk fat contained in fluid milk and fluid cream purchased from producers, including their own production, if any, a fee in mills per pound of milk fat equal to that required to be deducted from the payments due producers of fluid milk under Section 4384. Such assessed fees received by the director shall be used in the administration and enforcement of this chapter.

~~Distributors who are subject to the provisions of any minimum wholesale and minimum retail prices for fluid cream as established by the director shall pay to the director on all milk fat contained in fluid cream purchased from producers, or fluid milk or fluid cream purchased from producers, including their own production, if any, a fee in mills per pound of milk fat equal to that required to be deducted from the payments due producers of fluid milk for fluid cream or fluid cream under Section 4384.~~

SEC 2 Section 4384 of said code is amended to read

4384 Distributors who are subject to the provisions of any stabilization and marketing plan made effective by this chapter, shall deduct as an assessment from payments due producers for fluid milk, fluid cream or both, including each distributor's own production, the sum of ~~two three~~ mills ~~(\$0.002)~~ *(\$0.003)* per pound milk fat on all milk fat contained in fluid milk, fluid cream or both, or in the case of distributors who do not purchase or receive fluid milk, in milk fat pounds, the sum of ~~seven ten and one-half~~ mills ~~(\$0.007)~~ *(\$0.0105)* for each 10 gallons of such fluid milk. Said assessment rates are maximum rates. The director may fix the rate of such assessments at a less amount, and may adjust the rate from time to time, whenever he finds that the cost of administering the provisions of this chapter can be defrayed from revenues derived from such lower rates, in combination with such sums as are provided by Section 4383. The amount of the assessments so deducted shall be paid to the director on or before the 15th of the month following the month during which such fluid milk or fluid cream was received.

LEGISLATIVE COUNSEL'S DIGEST

Assessments payable by distributors of fluid milk and cream

Amends Secs 4383 and 4384, Ag C

Consolidates provisions regarding assessed fees to be paid by distributors of fluid milk and distributors of fluid cream

Increases the maximum assessment fees from two to three mills per pound of milk fat or from 7 to 10½ mills per 10 gallons of fluid milk

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ASSEMBLY INTERIM COMMITTEE REPORTS
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NUMBER 5

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

REPORT ON LONG-RANGE PROGRAM
AND BUDGET PLANNING

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GLENN E COOLIDGE (*Vice Chairman, Deceased*)

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January 7, 1963



Published by the
ASSEMBLY

OF THE STATE OF CALIFORNIA

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LETTER OF TRANSMITTAL

California Legislative Assembly
Interim Committee on Ways and Means
Sacramento, January 7, 1962

HON JESSE M UNRUH, *Speaker*
and Members of the Assembly,
State Capitol, Sacramento

GENTLEMEN Pursuant to H R 361 (x), 1961 Regular Session, the Assembly Interim Committee on Ways and Means herewith submits a report advocating changes in emphasis in state budget planning and proposing that each budget be accompanied by a long-range projection of its consequences and by proposed long-range programs to keep abreast of the State's growth

This report is based on studies for the committee by Griffenhagen-Kroeger, Inc, consultants in public administration and finance, supplemented by hearings and study sessions in which the full membership of the committee participated

The report was adopted by the committee on November 28, 1962

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

Tom Bane	Pauline L. Davis	Eugene G. Nisbet
Carlos Bee	Bert DeLotto	Nicholas C. Petris
Frank P. Belotti	(resigned)	Carley V. Porter
John A. Busterud	Edward M. Gaffney	Thomas M. Rees
John L. E. Collier	Leverette D. House	Joseph C. Shell
(with reservations)	Frank Lanterman	(with reservations)
Charles J. Conrad	(with reservations)	Bruce Sumner
Glenn E. Coolidge	Lloyd W. Lowrey	Jerome R. Waldie
(Vice Chairman,	Lester A. McMillan	John C. Williamson
deceased)	James R. Mills	Gordon H. Winton, Jr.

September 10, 1962

MR. ROBERT W. CROWN, *Chairman*
Assembly Interim Committee on Ways and Means
State Capitol
Sacramento, California

DEAR MR. CROWN: We transmit herewith our second draft of a report on long-range program and budget planning for the State of California.

We must continue to emphasize that this report is based on a limited study, designed to introduce the considerations favoring this type of planning and suggesting its general form and method.

The detailed application of the principles and practices we propose will take time, effort and money. It will require the joint effort of the legislative and executive branches of the state government to achieve maximum benefits. This draft concludes by suggesting the steps to be taken in that direction.

This draft reflects changes suggested during hearings held by the committee in Oakland and Sacramento. In the rewriting we have also rephrased it so that it might become the committee's report, if the members are so disposed.

I appreciate the co-operative spirit in which the committee and its staff have helped us produce a report that should prove to be of great value to the State of California.

Very truly yours,

LOUIS J. KROEGER
Executive Vice President
Griffenhagen-Kroeger, Inc.

INTRODUCTION

Every legislator is keenly aware of and deeply concerned about how California will cope with the complexities of her growth. No responsible elected official can participate in the politics and practical problems of the day without becoming concerned about their long-range consequences.

In a sense, every legislator has a greater responsibility for encouraging the long view than does any Governor. To be sure, each Assemblyman has a term only half as long as the Governor and each Senator has a term only equal to that of the Governor; but with the regular re-election of many of its members the Legislature provides a continuity seldom found in the executive branch. More important, the Legislature enacts the constitutional amendments and statutes which express the State's public policy; it authorizes expenditures and it creates the tax system by which they are financed.

The cost of California state government will increase steadily. It will increase because there are going to be more people. It will increase because those people are going to require more service and facilities. It will increase because of further inflation. It may decrease in specific ways because of improved organization and management, or curtailment of functions or technical advances—but the total trend will be up.

This is not necessarily to say that the means of financing will not keep pace. They may. Again, they may not.

We cannot afford to wait for each new fiscal year to see where we stand. We have to look far enough ahead to be able to take timely corrective action before a state financial crisis cripples our economy or causes a severe curtailment of vital services.

This report is the product of a twofold inquiry:

First, how to make the budget a better tool for understanding and forecasting the State's expenditure requirements and revenue possibilities.

Second, how to use that understanding and forecasting to plan and finance an adequate state government.

In stressing the need for more planning and forecasting, we do not intend to imply that there is none now. The department of state government, in varying degree, have long been aware of the initial needs of the future and have plans for meeting them. What we seek through this report is a means whereby such plans will be brought to a common standard, co-ordinated and—most important of all—revealed to the Legislature and the people.

We can all face the future with greater confidence if we know more about what it may hold for us. We can make better decisions today if we can see more clearly the probable consequences of what we do.

SUMMARY

The time has come to plan further ahead and to project the effects of current fiscal decisions if California is to meet the problems of her growth.

Each year's budget should be accompanied by a five-year projection of its efforts, in terms of both expenditures and revenues, taking into account all available data and forecasts concerning the number, composition and distribution of the population, and all relevant indications concerning the economy of the State and nation

Each budget and forecast should be accompanied by a five-year projection of probable program changes and capital improvements required to meet the State's growth, with estimates of costs and revenue

The emphasis in budget planning and presentation should be shifted *from* itemized detail of people to be hired and things to be bought *to* programs to be accomplished and data about what it costs to get the desired results, with established work standards

The emphasis in budget consideration by the Legislature should likewise be shifted from the itemized detail to the more basic questions of policy and program

Modern electronic equipment should be utilized to make all data available for quick reference and so that with each consideration of change in program or policy the cost and revenue consequences can be quickly calculated

The budget forecast should be changed to reflect and facilitate these changes in approach.

THE STUDY

The study on which this report is based was authorized by the Assembly Interim Committee on Ways and Means at a meeting in Monterey on September 7, 1961. Griffenhagen-Kroeger, Inc., consultants in public administration and finance, were retained at that time and a scope of study was adopted.

The agreed upon scope of the consultants' work was as follows

- 1 To define in detail the advantages of long-range fiscal planning
- 2 To propose the standards and guiding principles for long-range fiscal planning suitable to the State of California. Such standards and guiding principles to be of such character as to be useful to the Governor and Department of Finance in planning the budget and to the Legislature in reviewing and acting on it.
- 3 To include in such standards and guiding principles those which would apply to state operations, capital improvement, debt service and aid to local governments. This would necessarily also include both expenditure and revenue forecasting and planning.
- 4 To suggest ways in which data concerning population, economic activity, state government activity and other relevant activity should be maintained and projected to support a long-range fiscal plan.
5. To confer and correspond with appropriate state officials and with authorities in other states to get the benefit of their thinking and experience.
- 6 To submit progress reports and draft reports to the committee, and to assist in public hearings and discussions designed to explain this study and to gather the viewpoints of representative organizations.
- 7 To draft a final report containing consultants' professional findings and recommendations and, if necessary, to help the committee draft a report of its own conclusions and recommendations.

At a meeting of the committee in Los Angeles on November 20, 1961, a more detailed outline of the study was considered and several suggestions for departments to be used for pilot study purposes were advanced by members of the committee. The matter was left to further consideration. General observations on the desirability and purposes of the study were also heard from Mr. Robert L. Harkness, Deputy Director State Department of Finance, and Mr. Lester Howe, Director of the Tax Department, State Chamber of Commerce.

At a meeting with the Chairman of the Committee in Oakland on January 17, 1962, a yet more detailed "Study Program and Working Hypothesis" was presented by the consultants and agreed upon as the guide to further study.

At the same meeting with the chairman, the Department of Finance was selected for pilot study, it being relatively small in size, yet diverse in function and including the several important elements of state

operations, state enterprises, capital outlay, debt service and subventions

As the study proceeded, the consultants became convinced of the futility of using a single department to illustrate this report. The development of the case for doing the planning at all depends to a considerable extent on emphasizing the different factors affecting the functions of different departments. The point is not well made by concentrating mainly on one department.

With the consent of the committee, the consultants therefore abandoned a more detailed pilot study at this stage, although such a study is proposed for the future.

After a period of fieldwork devoted to gathering data and interviewing those most directly concerned, the first tentative draft of a report was presented to the committee at Oakland on May 16, 1962. This was a study session at which the committee discussed the report with the consultants. No outside witnesses were heard.

A public hearing was held in Sacramento on July 18, 1962, at which time the committee heard testimony by A. Alan Post, Legislative Analyst, Roy M. Bell, Assistant Director, Department of Finance; Dr. John R. Richards, Director, Co-ordinating Council for Higher Education, John A. Legara, Deputy State Highway Engineer, Emerson Rhyner, Attorney, Division of Contracts and Rights of Way; Samuel Leask, Administrator, Health and Welfare Agency, Robert Brown, Counselor, California Taxpayers Association, Leslie D. Howe, Director, Tax Department, State Chamber of Commerce, and Richard A. McGee, Administrator, Youth and Adult Corrections Agency.

A revised draft of the report, based on the hearings and further study by the consultants was considered by the committee at a meeting in Sacramento on September 19, 1962.

The report was finally adopted by the committee on November 28, 1962.

THE TIME HAS COME TO PLAN

This report is mainly concerned with the guiding principles and the major details of techniques which, if adopted by the State of California, would provide a sound basis for long-range program and fiscal planning. The need for this should be too evident to every responsible state official to require extensive justification. However, a brief summary of the basic reasons is in order.

California has grown, is growing and will continue to grow. The celebration of the moment when we moved ahead of any other state in population will have taken place before this report is filed. We must plan now how to meet the responsibilities of that growth and pre-eminent position. Mere numbers and size do not make a state great. Greatness results from deliberate design.

With growth has come and will come changes in both the economy and the composition of the population. Our size, soil and climate will make this always an important agricultural state. Our location as the gateway to the Pacific insures that transportation will always be important to our economy. These substantial supporters of our economic well-being will, however, become *relatively* less significant as the increase in population, centered in the urban areas, creates the need for diversified industry, commerce and services to support the people.

Thus far our action in meeting the problems of growth has been mainly a vain attempt to catch up with developments. We have built to alleviate overcrowding rather than on a scheduled plan to anticipate growth. Unless we face what is ahead, and arrange the services and facilities of government it will require, we are doomed to chaos and waste.

The State must provide capital improvements, either directly or by aid to local governments, to match her growth. At the least this will require state highways, mental and correctional institutions, office buildings, universities and colleges, and aid to local schools. These are the requirements which our hindsight has taught us to be the bare necessities. If we lack a more complete list, it is because we have not done the planning this report advocates.

The operating machinery of state government will need to expand just to match increased population, even if we only retain present quality and kinds of service. This increase may be offset to some extent by the introduction of new techniques, particularly through automation. It could conceivably be offset, too, by reducing the quality of service or by abolishing some of the present services. But we cannot know the extent of the growth nor of the offsetting savings unless we look ahead.

There will be continuing pressure to add new services and to improve the quality of what we have. If the pattern of the past holds true, many new programs will be justified on an initial modest basis, they will tend to expand rapidly as soon as they are accepted by the people, and their costs will increase substantially.

The departments of state government are necessarily already planning ahead. The Legislature needs to know as much about these plans as possible, as soon as possible. Each department sees from its own vantage point, as it should, what it expects to have to do. Each probably sees a role for itself in excess of what it can ever attain. Those responsible for the whole of state government need to know what lies ahead and to assess the financial capacity to cope with it. We need to be forewarned about when the present capacity to finance may be exhausted, so that there will be time to decide whether to curtail services to fit income or to find ways to increase income.

With growth and diversity, it will be increasingly important to find a proper balance between those functions of state government which facilitate economic improvement and social advancement on the one hand, and those required to alleviate the results of social and economic failure on the other hand. Only conscious planning, accompanied by continuous analysis, will keep us aware of what is cause and what is effect in the relationship between state government, the economy and the social order.

The yield of the present tax structure will vary as the economy changes within the State and it will be affected by external forces as well. It is easy to be lulled into a false sense of security by believing that our sales and income taxes are so tied to population and the volume of economic activity that they will match our future needs. This easy assumption is encouraged by past experience. It needs to be tested with knowledge about what the future holds.

Increased revenue requirements need to be foreseen far enough ahead that orderly change can be made. Sound change seldom comes out of crisis, unless the crisis forces adoption of a change already well thought out. Moreover, even the crisis changes in revenue may not bring returns to the treasury for at least a year. In short, the time to change the revenue system is always a year or more before the money is actually needed; and the time to start considering revenue changes is several years ahead of when they must be made.

On a year-to-year basis an exactly balanced budget is well nigh impossible. When there is no complete long-range plan, as there has not been, the apparent possibility of any surplus encourages excess spending and the apparent prospects of a deficit lead to piecemeal tinkering with the tax structure. Viewed for several years ahead, there will always be a picture of the net result produced by the opposing forces that influence revenue and expenditure. Viewed as a future and continuing problem, we can hope that the State's budget can be treated as a governmental and fiscal matter, not a political opportunity to criticize or a political obligation to defend.

Under the State's system of special and dedicated funds there have been general fund deficits even as the treasury bulged with balances in special funds dedicated to specific purposes. A long-range plan can help put these special surplus funds in their true perspective, as part of the State's total financial resources, and thereby contribute eventually to less earmarking of funds and greater financial discretion and responsibility for the Governor and Legislature.

Long-range planning can minimize the cost of borrowing. It can enable capital planning on true priorities, providing for not just what

is the most urgent, but assuring proper provision also for what needs to be "invested" in plant modernization for greater efficiency and for anticipation of new needs

If in the process of longer-range planning, we can change the emphasis in budget considerations from detail to essential purpose, we can assert a greater degree of legislative control over policy and total costs. Many legislators have complained that legislative intent is not always observed by the executive branch. There is much about the present manner of legislative review of the budget that diverts attention to individual items when it ought to be concentrated on expressing policy about the major elements of programs. If intent is to be observed, it needs to be more positively asserted.

Every legislator has felt the pressure of special interests. Legitimate as each of these interests may be, and worthy as their causes may be, the Legislature has an ultimate responsibility to weigh all competing requests and to decide upon a total budget that best serves the interests of the State, within the limits of available funds. A longer view of the costs and consequences of each proposed new program will help both the legislators and those who have special causes to plead to see why decisions must be made as they must be.

Taking all the foregoing together, it is evident that the State should make a serious effort to estimate the trends of the economy and of state government for some years ahead. It can thereby estimate the expenditures and revenues required and it can take corrective action when necessary ahead of, or at least concurrent with the emerging changes.

None of this implies that the Legislature need make any more formal financial commitments beyond the next fiscal year than it does now. The intent is that the Legislature continue to adopt a budget one year at a time, but that in doing so it should have better information about the circumstances which lie ahead and the probable consequences of the commitments it makes.

There is Little Opposition

There is relatively little organized or compelling argument against the idea of long-range program and budget planning. The differences that appear are more on the detail of how it should be done, and what factors should be taken into account, than it is on the principle itself.

Such opposition as the committee has heard is expressed in some variation of the following points, to each of which there are sound answers:

1 We can neither predict the future with accuracy nor can we control it.

That does not justify not providing for it to the best of our ability.

2 No Legislature should make any financial commitment beyond those in the budget for the next fiscal year.

This is a fallacious argument on two counts. First, the Legislature does make long-range fiscal commitments, either by the dedication of funds to certain purposes or by the authorization of programs which will require continuing or increasing support from year to year; second, what is being proposed is not a more positive fiscal

commitment beyond each current year, but rather a forecast of the consequence of commitments made each year so that the Legislature can be better prepared in subsequent sessions to evaluate programs, adjust costs and plan whatever orderly adjustment in the revenue system is necessary to keep the budget in balance

3 Each Governor and Legislature has a responsibility primarily for the present

It would be more accurate to say that while the Governor and the Legislature may naturally tend to be more concerned with the present, their responsibility is for the well-being of the people and the economy—and that includes prudent planning for the future

4 Much of the proposed plan depends on the successful use of the electronic computer. We do not yet know enough about its capability

Computers that have solved the problems of design and navigation to enable man to move into outer space can solve the more mundane problems of program and budget computations and forecasts

5 The present budget and Legislative Analyst's report provides a complete analysis of the States fiscal problems.

Both stress the present, or one year into the future. Such analysis is important and should be retained, while also looking more years ahead

THE ELEMENTS OF THE PROPOSAL

There are three separate but closely related elements in the proposal this report advances:

1. That with each year's budget there be submitted a five-year projection showing the effects in terms of both revenue and expenditure that can be expected if the kinds and level of service proposed in that budget are extended to the expected population growth and development of the State
2. That the five-year projection of the present budget be accompanied by a five-year program indicating change in the kind and level of service that may be anticipated to meet the changing needs of a growing State
3. That the current budget be presented in a new format which will concentrate attention on policy and program

Following sections of the report will present these elements of the proposal in more detail

HOW FAR AHEAD?

Assuming that the desirability of long-range budget projections and program planning is accepted in principle, the question is "how far ahead?" Even an annual budget needs some flexibility to meet unexpected changes and conditions. A biennial budget was abandoned some years ago because of the difficulty of making firm commitments two years ahead. In the face of this experience, there may be a natural reluctance to face the greater uncertainties of a longer period.

But what we propose is different. Appropriations have finality and rigidity. A long-range plan is, at best, an estimate—a forecast based on assumptions whose validity diminishes with each additional year they are projected into the future. As an estimate it can guide judgments about the future, yet avoid the finality of any commitment about the future. The only question is where the point of fading accuracy will reduce forecasts to empty conjecture.

It is not uncommon for major business enterprises to plan their capital expansion, their production schedules and their marketing programs for as much as five years ahead. Our national government projects many of its programs at least that far and it expects the developing nations to have 5- to 10-year developmental programs as a condition of participating in the mutual assistance programs.

Realistically, it appears highly desirable to require forecasts to be made and plans to be developed beyond the term for which a governor is elected. Any governor will have a natural tendency to concentrate on what he wants to accomplish in his term. He should be required to plan beyond that in the interests of the state. As his term progresses he should be required to project the consequences of the programs he sponsors.

A period of less than five years would give too incomplete a picture, one beyond five years would include too many uncertainties. For most operating programs we recommend a period of five years beyond the budget under consideration as the term for planning. For major capital improvements, such as the water project and master freeway plan, and for such major programs as those in higher education, a longer projection has been and can continue to be used.

Even with the relatively short period of five years for most programs, there will have to be many assumptions made, with all the risks of uncertainty inherent in trying to guess the course of future events. But without assumptions there can be no plan or goal. Without plans or goals we engage in a purposeless day-to-day existence. Clearly we must elect the path of purposeful planning, knowing full well that details will constantly have to be adjusted to new facts.

A Question of Balance

Lest there be any misunderstanding, we must repeat over and over again that the proposed long-range budget projection and program plan does not contemplate that budgets be actually approved for more

than one year at a time. The constitutional requirement that the budget be balanced extends only to the one which is currently being submitted by the Governor. Neither the departments, the Governor nor the Legislature should feel any obligation to prove a balance for each of the additional years over which projections are made. It would, in fact be dangerous to force such a balance. A way will have to be found to balance each year as it is reached, but it would be calamitous to create the illusion of future balance where the facts do not justify it. There should be nothing less than a complete and candid projection of both expected expenditures and expected revenues.

The real virtue of long-range planning is that the probability of the budget being out of balance at a given point in the future can be anticipated far enough in advance to take corrective effort out of the atmosphere of crisis. It might be said to be almost axiomatic that as the population grows and its composition changes, and as the economy shifts to suit the new population, there will be a natural opening of the gap between expenditures and revenue. What makes this an obvious truth is that the plan for expenditures is immediately attuned to the changing requirements, whereas fundamental changes in the revenue system are not nearly as responsive.

The revenue system does have some built-in adjusting features, assuming sustained prosperity, but the fact still remains that expenditures are influenced by one set of forces, dynamic and progressive in their nature, whereas revenues are influenced by another set of forces, largely static or resistant in their nature. The two forces may follow parallel courses for a number of years, but in time they must part. When that happens—or rather, when the indications are clear that it is about to happen—those concerned with the future of the State should recognize that this is a natural phenomenon, which at that point requires concerted corrective action. They will not find correction for the realities of the situation in exchanges of political charges and countercharges.

BUDGET PROJECTIONS

We have described the elements of the total proposal as "separate but closely related." There is always the possibility of delay in accepting new concepts of long-range planning and of budget format, because of differences over the detail and fear of facing the uncertainties of a few years into the future. Should this delay occur, we ought not defer for another instant the decision to require a projection of the consequences of what we do.

This is a separate element. It obliges us to think about new programs until they are upon us—if that is the way we want it. It would, however, enable us to know what it will cost for five years ahead to support what we approve now, as it extends to a growing population, in a changing economy. At the same time we can determine whether the added population and expected economic development will yield enough revenue under our present tax system to pay the added cost.

INDICATORS OF THE FUTURE

The correct selection and interpretation of data tending to predict future trends is the absolutely essential key to the success of long-range budget projections and program planning. Within the limits of time and funds available to the committee for this study it has neither been possible to explore fully all the possible indicators of the future, nor has it been possible to test the validity of those suggested. It will take either further study or a period of trial and error in actual operation to make the final selection of valid indicators.

In seeking valid indicators the aim should be to choose as few as possible which combine the characteristics of (1) relative ease of gathering the data, (2) established reliability and accuracy of the sources of these data, and (3) demonstrated consistent correlation between the individual indicator and either the total or some one or more governmental trends of the State.

The indicators to be chosen fall into four broad categories:

- 1 Those relating to the growth in population and changes in its density and composition
- 2 Those relating to general economic trends
- 3 Those relating to specific trends which characteristically follow a different course from the general trends, but because of their special nature have a bearing on some part of the State's governmental activity.
- 4 Those concerning scientific and technical developments which may affect the nature and scope of state government

Population

The first and most obvious element in California's future will be its growing population. The numerical increase alone will not affect each function in the same way, but it must be taken as a starting point. More important will be the composition of this population in terms of age groups and other identifiable elements creating special problems or requiring special service. Close attention needs to be given to age groups, for whenever there is a noticeable bulge or wave in the lower age groups, the State and its local governments must plan successively for public schools, for institutions of higher learning, for additions to the wage-earning population (with its implication both of added revenue for the State—or possible problems of unemployment) and on to the welfare responsibilities for the elderly.

Besides age and general composition, it will be important to take into account and forecast as accurately as possible where this population will be located within the State, and its probable density at each location. This will dictate where the State will need to provide capital facilities and where and how it will need to deploy its personnel to render the most effective service.

In its forecasts of population, numerically, by composition, by location and density, there are a wealth of sources available, including data and forecasts by the U S Bureau of the Census, forecasts by the Department of Finance, the assumptions and plans of the various public utility organizations, projections of the California Taxpayers' Association, those of state and local planning officials and possibly other sources.

General Economic Trends

It has not been possible in the limited time for this study to make a detailed economic analysis to determine the specific indicators which would most reliably forecast the trends and extent of California's economic growth and change. It would be dangerous to assume that any indicators have a permanent value in this respect. Part of what will need to be done is a continuing program of long-range planning, is to apply data in different combinations and to test the assumptions they produce until a reliable pattern has been found. Even then, the testing should be continued from year to year to make certain that the validity of these indicators continues. It will have to be recognized, too, that projections may be quite accurate as to long-range trends, while quite fallible as to short-term ups and downs.

Indicators having a bearing on the trend of prices and wages (including fringe benefits) will be among the most important. The two are interrelated, as witness the long history of rising prices leading to increased wages, with the increased cost of labor leading in turn to higher prices. Price levels will affect the sales tax revenue of the State and will affect expenditures through the cost of materials, supplies and services provided for in the budget. Utility and transportation rates, because they are subject to regulation, must be forecast separately from the price of goods. Wages and benefits, following closely after the price trend, yield revenue through the income tax and affect expenditures by their effect on direct state salaries, on local salaries for activities aided by the State, and on pension and other fringe benefit costs. Prices and wages, taken together along with other considerations, affect corporate income and thereby have a significant relationship to future revenue possibilities.

There are a number of specific types of economic data available from standard, reliable sources. In some combination of these lies the clue to what the future holds. In using these data, it will be necessary to consider the record of the past as a basis for projecting to the future, with particular attention to the extent to which each of these items have followed or departed from the upward trend in population. They also need to be analyzed constantly to watch for changes occurring in their relationship to each other. Among the kinds of data to which we refer are the statistics of employment and unemployment, the State's share in the gross national product, new construction, real estate transactions, transportation activity such as carloading, wholesale and retail sales, new utility connections, business failures, imports and exports, volume of financial transaction and the like.

Particularly significant indications of the future, if the data can be brought together on a systematic basis, would be the actual and planned

capital commitments of private enterprise for construction and expansion, and data on new business formations

Constant attention needs also to be given to the general economic conditions outside the State. There are surely influences starting outside the State that in time create economic phenomena in California.

A final factor needing continued attention is not so much economic as it is governmental. Any forward plan must make assumptions about the trend of international affairs, because of the relative effects of total war, total peace or variations in the cold war on the domestic economy. The continuing or changing nature of federal-state relations have implications on the extent of state programs supported in part by federal funds. There is a similar consideration of state-local relations in terms of the relative responsibility of the State and its local governments for programs and costs.

With increased state and federal activity, a factor to be kept in sight is the effect of this expanding activity on the local tax base. As more land is devoted to freeways, state institutions, state parks and recreation areas and all manner of federal installations, it will be argued that the further reduction of an already narrow tax base in some local jurisdictions requires more assistance in support of such programs as education and welfare. An offsetting factor to be kept in mind is that these public activities often generate housing, commercial and industrial activity creating a net increase in the local tax base.

It is important to remember, in the use of these indicators and in their publication in support of a long-range plan, that they are at best a projection of the trends of the past; that they are subject to unforeseen variations as new conditions develop; and that such estimates as are made of the future are necessarily based only on assumptions. Because of the uncertainty and possible inaccuracy of some of these indicators, there will be those reluctant to make the necessary assumptions. To that extent there is a weakness in forward planning.

The alternative to making no assumption and no plan for the future, however, is the continuation of a condition which annually becomes more intolerable, of committing the State to an ever-enlarging program, without sufficient preparation to cope with the consequences.

Specific Trends

We have said that not all departments will be affected alike by general growth in population. There are variables affecting almost every department which may often follow the trend of increased population, but will precede it in some cases, lag behind it in others and stray from it in an interesting variety of ways. Some of the data which needs to be taken into account in individual departmental projections is now included in the budget document. As it now appears, however, most of this data is on a purely historical basis, with too little analysis of its future significance.

We can by no means, within the limits of this report, make a complete and detailed list of all the variables affecting each department. We can, however, illustrate the point with the following observation concerning some of the major functions

With respect to *agriculture*, it is the easy assumption of many that as California becomes more urbanized and industrialized, there will be an accompanying decline in the need for state services to agriculture. At the moment, this does not seem likely, but the matter should be watched and commented on each year as the projections are made. California will continue to be one of the nation's leading agricultural states. There may be fewer farms, but the farmer's problems may be more complex. On the other hand, the farmlands lost to urbanization and industrial growth may be matched by new land gained through extended irrigation. Even if California agriculture were to decline markedly, the increased population, as consumers of agricultural products would remain concerned with marketing, weights and measures standards, and plant and livestock disease and pest controls. The Department of Agriculture will need to develop the specific factors which indicate the shifts in need for these and related services.

The State's *correctional* program, whether through custody or extramural supervision, will almost certainly be affected by factors other than increased population. Such other factors include economic conditions, employment levels, the composition rather than the number of the population, the level of law enforcement, the attitude of the courts and parole agencies, the effectiveness of supervision and rehabilitation and the effectiveness of the family, the schools, the churches and other social institutions. All will have a bearing on determining whether delinquency and crime will increase or decrease in or out of proportion to the population growth. The effects of the correctional agencies' own programs for rehabilitation will in themselves be an important factor to be included in the calculations of the future.

In *education* there are two major elements of activity and cost. First, the State's partial support of the public schools, administered by local districts, and second, more direct concern with the administration and financing of higher education. There has been too much emphasis on financing by formula applied to attendance, too little concern with the analysis of curricula and programs to see what costs they generate, and why. The obvious special indicators to be applied in education center mainly on the changing age composition of the population, but the emphasis must be shifted from this alone to watch the effect of other social and economic developments in influencing dropout rates, enrollment in collegiate grade institutions and other elements bearing on the cost.

Education suggests another item which must weigh heavily in forward planning. There is an interdependence here, illustrating that what develops in any one department of state government may have effects that must be taken into account in the other parts of the projection. Ideally, programs will be planned and policies adopted that will make the most of these interactions. If, as seems to be the case, for example, the provision for fine faculties and laboratories at the university and state colleges attracts more specialized industry to California, this is both a matter to be encouraged by ample support of those facilities and an item to become a part of the calculations of future economic growth, requiring added services and yielding added revenue.

Mental hygiene is one of the better examples of why projections cannot be made simply on the basis of population increases. Because of progressive policies and practices in this field, it has not been necessary to increase institutional capacity at the same rate as the growth of population in recent years. With the information being obtained about the incidence of various kinds and degrees of mental illness in the general population, and the rate at which they can respond to progressive treatment, it should be possible to make quite accurate predictions of requirements for this program.

In the conservation and development of *natural resources* the same general comments apply as in the case of agriculture. That a growing population will tend to make inroads on these resources only serves to emphasize the importance of the more careful conservation of what remains. Here the important indicators to take into account are not simply the growth in population and the possible diminishing of the resources, but rather data which will show why and how and when intensified programs of conservation and development are needed.

In *public health* it is safe to say that the need for more intensified service develops at least apace of, perhaps ahead of, the growth in population. It can be foreseen that as population increases and becomes more densely concentrated in the urban centers, the need is greater for stringent measures to prevent epidemics, maintain sanitation, insure safe water supply, see to the safe disposal of waste and prevent pollution of the air, including that from radiological sources. As the growing population crowds the limits of cities and counties, until these limits are all but obliterated (except as legal entities), the need for greater standardization among the city and county health departments becomes increasingly evident. This bespeaks the need for greater state participation to establish standards and see that they are maintained. Health departments have developed extensive systems of data, reporting on all aspects of their activity, which must be marshaled, not just as a recitation of what has happened in the past, but as a basis for foreseeing the needs of the future.

In the *regulation of business enterprises* and of the *professions and vocations* the increase may not necessarily be proportionate to the growth in population. In many of these fields increased population can be served by existing organizations and services, not necessarily requiring more supervision. Each agency concerned needs to watch carefully and report the effects of population and economic growth on its own activities.

In matters of *industrial relations* and *employment security* the changes in the size and composition of the work force may or may not follow the general trend of population. Special factors bearing on industrial peace and on unemployment rates will also have to be taken into account.

In matters relating to *motor vehicles* and their drivers it has been obvious in California for years that the number of vehicles increases out of proportion to population. At what rate this will continue and how long this can continue before substitute methods of transportation are resorted to is impossible to answer; but they are points to be reported on annually and projected into the future.

In the construction and maintenance of such major *public works* as highways, dams, canals and related facilities there has already been a great deal of the kind of forward planning which is here advocated for the entire state government. The principal point we would make about these activities is that as the budgets of the future are submitted, accompanied by the five-year additional projection this report recommends, there needs to be a fuller disclosure of the data and the assumptions on which these plans have been made and an indication of how much of the program is to be fulfilled in each of the succeeding years. Each of these programs needs more careful analysis, too, to assure their integration into a total, balanced public works program.

State *subventions*, particularly for education and welfare, are a major part of the budget. In turn, they become a major element in the "revenue" of local governments. The proposed long-range program and budget plan must include equally careful attention to these purposes, so that if at any point it appears that there will be any substantial shift in the amounts of these subventions, local governments will have enough advance warning that they can make corresponding adjustments in their plans.

Scientific and Technical Development

The new scientific discoveries in the last few years are said to equal those of all the preceding centuries of recorded history. With each new discovery multiplying the possibility of yet further discovery, we have passed the point where governmental, social and economic institutions can adjust quickly enough to take advantage of all of the new benefits. As rapidly as these adjustments can be made, however, they must be. An important part of the State's forward look is the appreciation and acceptance of discoveries already made and a look ahead at the possibilities of those yet to come, so that they can be applied as efficiently and as economically as possible to improve the lot of the people of California.

Some of what lies ahead may have tremendous implications on the budget of the State.

Continued progress in mental hygiene may further change the need for and the nature of both mental and correctional institutions.

New means or concepts of transportation could affect the vast amounts it now appears will be necessary for highway construction.

Advances in medicine could reduce hospital and clinic needs, thus reducing some institutional costs; but in prolonging life, require additional funds to cope with unemployment or to provide more leisure time facilities.

The combination of prolonged life with the added leisure made possible by technical advances such as automation, will further increase the need for leisure time facilities and activities.

One of the State's major commitments at the moment is in the development of water, for irrigation, for domestic purposes, for industrial purposes and for power generation. The cheap and safe utilization of atomic energy might provide a substitute for the power requirement and a major break through in reclaiming sea water could change other aspects of the need.

Again we have cited the obvious, if only to underscore the urgency of taking into account all that the future may offer.

Caution

We must resist all temptation to oversimplify the future effects of what we do today by resorting to vague generalities. A general projection of gross increase in total expenditures and revenue would be easy but would not be realistic. It would assume an increase in governmental costs in direct proportion to the increase in population and/or economic activity—which in total is not necessarily so and by individual department or function is absolutely not so.

The only realistic method of projection is first to forecast the growth in and change in the *composition* of the population and of the growth in and change in the *composition* of many details of the economy, and then to apply a separate forecast of the effect of these expected changes on the level and nature of each state service.

One set of projections must be made without any assumption of change in policy, procedure or technology—unless specific changes are planned or recommended as part of the current budget. Projections cannot assume future change in either tax programs or tax structure—except as specific change is proposed in the current budget. Instead, forecasts need to be made to show whether present policy, procedure and technology projected to new conditions will continue to provide a balanced budget. If not, the projections will provide the warning and ample time for thoughtful revision or adoption of new concepts to meet new conditions.

All of the foregoing is said with respect to *projections* of the consequences of each current year's budget. Such projections would add much to our understanding of the future. Understanding the full import of the future cannot but impel us to try to do something about it; hence the next element in the proposal—program planning.

PROGRAM PLANNING

It was evident from the moment we began to think about budget projections that there is an implicit need also to consider program planning. A simple projection of present staff and facilities to maintain present service through present agencies would be incomplete and inaccurate. It would have to ignore the growth and change that is California's destiny.

We need a declaration of basic fiscal policy requiring that programs be planned and that estimates of revenue they will yield and expenditures they will require be projected five years beyond the budget currently in preparation or under legislative consideration. This would supplement the projections discussed in the previous section.

Such a provision should impose a responsibility of the Legislature, the Governor and the departments for assigned parts in the process. The Legislature by its specific acts and by the expression of its standing and interim committees can give indications of policy direction. The Governor will have a program, both of what needs to be done and of the means to finance it, that must be a part of the process.

Planning the budget must remain an executive function, but declaring policy is a legislative role. It is not enough that a budget be submitted by the Governor to the Legislature as a set of accounts to support a Governor's program. It is not enough that the Legislature know the programs and aspirations of the Governor. It must have full access to all the data on which plans and forecasts are based. The public is entitled to share this information, for it must be enlightened in its judgment of candidates, officeholders and issues.

The departments, because they are closest to and most continuously in touch with the problems, must bear the brunt of this program planning responsibility.

Departmental Responsibility

For effective long-range program and budget planning, the declaration of basic fiscal policy should impose on each department at least one responsibility, and in some cases, two.

The special responsibility of some of the departments should be to report in usable form the data they gather in the normal course of their work which constitutes part of the indicators to be used in projecting into the future. It is neither necessary nor desirable that a new organization be created to gather all this information independently. All of the facts that are needed are now being gathered and are available in one form or another, either in the records of the state departments or in the continuing research of private organizations and institutions. It is necessary only that these materials be put into a consistent form and that an electronic computer be used for the necessary storage and analysis projection. This final assembling of the data is clearly the responsibility of the budget staff. The basic data itself need not all be reproduced in the budget document. It can be

presented in suitable summary form for ready understanding. The full detail should, however, remain available for inspection by the Legislature, which may appropriately review the way in which information is being utilized and test the assumptions on which projections are made.

The common responsibility of each of the departments should be to develop long-range programs, related to the basic indicators of the State's growth, applying work units to be generated by that growth to show what can be expected of all currently authorized programs, what modifications in present programs should be made and what new programs should be considered. In the larger departments this will necessarily mean the use of modern electronic devices, so that records can be constantly updated and projections carried forward. It will not be necessary for the department to report completely all of the data on which it bases its program projections, but they should be available for check.

In the preparation of these programs the department should rely on the program guidance of the Governor and Legislature and the technical guidance of the budget staff. The basic information on which the department bases these program plans should be equally available for inspection by the budget staff and by legislators and such representatives of the Legislature as the Legislative Analyst.

A long-range budget can be no sounder than the facts and program planning that support it. We are suggesting more, then, than a change in practices and format by the state budget planners. We are proposing that every department think ahead, find a more specific basis for justifying its needs and express its needs in a program form that can be judged by the budget planners, the Governor and the Legislature.

An important implication of all this is that departments will have to do more (1) to forecast the effects of future growth on their programs, (2) to announce preliminary plans for program additions or changes sooner, and (3) to develop specific work measurement criteria to relate cost to program. An important byproduct of this last point will be a tighter control over productivity.

Perhaps most important of all, is the possibility that more careful forward planning may encourage the deliberate planning of obsolescence of functions and organization forms no longer suitable to present and emerging conditions.

Planned Obsolescence

Because so much has been said about expansion of service to meet the problems of growth, we need to emphasize that adjusting to the future need not always be by adding to what we now do. We are experiencing more than growth; we are also undergoing *change*. Change implies an opportunity to cast off services, and forms of organization, and ways of doing things no longer suitable to the times.

As a condition of giving legislative support for new or expanded programs, the departments should be required to take deliberate steps to declare obsolete that which is no longer suitable, and to *plan the obsolescence* of that which a long-range plan can foresee as no longer

suitable. In this the Legislature will have to assist by clearing away barriers and providing incentives to eliminate function, organization and staff.

Chief among the artificial barriers to change are the constitutional and statutory provisions by which particular sources of funds are forever dedicated to particular activities. This committee has previously reported on the evils of this system. It will continue its efforts to eliminate it.

Another artificial barrier to planned change is the extent to which procedural requirements are written into law. Many a department is using costly building space unnecessarily to accommodate bulky files which technologically can be easily displaced by a drawer of microfilms. There is major opportunity to reduce costs in the systematic revision of all laws specifying procedures as distinguished from declaring results to be obtained, by whatever procedure will do it best.

Still another artificial barrier to planned obsolescence is the prescribing of form of organization by law. We admit that new machines and tools are required to meet new needs. We authorize the employment of individuals with new qualifications to solve new problems. We expect these changes to be effective, however, in forms of organization created decades ago, suitable to the conditions of those times, but as unsuited to today's condition as the quill pen or the wheelbarrow.

The first step in creating incentives to planned obsolescence is to change our concept of a career service. We tend to think of a civil service career as a lifetime dedicated to advancement in a particular function or operation. Our civil service system emphasizes status in a particular class of work, rather than permitting flexibility in using the talents of the individual to meet the needs of changing times. Indeed our whole concept of selection and promotion is based on the mistaken idea that long years of a specific kind of education and experience are necessarily the best preparation for directing a given kind of activity. They may well be the worst. We need more public servants who can understand the essential nature of problems, who can understand and weigh the specialized information and viewpoints provided by those who know the technicalities, but who have the perspective and the vision to balance technical data with the public interests, and to choose courses of action which best serve those interests.

We do not belittle the role of the specialist, nor sell his training short. We only suggest that it needs to be balanced by considerations unconcerned with the status and objectives of any particular profession or specialty. In short, we need to stress careers in *public service* above careers in special callings.

A second step toward better incentives would be greater weight in our compensation plans, in our promotional schemes, and directly through cash awards to those who show the initiative and the ingenuity to plan the elimination of functions and the improvement of organization and methods. We tend to reward the defenders of the status quo in preference to those who dare innovation. We pay most to those who develop the biggest organization, rather than honoring and rewarding those who can do the most with the least, and who frankly admit when their job is done.

A third essential step is more attention to training—or more exactly, retraining—our staffs for new duties when old functions are abolished, or emphasis is changed, or techniques are altered. Training is too often regarded as a benefit to the individual, hence to be done on his time at his expense. It is only if the individual benefits that the State can benefit too. If in changing some of our operations, we should release the old employees and hire new ones, we would commit several wrongs all at once. We would lose a great investment in those we let go; we would spend more in breaking in new employees than we would in retraining the old; we would lower the morale of an entire organization, and we would intensify the barriers to acceptance of change.

With these three ingredients—careers in public service, preference of the innovator above the conserver, and retraining to utilize our existing personnel resources—we can compound the incentive to participate in, or at least not resist, the obsolescence we must plan.

The most obvious kind of planned obsolescence is that resulting from technological improvements. The most urgent need, as we introduce new devices, is that we be certain that they are not used merely to do the old operation faster, neater and more accurately. Actually, they often eliminate the need for certain records or results of the past, they often offer automatic new byproducts, and they may even open the way to functions never before possible—all of which we should plan to utilize.

Administrative processes have a deadly way of accumulating. Much of what the departments do was originated to serve a legitimate but transient need. When the need passed, no one had any responsibility for noting its passing, and those directly concerned with the operation are seldom moved to ask questions.

The many ways by which the executive branch can undertake to recognize what is obsolete and to include elimination and change in its plans for the future is beyond the scope of this report. We have dwelt on the subject at this length only to stress our concern with re-examination along with new planning.

CONTENT AND FORMAT

To give effect to the shift in emphasis to program planning and projections, we envision a substantial change in the content and format of the budget document. This requires no constitutional or statutory change. The law requires only that the Governor submit a budget. The present content and format have evolved over many years. They carry forward practices developed when the state government was relatively small, its progress relatively single, the costs relatively low, and the result of any given decision relatively insignificant. In contrast, every fiscal decision made today has far reaching social and economic implications and the complexity will be compounded with the expected growth of the future.

Careful consideration of a budget today requires that each request for funds be weighed against each of the others and against the total. There is lively competition for every tax dollar, which can only become more spirited with each passing year. There is no feasible way to settle this competition each year except by weighing the values and implications of the program each request for funds represents. Except for an occasional emergency, programs cannot be rightly judged by one year's needs alone. The history of what each has accomplished and the prospects of what each can do for the people and the economy must be taken into account.

Present budget planning practices and format have forced the Governor to some extent, and the Legislature to a greater extent, into a position of approving or disapproving a given compilation of figures. It has become almost a "take it or leave it" proposition. What we seek is that the Governor and Legislature shall have a greater hand in shaping future events by being better forewarned about them and by considering the annual budget in a form that emphasizes purpose above itemized detail. There needs to be greater freedom to consider alternatives and to test assumptions, with an easy means of quickly adjusting the detail to support the sounder policy decisions that can result.

The budget document has increased in bulk and complexity until few can master all its detail. In fact, mastery has passed to the other side. The detail is in virtual control of the situation, because of its bewildering variety. There is no point in seeking to regain mastery by finding better ways to tabulate the detail. Instead, the detail must be left in the background, completely subordinate to the purposes to be served. It is relatively unimportant to know how much the State is spending for clerks, technicians, administrators, typewriters and paper clips compared with the importance of knowing what it costs to educate, to cure, to punish or reform, to relieve hardship, to build, to regulate—and on through the whole gamut of services and functions.

Content

We recommend that the multi-hundred-paged compilation of detail now constituting the budget be no longer published for transmittal to the Legislature. Much of this detail will need to be maintained for management and fiscal control purposes, but it is far too ponderous to enlighten the legislator in his consideration of program policy and the financial needs of the State. The detail can be available for information without being presented in a form which makes detail the focus of legislative attention.

There is too much detail on two counts: *first*, too much verbiage purporting to describe "program and performance" when in most cases it is but a general description of function, with no data on performance; and *second*, much too much detail on numbers and kinds of positions, salaries paid and the specifics of cost of materials, supplies, travel and the like, rather than summaries disclosing what it will cost to accomplish each major purpose.

Much of the language repeated from year to year in the bulky budget book is a basic description of the organization and function of each department, important as background information for the new legislator, but of no value to those experienced in and familiar with state government. There must be many purposes for which a good basic statement of organization and function is useful, within the state government and to the general public. We recommend, therefore, that this information be printed in a separate volume, to be made available for general distribution and to be used as a reference by the legislators in the consideration of the budget whenever there is any question about basic function or organization.

We recommend that the itemized detail of individual jobs and amounts for materials, supplies and other objects of expenditure not be published at all. It will still have to be compiled by the executive branch to arrive at totals. Upon approval of the annual appropriations act it will still be the basis for allocations on which budgeting control depends. If any legislator needs to know how many jobs there are in a given unit, or at what salary, he can obtain the data as rapidly from the custodians of the records as he can now by looking it up in the big book.

With that detail out of the way, it will then be possible for the budget document to concentrate on program, the work units and cost factors which form a realistic basis for deciding the expenditure program of the State and on the indicators of the future which show the consequences of what is being proposed and decided.

What is "Program"?

What we mean by "program" is a specific kind and level of service required in fulfilling the general function assigned to a department by law. Most departments will have many "programs." The Department of Corrections, for example, has the general function under the law of having custody of, supervising and rehabilitating those convicted of crimes. Within that general statement of function there is a wide choice of programs possible, ranging from emphasis on custody, with little

attention to supervision, to the other extreme of concentrating on rehabilitation and supervision to the point where there remain relatively few cases for custody.

The first choice can be supported by low-grade custodial personnel; the other extreme requires a large professional staff. The decision about cost is made incidental to the decision about program. Conversely, program may be modified to meet available funds. The main point is that decision should be made in relation to the results expected.

The Legislature should require each department to justify its budget request in terms of what it is trying to accomplish, and what the cost is to be. The Legislature should be judging whether the nature of the program, and what it seeks to accomplish, is worth the cost. If it is not, it should require the department to come back with a new program at a lower cost, rather than attempting to eliminate individual position or other items in an effort at budget balance.

Standards

The main content of the budget, therefore, should consist of statements of the individual programs by which a department expects to fulfill its total responsibility; a statement of what it expects to accomplish by that program, mainly in terms of social and economic values or in terms of production units, whichever are appropriate in its case, a definition of work units by which its program is planned and its accomplishments can be judged; an explanation of the cost unit to be applied to each work unit; a forecast of the total work units to be processed in the course of the year and an extension of these work units multiplied by the cost factor to produce total cost.

The determination of work units, the forecast of the number of those to be expected and the finding of cost factors should be easy for some departments and will be exceedingly difficult in others. Some are engaged in an almost direct production activity, others have more subtle programs in which results are measured by social or economic impact, rather than by visible production units. That this may be difficult to work out to perfection in every case cannot be accepted as an argument against trying it. It is merely an obstacle to be overcome.

To illustrate what we propose. In its simplest form the function of maintaining state buildings and grounds includes a program for daily cleaning of the office buildings. The *work unit* is the number of square feet to be cleaned; the *work standard* is the average number of square feet it has been determined one man can clean on one shift. These in turn generate other units to be applied, such as a ratio of foremen to janitors, a ratio of other supervisory personnel to foremen, a standard of indirect administrative overhead costs and the costs of materials and supplies per square feet to be cleaned. Together these produce a *cost unit*.

The present budget content leads the Legislature into concentrating on how many janitor jobs and how much supporting costs are to be authorized. Presented in the way we have suggested, however, it will be evident that it necessarily costs a certain amount to carry on a program of cleaning all offices daily. If the Legislature wishes to reduce this cost, the way to do so is not arbitrarily to eliminate positions or

other amounts in the budget detail, but rather to decide as a matter of policy that space shall be cleaned every other day, or that the amount of space assigned per man shall be increased, with some sort of bonus to those assuming the additional load, but amounting to less than the total cost of the original program—or any of the other numerous possibilities.

The possibilities become much more numerous, the policy decisions to be made by the Legislature much more significant, when this plan is applied to programs more complex and more important than that of cleaning office space.

In converting to the proposed plan it should be understood that it will be several years before every department can develop the detail and standards by which it can present a realistic statement of program. It requires a good deal of concentrated effort to reduce the functions of a department to a careful statement of its component programs. It requires even more effort to determine the significant work units by which the program can best be expressed and to convert these units into such standards as number of cases to be handled per employee, the ratio between professional and clerical employees, between total line employees and supervisors, the ratio of administrative overhead and the amount of costs required to support personnel with necessary equipment, materials, supplies, travel, etc.

It will be necessary to guard against the temptation to establish general statewide standards on some of these points. To the extent common standards can be applied they should be; but to that extent only. Not all professional activity, for example, requires the same clerical support; and not all clerical activity requires exactly the same amount of typewriters, calculating machines, paper, pencils and paper clips. Each department must develop a careful record of its own experience, evaluate it to see if it is the most efficient and economical experience, and then develop its own cost standards. Finally, with the standards established, taking into account the population to be served and the other special factors bearing on programs of the department, it can explain its program, it can justify its program and it can report a realistic cost of the program.

This annual focus on the program of each department should overcome the present tendency to take for granted all that has been authorized in the past and to concentrate only on jobs and other costs being added. It is not valid to assume that everything authorized in the past continues to be needed. There ought to be a deliberate planning of the obsolescence of functions as the character of the state changes, and the interests of the people in services rendered by the state shift. The bureaucracy now has no incentive to call attention to functions or programs which have outlived their usefulness. Only the annual restatement and re-examination of programs will bring this to light. The present procedure tends to conceal what has become useless; the proposed procedure will expose it.

Supporting the statement of program and the totals of work units and costs appearing in the published budget, there would be available the detail now in the published document. This should always be open for inspection by those who want to test the validity of the data sup-

porting the totals. We propose that in time all of this detail be kept current in the memory unit of an electronic computer. Then any specific inquiry can be answered in an instant. Whenever specific items are changed, either by a program change or by increases in salaries or prices, the necessary corrections can be made and new totals can be quickly computed.

In summary, the budget presentation of each department would include:

1. A statement of each program proposed to fulfill the department's assigned functions
2. As to each of these programs, a statement of justification in terms of how it will contribute to the fulfillment of the department's legal responsibility and how it will be beneficial
3. As to each such program, a statement of the work unit which more accurately measures the extent of the program
4. As to each of these work units, other necessary data to show how these units are converted into man-months of staff most directly identified with the work unit, and in turn into the other units of supervision, clerical support and nonpersonnel support necessary to carry on the program
5. The necessary additions and multiplications necessary to apply the work unit to determine the total workload expected because of population or other considerations, with a summary of resulting costs.

Projections

All of the foregoing had to do with the manner of presenting the budget currently under consideration. In addition, as a separate part of each department's presentation, there should be a projection in two parts, the *first* assuming that the budget currently proposed is approved and applying the general and special indicators appropriate to that department to show the consequences of the extension of the program five years ahead; the *second* proposing whatever new programs may be required by emerging conditions and showing their effects during the same five years.

It is essential that the projections be included along with the current budget. The Legislature, in considering the budget, will then be equally aware of the eventual consequences. Especially essential is a requirement that where experimental programs are being introduced at a nominal cost, the department must make a showing of what it expects the full development of the program to cost, indicating the annual rate at which it will be stepped up in order to convert an experimental program into a full operation.

As decisions to change proposed programs are made during the legislative session, the projection must be changed too. When the entire process can be geared to an electronic computer such adjustment can be made in a matter of moments.

Format

In addition to changing the content of the budget from detail to program, we recommend a change in the budget format for the clearer

segregation of the several components of the budget, to provide a better understanding of what is truly state operations and what is going to other purposes. There should also be a clearer distinction—whether in operations, capital expenditures or subventions—between those items which are compulsory and those which are discretionary with the Legislature.

The “compulsory” items, for the purpose of this classification, include only those which are required by the Constitution, by an initiative measure or by any agreement between the State and any other political subdivision which is so binding that the Legislature at a given session may not alter the commitment.

We should consider as “discretionary” not only the ordinary items of year-to-year appropriation, but also those items sometimes accepted as compulsory because of formulas established by statute for the support of a given function or for the subvention of moneys to local governments. There may be a moral obligation to continue these formulas for a period of time until new agreements can be reached, but legally these are entirely in the discretion of the Legislature, subject to change at any session.

Subventions likewise need to be segregated to distinguish between those in which the State is serving *essentially* as tax collector for local governments and those in which the money is substantially redistributed with necessary regard to its local source.

For clear separation of unlike elements in the budget, we propose the following outline, to be used both in summaries of expenditures and related revenues, and in the arrangement of information on programs and costs:

- I State Governmental Operations
 - Compulsory
 - Discretionary
 - (Arranged by department under each heading)
- II State Enterprises
 - (Including loan fund operations)
- III Capital Improvements
 - Compulsory
 - (Draft service)
 - Discretionary
 - (Currently financed)
 - (Financed by borrowing)
- IV Subventions
 - Compulsory
 - (I.e., constitutional dedications to public education)
 - Discretionary

The summary of expenditures as just proposed should be followed by estimates of future trends. This would be a composite of the estimates and projections supporting the individual departmental requests. It would first apply the indicators and criteria to determine future trends of program costs, assuming present levels and kinds of service. The additional important feature would be a statement of future pro-

gram plans Whenever a department foresees that there may need to be some major change in an existing program, or a phasing out of a program, or when it is likely that new programs will be needed, they should be added to the projections for the future so that there is ample time to consider their financial consequences, get indications of reaction and policy and, in subsequent years, adjust the detail accordingly

Revenue

Implied in all that has been said about program and costs is the need to show related sources of revenue These can continue to be shown as they have been identified in the past, estimating such sources as taxation, fees and charges, the proceeds of bond sales, the proceeds of enterprises, reserves, surpluses carried forward and grants or matching funds due from outside sources

The indicators need to be applied here as well to estimate the future income to be expected from each of these sources In summary form there needs to be shown a comparison between the trend of expenditures and the trend of revenues, pointing up finally to what changes, if any, may be necessary in fiscal policy.

Fiscal Policy

The final portion of each year's budget and projections should be the administration's recommended changes in fiscal policy, if any, to keep expenditures and revenue in balance This may include proposals to revise or restrict expenditure programs, it may propose increases in rates of revenue within the existing revenue structure; or it may propose new kinds of taxes and estimate their yields

It must be expected that there will seldom be a year when the current budget and the forecasts for five years ahead will indicate such perfect balance that no corrective action is needed After a few years of experience under this plan, however, there should be no surprises and no crises with respect to state fiscal policy The Legislature, meeting in a given year when some adjustment in expenditure or revenue is required to bring the two in balance, will be able to act on the basis of a forewarning of one or two years at least

AUTOMATION

It is fortunate that California's growth and greater complexity of government coincide with the rapid progress in technology which makes the electronic computer available for use in budget and program planning

The computer adds new dimensions to the ability to plan and enables a different manner of presentation of programs because of several of its characteristics -

1. The computer has a vast "memory" or capacity for storage of detailed information. It can accumulate the kind of detail which is now printed in the budget document. It is possible to retain in the "memory" as much of the data as carries forward from year to year, while at any moment accepting correction or updating of specific data.
2. The information stored in the computer's memory can be retrieved or referred to quickly, in an almost infinite variety of combinations. Special tabulations can be prepared or specific inquiries can be answered at will.
3. Data on work units and costs can be accumulated and refined to provide more exact calculations in place of present estimates.
4. By simulating possible future conditions, alternate courses of action can be explored more freely, making it possible to reach decisions after much more accurate forecasts of their probable effect.
5. On the basis of known facts, such as established trends of the past, the computer can quickly project to show the cost that will be generated by growth in population, expanding economic activity and other indicators selected for consideration in program planning.
6. Just as the equipment can project the present trends into the future, so can it be used to calculate quickly the effects of any changes in program. Hence, it will be possible as questions are raised and issues are debated about programs, to get an immediate response as to the probable effect of a given decision on both expenditure and revenue.

We can foresee the time when all the facts—the work units, the workload, cost factors and the like—are stored in the computer. The program decisions of the Governor will be added to produce a program of the form and content we have been discussing. Specific information supporting any part of the program will be immediately available to legislative committees through a communication link between the committee room and the computer. As specific items are debated and committees weigh the possibility of adding to, subtracting from or altering programs, inquiry can be made to the machine concerning the fiscal consequences of each decision and an answer can be ready while the committee considers the question

What the machine offers is speed and flexibility in the handling of information. It can even be set up to serve as a reminder when given decisions have implications that might not immediately come to mind. The machine cannot plan and it cannot decide. It facilitates these processes, however, by removing the burden of detail which now hampers planning and decision.

Because the machine cannot plan and think for itself, because of the tremendous variety and amount of detail involved in the preparation of the budget and the projection of the plans for the future, and because extreme care must be used in selecting the data and establishing the procedures for the machine, the development of ways of adapting budget planning and program projections to the computer will require a considerable investment of time and funds. It is an investment, however, which will provide a rich return in terms of more accurate and sounder decisions about the State's future.

Some fear that the computer may be led to false results by the deliberate introduction of wrong data or the introduction of erroneous assumptions. There is that danger; but it is an even greater danger under the present system, where one individual's "guesstimate" is pitted against another's, with neither having all the facts nor the facility for analyzing them, that the computer offers.

Safeguards can be programed into the machine and the original data is always open to inspection by calling on the machine to report what facts and assumptions it was given.

THE NEXT STEP

Your committee has made plain its conviction that a new approach is required to assure that the State of California's activities are financed with due regard to both what can be accomplished now and what can be expected to result in the future. We have proposed the general standards and methods for converting to a program budget and for making projections five years into the future.

Assuming the goal we have set is acceptable, how can it best be reached?

Obviously, there cannot be a complete and instant conversion. New techniques need first to be developed. They should be tried experimentally until the best methods are developed. It will then require a period of several years of gradual adjustment to the new plan, varying by department according to the time it takes to develop the necessary definition of programs, then objectives, their work units and their cost units.

If this changeover is to be made as promptly as possible, the preliminary planning needs to be done by a staff apart from the regular budget-makers, yet working in close conjunction with them. The regular budget staff has a monumental task in preparing the annual budget under the present concept. To ask them to take on the burden of perfecting the new concept would either distract attention from their present job or result in the new treatment getting less attention than it deserves. In addition to staff, two other elements are needed for proper development of the new plan.

First, an agency of state government having a sufficient variety of activity to demonstrate the problems involved and the techniques needed; which is already well advanced in its own concepts of planning, and which is willing to co-operate in this venture. Your committee finds that the Youth and Adult Corrections Agency meets all these standards.

Second, the successful development of the plan will depend on the use of an electronic computer. The State has several such installations, some one of which undoubtedly has enough space capacity to be used for demonstrative purposes. By using available equipment in this way, it will be possible to determine the kind and amount of equipment and staff it will be necessary to provide for the full implementation of the plan.

We recommend, therefore, that the further development of this new plan remain under the direction of your committee; that the Youth and Adult Corrections Agency be asked to co-operate in the application of the new techniques to its programs; that the Department of Finance and the Legislative Analyst be asked to provide limited staff assistance; that an agency yet to be designated be added to provide the use of its electronic computer; and that, with this combination of talent and resources, the objective be to develop a full-scale demonstration of the proposed plan for long-range program and budget planning.

An appropriate resolution to authorize this next step will be introduced.

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CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS
PROGRESS REPORT ON DEDICATED FUNDS
AND REPORTS ON
STATE PURCHASING—MILITARY LEAVE PAY
INSTITUTIONAL COSTS—LAKE EARL

MEMBERS OF THE COMMITTEE

ROBERT W. CROWN, *Chairman*

GLENN E. COOLIDGE (*Vice Chairman, Deceased*)

Bruce F. Allen	Pauline L. Davis	Nicholas C. Petris
Tom Bane	Edward M. Gaffney	Carley V. Porter
Carlos Bee	Leverette D. House	Thomas M. Rees
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Charles J. Conrad	James R. Mills	John C. Williamson
Bert DeLotto (<i>Retired</i>)	Eugene G. Nisbet	Gordon H. Winton, Jr.

COMMITTEE STAFF

LARRY MARGOLIS, <i>Consultant</i> (June 1961-October 1961)	ROBERT COURTEMANCHE, <i>Legislative Intern</i> (September 1961-August 1962)
LOUIS J. ANGELO, <i>Consultant</i> (October 1961-.....)	ROBERT L. PADGETT, <i>Legislative Intern</i> (October 1961-September 1962)
WILLIAM W. YOUNG, <i>Legislative Assistant</i> (September 1962-.....)	JEROLD L. PERRY, <i>Legislative Intern</i> (September 1962-.....)

GAIL VESSELS, *Committee Secretary*

January 7, 1963



Published by the
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OF THE STATE OF CALIFORNIA

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Majority Floor Leader

CARLOS BEE
Speaker pro Tempore
JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

January 7, 1963

To the Speaker and Members of the Assembly

DEAR MR SPEAKER AND MEMBERS:

Your Interim Committee on Ways and Means, in accordance with the provisions of House Resolution 361(x), 1961 Regular Session, herewith respectfully submits a Progress Report on Dedicated Funds and final reports on State Purchasing, Military Leave Pay, Institutional Costs and Lake Earl.

Your committee has previously transmitted, under separate cover letter, its reports on Long-range Program and Budget Planning, Implementation of the California State Capitol Plan, and California's Tourist Trade.

The committee is particularly indebted to the committee staff, the consulting firms of Griffenhagen-Kroeger, Inc., and Alfred W. Baxter and Associates and the offices of the Legislative Analyst and the Legislative Counsel for their technical assistance in the preparation of these reports.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

TOM BANE
CARLOS BEE
FRANK P. BELOTTI
JOHN A. BUSTERUD
JOHN L. E. COLLIER
CHARLES J. CONRAD
PAULINE L. DAVIS
EDWARD M. GAFFNEY
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EUGENE G. NISBET
NICHOLAS C. PETRIS
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THOMAS M. REES
JOSEPH C. SHELL
BRUCE SUMNER
JEROME R. WALDIE
JOHN C. WILLIAMSON
GORDON H. WINTON, JR.

•

GENERAL INTRODUCTION

This report contains the findings and recommendations of the Assembly Interim Committee on Ways and Means and four subcommittees appointed following adjournment of the 1961 Legislature. The subcommittees, whose reports were adopted by the committee, were constituted as follows:

SUBCOMMITTEE ON STATE PURCHASING

James Mills, <i>Chairman</i>	Glenn Coolidge (deceased)
Tom Bane	Robert W. Crown
Carlos Bee	Frank Lanterman
Frank Belotti	Nicholas Petris
Charles Conrad	Gordon Winton

SUBCOMMITTEE ON LEAVE PAY

Charles Conrad, <i>Chairman</i>	Lester McMillan
Bruce Allen	Eugene Nisbet
Leverette House	Gordon Winton
Frank Lanterman	

SUBCOMMITTEE ON INSTITUTIONAL COSTS

Nicholas Petris, <i>Chairman</i>	Lloyd Lowrey
Carlos Bee	Lester McMillan
John Busterud	Bruce Sumner
Glenn Coolidge (deceased)	Jerome Waldie
Frank Lanterman	John Williamson

SUBCOMMITTEE ON LAKE ERL

Carlos Bee, <i>Chairman</i>	Leverette House
Frank Belotti	Carley Porter
John L. E. Collier	Thomas M. Rees
Robert W. Crown	Jerome Waldie
Pauline Davis	

Two additional subcommittees were appointed whose respective reports will be transmitted to the Assembly under separate covers. They were:

SUBCOMMITTEE ON TOURIST TRADE

Robert W. Crown, <i>Chairman</i>	Nicholas Petris
Tom Bane	Carley Porter
Pauline Davis	Bruce Sumner
Edward Gaffney	Thomas M. Rees
Leverette House	John Williamson

SUBCOMMITTEE ON CAPITAL OUTLAY

Tom Bane, <i>Chairman</i>	Lloyd Lowrey
Bruce Allen	James R. Mills
John Busterud	Eugene Nisbet
John L. E. Collier	Thomas M. Rees
Pauline Davis	Jerome Waldie
Edward Gaffney	Gordon Winton

The reports of all six subcommittees were considered and adopted by the committee at its final executive meeting on November 27 and 28, 1962. In addition, the committee adopted two other reports on subject matters given study by the full committee: a report on long-range program and budget planning, transmitted to the Assembly under separate cover, and a progress report on dedicated funds, contained herein.

The committee expresses sincere appreciation for the technical and administrative assistance rendered by the committee staff, the offices of the Legislative Counsel and the Legislative Analyst.

DEDICATION

On September 12, 1962, this committee, the Legislature and the people of California were shocked and saddened at the sudden and untimely passing of our distinguished colleague, Glenn E. Coolidge, Vice Chairman of the Ways and Means Committee and in previous years its chairman. His passing, at a moment when he aspired to serve the people of California in the Congress of the United States after many years of dedicated, skillful leadership in the Assembly, was a tragic loss. As a token of this committee's respect and esteem, this report is dedicated to Assemblyman Glenn E. Coolidge.

The committee further acknowledges the significant contributions of Assemblyman Bert DeLotto, who resigned his membership in the Legislature to accept responsibility with the U.S. Peace Corps. Our good wishes go to Bert DeLotto and other members of the committee who will no longer be serving on Ways and Means.

ASSEMBLY INTERIM COMMITTEE REPORTS
CALIFORNIA LEGISLATURE

ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

PROGRESS REPORT ON DEDICATED FUNDS

MEMBERS OF THE COMMITTEE

ROBERT W. CROWN, *Chairman*

GLENN E. COOLIDGE (*Vice Chairman, Deceased*)

Bruce F. Allen

Tom Bane

Carlos Bee

Frank P. Belotti

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

January 7, 1963

To the Speaker and Members of the Assembly:

DEAR MR. SPEAKER:

Your Interim Committee on Ways and Means transmits herewith a progress report on the subject of Dedicated Funds. Your committee has given continued attention to the problems cited in the Report on Dedicated Funds submitted to the 1961 Legislature by the Assembly Interim Committee on Ways and Means, February 15, 1961, and to the recommendations contained therein.

The committee expresses its appreciation to Assemblyman Milton Marks and the members of the Interim Committee on Constitutional Amendments for their assistance to this committee in jointly considering the proposed abolishment of the School Land Fund.

The committee is also grateful to Mr. A. Alan Post, Legislative Analyst, Mr. William Merrifield, Auditor General, Mr. Ralph McCarthy, Deputy State Controller, Mr. Robert Harkness, Deputy Finance Director and Mr. Bernard Czesla, Deputy Legislative Counsel, all of whom assisted the Committee Consultant, Louis Angelo, in preparing this report.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

TOM BANE
CARLOS BEE
FRANK P. BELOTTI
JOHN A. BUSTERUD
JOHN L. E. COLLIER
CHARLES J. CONRAD
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BRUCE SUMNER
JEROME R. WALDIE
JOHN C. WILLIAMSON
GORDON H. WINTON, JR.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The committee makes the following findings:

1. There still remain in excess of 140 dedications or special funds in the Treasury of the State of California.
2. The Legislature, during the 1961 Regular Session, abolished nine dedicated funds and created six new funds.
- 3 The School Land Fund, provided for by Section 4, Article IX of the State Constitution, provided less than one-tenth of 1 percent of the total disbursements made by the State to support public education during the fiscal year ending June 30, 1959.
4. The School Land Fund fails to meet the test applied by the Auditor General to determine its justification as a special fund and, hence, is not required for sound financial administration.
5. The Auditor General, State Controller, Director of Finance, and Legislative Analyst all agree that the School Land Fund should be abolished.

The committee recommends:

1. Appropriate legislation be initiated during the 1963 legislative session which will submit to the voters a proposed constitutional amendment authorizing the Legislature to abolish the School Land Fund and transfer of its assets to the General Fund.
2. The Legislature and its fiscal committees should continue to give careful attention to the problem of unjustified dedications or funds, to plan the orderly abolishment thereof, and to prevent new dedications and funds which do not qualify according to the established criteria.

PROGRESS REPORT ON DEDICATED FUNDS

Background

The Assembly Interim Committee on Ways and Means, during the 1959-60 interim, authorized an examination of and preparation of a report on dedicated funds. The committee transmitted its report, together with findings and recommendations, to the 1961 Legislature. The report,¹ among other things, recommended a "plan of action" which included the following:

1. That bills be introduced to eliminate dedicated funds found to be the least justified.

2. That pending adoption of constitutional amendments which would authorize the abolishment of special funds, the Legislature commit itself as a matter of policy to observe the proposed criteria with respect to judging the validity of special funds

3. That subcommittees be assigned by the Assembly Committee on Ways and Means and the Senate Finance Committee to give continuing attention to the problem, to develop public attention and support, to plan the orderly abolishment of unjustified dedications or funds, and to prevent new dedications and funds which do not qualify according to the criteria.

During the 1961 Regular (General) Session, the Legislature enacted seven measures abolishing nine dedicated funds. The following table indicates which fund was abolished and where the balance was transferred:

TABLE A

<i>Bill Number and Author</i>	<i>Fund Abolished (1961)</i>	<i>Balance Transferred To</i>
AB 1185 (Sumner) Chapter 75	Itinerant Merchants Fund	Motor Vehicle Transportation Fund
AB 1881 (Unruh) Chapter 870	Legislative Printing Fund	General Fund
AB 1880 (Unruh) Chapter 875	State Printing Fund and Purchasing Revolving Fund	Service Revolving Fund
AB 1877 (Unruh) Chapter 881	Redemption Tax Fund	General Fund
AB 1878 (Unruh) Chapter 892	State Lands Act and State Beach and Park Funds	General Fund and Water Fund
AB 1886 (Unruh) Chapter 1291	State College Fund	General Fund
SB 1413 (McAteer) Chapter 1413	Athletic Commission Fund	General Fund (Athletic Commission Account)

¹ Report on Dedicated Funds, prepared by Griffenhagen, Kroeger, Inc., Transmitted to Legislature, February 15, 1961, by Ways and Means Committee.

During the same legislative session, however, the Legislature enacted the following measures establishing six new dedicated funds

TABLE B

<i>Bill Number and Author</i>	<i>Fund Created (1961)</i>
AB 1130 (Rees) Chapter 740	Insurance Tax Fund
AB 1880 (Unruh) Chapter 875	Service Revolving Fund
AB 541 (Meyers) Chapter 1263	State Employees Contingency Reserve Fund
AB 2638 (Reagan) Chapter 1736	Driver Training Penalty Assessment Fund
AB 2834 (Cologne) Chapter 2127	Airport Assistance Fund
SB 1415 (Fisher) Chapter 1813	Auxiliary State School Fund

As a result, there was a net decrease of only three dedicated funds during the 1961 session of the Legislature. It is hoped that the effort to abolish unjustified dedicated funds will continue during subsequent sessions of the Legislature.

CONTINUED STUDY OF DEDICATED FUNDS

The Assembly Interim Committee on Ways and Means has continued its attention to the problem of dedicated funds during the interim period ending with this report. Although intensive study was not possible due to the heavy workload of the committee, public hearings were held having to do with dedicated funds.

THE SCHOOL LAND FUND

A joint hearing was conducted by the Assembly Interim Committee on Constitutional Amendments and this committee, on March 6, 1962, to consider the advisability of abolishing the School Land Fund, as recommended by the Auditor General in his report to the Legislative Audit Committee for the year ending June 30, 1959.

Among the witnesses participating in the joint meeting were Mr. William Merrifield, the Auditor General, Mr. Ralph I. McCarthy, Deputy State Controller, Mr. Robert Harkness, Deputy Director, Department of Finance; Mr. A. Alan Post, Legislative Analyst; and Mr. Bernard Czesla, Deputy Legislative Counsel.

Mr. Merrifield told the committee that in making an audit of each special fund, a test is always applied to determine whether or not the fund can be justified. The test applied seeks to determine whether or not the fund is necessary for sound financial administration. In the case of the School Land Fund, Mr. Merrifield concluded that it did not meet the test and could not be justified as a separate dedicated fund.

Constitutional Authority

Article IX, Section 4 of the State Constitution provides that the proceeds of all lands that have been granted by the United States to the State of California for the support of common schools, and the

500,000 acres of land granted to the new states by an act of Congress which have been sold, and all estates of persons who die without leaving a will or heir, and also amounts granted by Congress on the sale of lands in the State, shall remain in a perpetual fund, the interest of which together with all the rents of the unsold lands, shall be inviolably appropriated to the support of common schools throughout the State (See Appendix II.)

State Compliance

To comply with this provision of the State Constitution, the State has accumulated the proceeds from the various sources indicated in a fund known as the School Land Fund. The Division of State Lands of the Department of Finance administers the renting, leasing, and selling of school lands. The Auditor General reports that since a large portion of the State is either arid or mountainous, much of the State has never been surveyed and title to many sections of potential school lands has not passed to the State.

Uses of the School Land Fund

The assets of the School Land Fund are invested in various ways to effect compliance with the constitutional mandate of supporting public education. A breakdown of recent investments of the School Land Fund and the amount of income realized from such investments are contained in Appendix I of this report. However, the extent to which these investments contribute to the support of public education in California is negligible, to say the least.

According to Mr. Merrifield's *Report on Examination* ending June 30, 1959, less than one-tenth of 1 percent of the total disbursements for local school districts was provided from investments of the School Land Fund. Disbursements to local school districts of California from the General Fund in 1959 totaled \$571 million. This was 23 times the principal of the School Land Fund, which at that time was \$25.5 million. Mr. Merrifield told the committee that the School Land Fund's principal as of June 30, 1961, was \$28,793,000, constituting an accumulation over a period of about 110 years.

The Auditor General pointed out that Section 6 of Article IX of the State Constitution provides for the support of our public school system by requiring that not less than \$180 per average daily attendance be apportioned by the State each fiscal year to support public education in all school districts. The School Land Fund, since it produces a revenue of about \$1 million per year, cannot begin to fulfill the fiscal commitment imposed by Section 6, Article IX. For that reason, and from a position of sound fiscal management, the Auditor General's recommendation was that Section 4 of Article 9 of the Constitution be repealed, thus making it possible to abolish the School Land Fund and to transfer its assets to the General Fund. The Auditor General's recommendation was generally concurred in by Deputy State Controller Ralph I. McCarthy, Deputy Finance Director Robert Harkness, and Legislative Analyst A. Alan Post.

Mr. McCarthy told the committee that in addition to the 586,000 or more acres of unsold state lands held by the fund, there are approximately 128,000 acres of unsurveyed school lands title to which would

come to the State when they are surveyed. Mr. McCarthy indicated that if the School Land Fund were abolished, these unsurveyed lands, because of federal restrictions on them, plus the mineral rights which under federal law the State is not authorized to sell, would be better transferred into the Special Deposit Fund or some other trust fund in order to assure compliance with stipulated conditions.

Mr. Post's testimony indicated that he could see no justification for keeping the School Land Fund as a separate dedicated fund, since there appeared to be no federal or constitutional restrictions prohibiting the abolishment of this fund. (See Appendix IV.) Mr. Harkness argued that since the fund contributes only the smallest fraction of the total amount expended by the State for public education, that the fund should be abolished and the unobligated assets deposited in the General Fund. The position of the Department of Education with respect to abolishing the School Land Fund is contained in the reprint of Dr. Ronald Cox's letter to the committee which appears in Appendix III of this report.

CONCLUSIONS AND RECOMMENDATIONS

The committee concludes, on the basis of testimony received and the compelling arguments offered by the Auditor General, that the School Land Fund cannot be justified. We, therefore, recommend that appropriate legislation be adopted by the 1963 Legislature and a constitutional amendment be submitted to the voters which would authorize the abolishment of the School Land Fund. We recommend that the assets of the fund, upon its abolition, be transferred to the General Fund.

The committee further recommends that the Legislature and its fiscal committees continue to give careful attention to the problem of unjustified dedications or funds, plan for their orderly abolishment, and prevent new dedications and funds which cannot be justified from the standpoint of sound fiscal management.

REPORT ON ASSEMBLY BILL 3148

The provisions of Assembly Bill 3148 (Meyers), 1961 Regular (General) Session, was the subject of a public hearing by this committee on August 27, 1962 at the State Capitol. Assemblyman Meyers told the committee that he was withdrawing advocacy of A.B. 3148 which he described as "too far reaching," in favor of Assembly Bill 1868, (Rees), 1961 Regular (General) Session, which Assemblyman Meyers described as more realistic while still covering the basic intentions and purposes of his bill.

Assembly Bill 3148 would have provided for the deletion of the continuing appropriation in the State Highway Fund and would have made expenditures from such funds subject to the same budgetary and fiscal controls as expenditures of other state funds.

Assembly Bill 1868, as amended in the Assembly, May 16, 1961, would have provided that the expenditure of money in the State Highway Fund for administration, contingencies, and other proposed expenditures, including capital expenditures other than for highway construction, be subject to legislative review and control (See Appendix V for reprint of A B 1868, as amended, May 16, 1961) *

Proponents

Among the witnesses who testified in favor of A B 3148 and A B 1868, were Mr. Edward A. Barry, representing the West Portal Home Owners Association and the Property Owners Association, San Francisco; Mr. Hal Altman, representing the Legislative Committee of the Conference of California Historical Societies, and Mr. Terrence Feil, representing the California Citizens Freeway Association.

Assemblyman Meyers on the basis of information supplied to him by the Legislative Counsel pointed out that A B 1868 clearly would not put the Legislature in the route-determining business.

Opponents

Among the witnesses who testified in opposition to both A.B. 3148 and A B 1868, were Mr. Hugo Winter, Co-ordinator, Metropolitan Transportation Engineering Board and Mr. Charles J. Hunt, Jr., representing the Automobile Club of Southern California.

Opponents of both A B 3148 and A B 1868 argued against any change in the existing framework which would weaken the independent position of the State Highway Commission. They suggested that adoption of either bill would open the door to possible "pork-barrel" pressures in the Legislature.

* A B 1868 passed the Assembly on May 18, 1961, and was referred to the Senate Finance Committee where it was held in committee.

Legislative Analyst

Legislative Analyst A. Alan Post pointed out that the Legislature, through statutes, still reserves the ability to change the present basis for administering the highway program:

The Collier-Burns Act is a statute, so the commission and division must always be mindful of the fact that the Legislature could at any time change this . . . Secondly, the Streets and Highway Code does provide a limitation on maintenance and general administration . . . (since) no more than the net revenue from one cent of the fuel tax shall be available for this purpose.

Mr. Post questioned the wisdom of the Legislature becoming "involved in what are local, economic debates over whether a highway is going to go one place or another." However, Mr. Post indicated that it was questionable that the Collier-Burns Act provided "a sound and sufficient basis for bringing pressure to bear on the problem of responsiveness to public policy." Mr. Post suggested that the Legislature, from time to time, might identify these particular areas in terms of how the department operates and see if it cannot devise a better way of meeting the public policy question head on. This, according to Mr. Post, might be preferable to attempting to do it through an overall method of indirect fiscal control by the Legislature.

CONCLUSIONS

The committee recommends that the subject matter contained in the provisions of both Assembly Bill 3148 and Assembly Bill 1868 be given further careful study by appropriate interim committees following the 1963 legislative session. It is impossible for the committee at this time, on the basis of one public hearing and very limited testimony, to draw any final conclusions.

APPENDIX I**OFFICE OF THE AUDITOR GENERAL**

March 22, 1962

ASSEMBLYMAN ROBERT W. CROWN, *Chairman*

Assembly Committee on Ways and Means

ASSEMBLYMAN MILTON MARKS, *Chairman*

Assembly Committee on Constitutional Amendments

State Capitol

Sacramento, California

GENTLEMEN:

At a joint meeting of your committees on March 6, 1962, concerning the abolition of the School Land Fund, we were asked to submit answers to a number of questions.

We have answered these questions in the statement attached hereto which includes financial statements of the School Land Fund as of February 28, 1962. The financial statements shown in the attached

statement have been prepared from the published reports, work papers and records of the State Controller and other available sources without audit by us.

Respectfully submitted,

WILLIAM H. MERRIFIELD
Auditor General

Question

What were the investments of the School Land Fund as of a recent date? When and how were investments acquired?

Answer

The investments of the School Land Fund as of February 28, 1962, were as follows:¹

Deposit in Surplus Money Investment Fund -----	\$7,300,000
Investment in securities -----	11,878,390
Loans on buildings -----	5,107,051
Loan on Richmond-San Rafael Bridge -----	4,689,812
Total -----	\$28,975,253

Surplus money in the fund has been invested from time to time in United States government bonds and municipal securities. The securities held by the fund at February 28, 1962, are detailed on Exhibit C which also shows the years of acquisition, maturity dates, and rates of interest.

Beginning with the year ended June 30, 1961, surplus moneys of the fund have been invested in United States government securities through the Surplus Money Investment Fund. The investment in the Surplus Money Investment Fund was \$2,850,000 at June 30, 1961, and was increased to \$7,300,000 at February 28, 1962, as shown in Exhibit A.

The loans on buildings and the Richmond-San Rafael Bridge are described in Exhibit D. The exhibit shows the authorizing statutes, the agreed rates of interest, the repayment periods, and the balance of each loan at February 28, 1962.

The loans on buildings were made by advances to the Division of Architecture for construction. The advances to the Architecture Revolving Fund for the years ended June 30, 1952, 1953, and 1954, are related to the sales of securities by the School Land Fund and the losses on sales of securities as shown by the State Controller's reports:

<i>Year ended June 30</i>	<i>Advances to Architecture Revolving Fund</i>	<i>Sales of securities</i>	<i>Loss on securities</i>
1952 -----	\$1,557,000	\$1,408,000	
1953 -----	3,472,000	3,248,000	\$115,000
1954 -----	1,924,000	1,796,000	93,000

The other transactions in securities for these years shown by the State Controller's reports are purchases of \$224,000 and \$140,000 during the years ended June 30, 1952 and 1954, respectively.

¹ See accompanying balance sheet (Exhibit A).

Question

What income do the investments of the School Land Fund earn?

Answer

The accompanying Exhibit E shows the income received and accrued on the various investments of the School Land Fund for the years ended June 30, 1957 through 1961, and for the eight months ended February 28, 1962.

The rate of return on investments in securities and the Surplus Money Investment Fund based on the average of invested balances at beginning and end of each year are shown below.

<i>Year ended June 30</i>	<i>Average investment</i>	<i>Interest received</i>	<i>Rate of return</i>
1957 -----	\$11,705,595	\$276,518	2 362%
1958 -----	11,616,002	241,312	2 077
1959 -----	13,299,270	348,558	2 621
1960 -----	15,490,047	560,500	3 618
1961 -----	17,816,827	597,694	3.355

The rates of return on loans on buildings, as shown in Exhibit D, are as follows:

<i>Loan</i>	<i>Final payment date</i>	<i>Uncollected balance, February 28, 1962</i>	<i>Rate of return</i>
Motor Vehicle Building -----	August 1975	\$3,936,179	2½%
Highway Patrol Building -----	July 1975	495,962	2½
Highway Patrol Building -----	October 1975	458,225	2½
Civil Defense Building -----	October 1975	216,685	2½

There are no provisions in these loans for adjustment of the rates of interest.

Exhibit E shows the interest which is accruing on the loan to the Richmond-San Rafael Bridge. This interest accrues at the rate of 3½ percent compounded annually, as shown in footnote 2 to Exhibit D. As shown in footnote 3 to Exhibit D, neither the principal nor the interest on the loan to the Richmond-San Rafael Bridge will be paid until bonds are sold to refund this loan or until all the bonds presently outstanding on the Richmond-San Rafael Bridge have been retired. Those bonds mature on September 1, 1992. The interest accrued and unpaid on this loan at February 28, 1962, was \$1,046,178. If no payments are made on the principal or interest of this loan before September 1, 1992, and if no change is made in the rate of interest, the accrued interest payable at September 1, 1992, will exceed \$13,500,000. The combined principal and interest would exceed \$18,000,000 at that date.

Question

What loss would be sustained if the assets of the fund were liquidated as of a current date?

Answer

The only assets of the School Land Fund which could be liquidated immediately are the investments in securities which amounted to \$11,878,390 at February 28, 1962, and the deposit in the Surplus Money Investment Fund. The loss on the securities would be as shown below

if they had been sold on February 28, 1962, at the market values shown for that date in Exhibit C.

Book value of securities	\$11,878,390
Market value of securities	10,812,666
Loss	\$1,065,724

It is assumed that the deposit in the Surplus Money Investment Fund would be recovered without loss to the School Land Fund or the successor fund.

The abolition of the School Land Fund would not necessarily require the liquidation of the securities, as they could be transferred to the General Fund as the successor fund.

Question

Why is the balance of the School Land Fund only \$29 million at February 28, 1962, when the increase in the fund during the last 5 years of the 110 years it has been in existence was \$9 million?

Answer

Exhibit B shows that the fund balance increased from \$19,757,385 at June 30, 1956, to \$29,086,737 at February 28, 1962, which is an increase of \$9,329,352. This increase, by categories, is as follows:

Reserve for school land and surplus	\$5,058,957
Estates of deceased persons	2,841,405
Abandoned property	1,428,990
Total	\$9,329,352

The "reserve for school land and surplus" accounts consist primarily of the proceeds of the sale of school lands that have been granted by the United States to the State of California, the proceeds from the sale of the 500,000 acres of land granted to new states by an act of Congress, and amounts granted by Congress on the sale of lands in the State. The amounts received from the sale of lands are required to be deposited and retained in the School Land Fund by Article IX, Section 4, of the State Constitution. The "reserve for school land and surplus" accounts contain other amounts that have been credited to the surplus account which are not proceeds from sales of land, the principal one being a gain on the sale of securities in 1950 of \$1,668,600. The exact composition of these accounts is not available at the present time. We understand that the State Controller is making an analysis of the accounts.

The amounts received from the estates of deceased persons are also required to be deposited and retained in the School Land Fund by Article IX, Section 4, of the State Constitution.

Abandoned property has been deposited in the School Land Fund under various statutes passed by the Legislature. The 1959 Legislature provided that thereafter this abandoned property would be deposited in the General Fund instead of in the School Land Fund.

The reasons for the more rapid rate of growth of the School Land Fund since July 1, 1956, as contrasted to the 100 or more years prior to that time is not completely clear. For instance, the additions to the reserve for school land for the years 1952 through 1955 were \$151,000,

\$139,000, \$160,000 and \$138,000, respectively, as compared with \$1,304,000 in 1957, \$834,000 in 1958, \$603,000 in 1959, \$1,600,000 in 1960, and \$452,000 in 1961, as shown in Exhibit B. The Governor's Budget for the fiscal year 1959-60 states that "land sales and records activity has increased as the interest in vacant state and federal lands has increased the demand for this type of property over the past four to five years."

The Governor's Budget for 1955-56 stated "An expansion of the current program of disposing of school lands is proposed." Evidently increased activity in the disposal program has resulted in the increase in land sales referred to above.

In May 1960 the State Lands Commission placed a moratorium on further sales of school lands, except for applications pending at the time, until a study has been made respecting the possible use of the lands by other state agencies. This would account for the drop in receipts from this source from \$1,600,000 in the year ended June 30, 1960, to \$452,000 in the year ended June 30, 1961, as shown in Exhibit B.

In connection with this question, a comment from Bancroft's *History of California* (Volume VI, pages 640-641) is of interest:

"In relation to these several grants of land in 1869, all of the 500,000-acre grant had been sold, excepting 10,000 acres, represented by outstanding school warrants. All of the seventy-two sections and ten sections had been sold. Very little swamp-land remained, and only the least desirable of the surveyed common school lands. The agricultural-college grant was converted to the use of the state university by an act of the legislature of 1868. By an act of the same body, provision was made for the sale of all lands of every kind owned by the state, or in which she had any interest, the maximum price being fixed at \$1 25 an acre.

"Thus in eighteen years the state had disposed of her vast landed possessions, making no attempt to increase their value by improvements, nor leaving any to rise in value along with the development of the country about them. The money realized was appropriated in the manner heretofore shown, a large part of it having been dissipated by the extravagance of the early legislatures, or fraudulently disposed of by political tricksters in collusion with dishonest officials. The funds created have been borrowed by the state, the interest on the money obtained by sacrificing the state's lands, taking the place of the income which should have been derived from a judicious care for them."

Exhibit A
SCHOOL LAND FUND
BALANCE SHEET

February 28, 1962 and June 30, 1956, and Comparison

	February 28, 1962	June 30, 1956	Increase (Decrease)
Assets			
Cash	\$146,454	\$171,351	(\$24,897)
Due from other funds	--	41,504	(41,504)
Deposit in Surplus Money Investment Fund	7,300,000	--	7,300,000
Investment in securities (Exhibit C)	11,878,390	12,742,332	(863,942)
Loans on buildings (Exhibit D)	5,107,051	6,870,434	(1,763,383)
Loan on Richmond-San Rafael Bridge (Exhibit D)	4,689,812	--	4,689,812
Deferred interest receivable—Richmond-San Rafael Bridge	1,046,178	--	1,046,178
Total	\$30,167,885	\$19,825,621	\$10,342,264
Liabilities			
Due to State School Fund	\$34,970	--	\$34,970
Deferred receipts and accounts receivable	--	\$68,236	(68,236)
Interest accrued on Richmond-San Rafael Bridge Loan — payable to State School Fund when collected	1,046,178	--	1,046,178
Fund balance (Exhibit B):			
Reserve for school land and surplus ..	19,073,083	14,014,126	5,058,957
Estates of deceased persons	8,044,950	5,203,545	2,841,405
Abandoned property	1,968,704	539,714	1,428,990
Total fund balance	\$29,086,737	\$19,757,385	\$9,329,352
Total	\$30,167,885	\$19,825,621	\$10,342,264

Note The value of the state school lands held by the State under grant from the United States government is not shown above. According to the State Controller's annual report for the fiscal year ended June 30, 1961, the State Lands Commission has stated that as of June 30, 1961, there were 589,503 acres of such land with an estimated value of \$25 per acre, or a total of \$14,662,577. In addition there still remain unsurveyed lands within the State of California which will make available some additional school land when these lands are surveyed.

Exhibit B
SCHOOL LAND FUND
SUMMARY OF CHANGES IN FUND BALANCE
June 30, 1956 to February 28, 1962

	Total	Reserve for school land and surplus	Estates of deceased persons	Abandoned property
Fund balance, June 30, 1956	\$19,757,385	\$14,014,126	\$5,203,545	\$539,714
Additions				
Year ended June 30				
1957	2,344,960	1,304,030	841,897	699,033
1958	1,972,453	833,926	923,538	214,989
1959	1,428,315	602,850	314,157	511,308
1960	2,151,326	1,599,952	546,517	4,857
1961	1,138,790	451,846	688,140	(1,196)
Eight months ended February 28, 1962	293,508	266,353	27,156	(1)
Total additions	\$9,329,352	\$5,058,957	\$2,841,405	\$1,428,990
Fund balance, February 28, 1962	\$29,086,737	\$19,073,083	\$8,044,950	\$1,968,704

Exhibit C
SCHOOL LAND FUND
INVESTMENTS IN SECURITIES
February 28, 1962

Investments	Year acquired	Maturity date	Par value	Book value ¹	Market value ²
United States Treasury bonds					
2½% of 1965	1958	2-15-65	\$1,250,000	\$1,244,855	\$1,218,750
3% of 1964	1958	2-15-64	100,000	100,000	98,469
3% of 1965	1955	2-15-65	150,332	150,332	127,781
4% of 1969	1957-60	10-1-69	430,000	448,098	432,150
2½% of 1972/67	1946-50	12-15-72/67	5,180,000	5,212,749	4,518,313
2½% of 1972/67	1945 and 1948	6-15-72/67	2,400,000	2,421,166	2,100,000
United States Treasury notes					
4% of 1962	1957-58	8-15-62	350,000	350,306	351,531
4% of 1964	1959	5-15-64	950,000	948,034	970,422
United States savings bonds—2½% Series G	1950	1962	1,000,000	1,000,000	986,000
Municipal improvement bonds—5%, Lincoln	1933	10-1-65/63	2,350	2,350	2,250
Totals			\$11,812,250	\$11,878,390	\$10,812,666

¹ Book value consists of par value of \$11,812,950 less unamortized discount of \$7,415 plus unamortized premium of \$72,555.
² Market value is computed on the basis of quoted bid price at February 23, 1962, in the case of United States Treasury bonds and Treasury notes, redemption value in the case of United States savings bonds, and par value in the case of the Lincoln Municipal Improvement bonds.

Exhibit E

SCHOOL LAND FUND
REVENUES FROM SCHOOL LAND FUND INVESTMENTS AND LOANS, AND FROM
SCHOOL LAND RENTALS AND ROYALTIES
July 1, 1956, to February 28, 1962 (Note 1)

	Year ended June 30					Eight months ended February 28, 1962
	1957	1958	1959	1960	1961	
Interest on School Land Fund investments in securities and Surplus Money Investment Fund.....	\$276,518	\$241,312	\$348,558	\$560,500	\$597,694	\$176,163
Interest on building loans.....	168,195	161,766	134,481	134,669	150,832	88,937
Total revenues from investments and loans.....	444,713	403,078	503,039	695,169	748,526	264,400
Rentals and royalties from school lands.....	17,354	27,713	15,297	12,707	14,944	15,014
Total current revenues.....	462,067	430,791	518,336	707,876	763,470	279,414
Deferred interest accrued on Richmond-San Rafael Bridge Loan.....	115,674	183,147	193,510	200,808	208,589	144,448
Totals.....	\$577,741	\$613,938	\$711,846	\$908,684	\$972,059	\$423,862

* Revenues received from School Land Fund investments and loans and rentals and royalties from school lands are deposited and recorded in the State School Fund. The deferred interest accrued on the Richmond-San Rafael Bridge loan is not recorded as revenue. It is recorded in the accounts of the School Land Fund with an offsetting reserve.

* The allocation of the revenues by years may not be strictly accurate due to changes in the policy of accruing revenues at the end of the various years. No estimate of accrued revenues not collected was made as of February 28, 1962.

APPENDIX II

EXTRACT FROM STATE CONSTITUTION

ARTICLE IX

State School Fund

Sec 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools which may be, or may have been, sold or disposed of, and the 500,000 acres of land granted to the new states under an act of Congress distributing the proceeds of the public lands among the several states of the Union, approved A D 1841, and all estates of deceased persons who may have died without leaving a will or heir, and also such percent as may be granted, or may have been granted, by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

(Constitution of 1849, Art IX, Sec 2, revised 1879)

Public Schools—Salaries of Teachers

Sec 6. Each person, other than a substitute employee, employed by a school district as a teacher or in any other position requiring certification qualifications shall be paid a salary which shall be at the rate of an annual salary of not less than \$2,400 for a person serving full time, as defined by law

Public School System

The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System

Support of Public School System—State Aid

The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year, an amount not less than one hundred eighty dollars (\$180) per pupil in average daily attendance in the kindergarten schools, elementary schools, secondary schools, and technical schools in the Public School System during the next preceding fiscal year.

The entire State School Fund shall be apportioned in each fiscal year in such manner as the Legislature may provide, through the school districts and other agencies maintaining such schools, for the support of, and aid to, kindergarten schools, elementary schools, secondary schools, and technical schools except that there shall be apportioned to each school district in each fiscal year not less than one hundred twenty dollars (\$120) per pupil in average daily attendance in the

district during the next preceding fiscal year and except that the amount apportioned to each school district in each fiscal year shall be not less than twenty-four hundred dollars (\$2,400)

Solely with respect to any retirement system provided for in the charter of any county or city and county pursuant to the provisions of which the contributions of, and benefits to, certificated employees of a school district who are members of such system are based upon the proportion of the salaries of such certificated employees contributed by said county or city and county, all amounts apportioned to said county or city and county, or to school districts therein, pursuant to the provisions of this section shall be considered as though derived from county or city and county school taxes for the support of county and city and county government and not money provided by the State within the meaning of this section.

APPENDIX III

DEPARTMENT OF EDUCATION
SACRAMENTO, February 28, 1962

HON ROBERT W CROWN, *Chairman*
Assembly Ways and Means Committee
Room 2140, State Capitol
Sacramento 14, California

DEAR MR CROWN:

Mr Lou Angelo, Consultant to the Ways and Means Committee, has notified us of the hearing of your committee jointly with the Assembly Committee on Constitutional Amendments on the recommendation of the Auditor General to abolish the School Land Fund. He further invited a representative of the Department of Education to present testimony at the hearing on March 7, if the Department of Education desired to do so.

It is our understanding that the recommendation of the Auditor General is to repeal Section 4 of Article IX of the Constitution, which provides for the appropriation of income from certain federal lands granted the State and the income from other specified purposes to the support of the common schools. We have no opposition to this recommendation.

Funds accruing to the State from sources specified in Section 4 of Article IX of the Constitution are ultimately credited to the State School Fund. The remainder of the State School Fund required each year is appropriated from the General Fund. The elimination of the constitutional section will not affect the total amount to be appropriated to the State School Fund for the purposes of school support. The minimum amount of such support is specified by Section 6 of Article IX of the Constitution, and the maximum amounts are specified by statute. There could be opposition to the proposal only if there seemed to be a possibility that the revenues now specified in Section 4 of

Article IX would likely exceed the maximum amounts of school support required by statute. These amounts are now less than 1 percent of the State School Fund

This letter represents the position of the Department of Education to the recommendation in question. I hope it will serve in place of actual testimony at the scheduled hearing

Sincerely yours,

RONALD W. COX
*Associate Superintendent
of Public Instruction*

APPENDIX IV

OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, December 5, 1962

HON. ROBERT W. CROWN
1108 Park Street
Alameda, California

SCHOOL LAND FUND—No. 5521

DEAR MR. CROWN:

QUESTION

You have asked us whether there are any federal constitutional or statutory requirements or restrictions that would prevent the submission to the voters of California of a constitutional amendment to Section 4 of Article IX of the California Constitution, which would authorize the Legislature to abolish the School Land Fund and transfer its assets to the General Fund?

OPINION

In our opinion the State's obligation under the federal grant would not prevent the abolition of the School Land Fund and the transfer of its assets to the General Fund.

ANALYSIS

The School Land Fund consists of certain moneys established by Section 4 of Article IX of the California Constitution as a perpetual fund for the support of common schools throughout the State. That section reads:

"Sec 4 The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A.D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent as may be granted, or may have been granted, by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all

the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State "

The money in the fund thus includes the following

- (1) The proceeds of all lands which have been granted by the United States to the State of California for the support of common schools
- (2) The 500,000 acres of land granted to new states by an 1841 act of Congress, which lands have been sold (5 Stat 453).
- (3) All estates of persons who die without leaving a will or heir.

An 1841 act of Congress granted 500,000 acres of public lands to each of the nine existing public-land states and to such new states as might later be admitted to the Union (5 Stat 453). These lands were granted "for purposes of internal improvement." The proceeds of the sale of such lands were to be applied to "objects of internal improvements."

In 1853 Congress granted to California Sections 16 and 36 of each township for "the purposes of public schools in each township" (10 Stat 244, 246).

Revenues from the sale of these lands or from the sale of the products of these lands have been placed in the School Land Fund pursuant to Section 4 of Article IX of the State Constitution. The principal source of moneys in this fund has been proceeds from the sale of the school lands resulting from the 1853 federal grant.

The question that is presented is whether the federal acts impose any restrictions in the use this State may make of these funds.

In order to evaluate the many cases throughout the country that have discussed the nature of these federal grants and any restrictions resulting therefrom, it is first necessary to discuss briefly their history, particularly the school grants.

The first enactment for the sale of public lands in the western territory set apart Section 16 of every township for the maintenance of public schools (Ordinance of 1785, *Cooper v Roberts*, 15 L. Ed 338, 339), and, in carrying out this policy, grants were made for common-school purposes to each of the public-land states admitted to the Union. Between the years 1802 and 1846 the grants were of every section 16, and, thereafter of sections 16 and 36. The terms and provisions of these grants have not been uniform and vary from state to state.

The earlier grants to Ohio and Indiana were made directly to the inhabitants of the township in which the section was located (Ohio, 2 Stat 175; Indiana, 3 Stat 290). The grants to Illinois, Alabama, Arkansas, and Missouri were to "the State, for the use of the inhabitants of such township for the use of schools" (Illinois, 3 Stat 430, Alabama, 3 Stat 491, Arkansas, 5 Stat 58; Missouri, 3 Stat 547). Under these grants the inhabitants of each township were the holders and owners of either the legal or equitable title to the land, and to a great extent the power of disposing of and controlling the property vested in them, and not in the State (*Wyman v Banvard* (1863), 22 Cal. 524, 531). Later grants, including the grant to California, were made directly to the State for the use of schools in general (*Wyman v Banvard*, supra, 22 Cal. at p 531).

The grants vary not only as to the purposes for which they were made, but also as to the restrictions imposed. The most restrictive were those made to New Mexico and Arizona (New Mexico, 36 Stat 561, Arizona, 36 Stat 572). Under these two grants, the lands were expressly granted *in trust* for school purposes. Not only was an express trust imposed, but also the United States Attorney General was given the duty of enforcing the provisions of the granting act. This is not the case with respect to the California grant.

In some of the grants provisions were contained requiring the statutes to set up permanent funds to receive and safeguard the proceeds from land sales (Arizona, 36 Stat 572, Colorado, 18 Stat 475, Montana, 25 Stat 679, New Mexico, 36 Stat 561; Utah, 28 Stat. 109; Washington, 25 Stat 679, and Wyoming, 26 Stat 222). The California granting act has no such provision.

Many of the grants also contain restrictions on the power to the state to sell the granted lands. Those same acts provide that the lands may not be sold or leased at less than their true value or the act itself fixes a minimum sales price (Arizona, 36 Stat 572; Colorado, 18 Stat 475, Idaho, 26 Stat 215, Montana, 25 Stat 679; New Mexico, 36 Stat 561, Washington, 25 Stat 679). The California granting act does not contain such restrictions.

It is apparent from the above that the cases from other states discussing the nature of these grants must be viewed in the light of the particular granting act concerned.

Most of the states at the time they accepted these grants placed provisions in their state constitutions providing that the lands or the proceeds herefrom must be devoted to school purposes and made provision for a permanent fund to preserve the proceeds for school purposes. This is the case in California (Cal Const, Art IX, Sec. 4). It is not always clear from the cases whether the discussion of the nature of the State's ownership of the granted lands and the restrictions on the state result from the State Constitution, the granting act, or a combination thereof.

With this background in mind we turn to the cases.

Some Nebraska cases have held that that state holds its school lands as trust property and the state is required to administer them as such for the benefit of the schools. The Nebraska grant is similar to the California grant (13 Stat 47). However, in some cases the Nebraska courts have based this result on the State Constitution (*State v. Board of Educational Lands and Funds* (Neb., 1951), 47 N W 2d 520). Other Nebraska cases state that by virtue of the granting act and the State Constitution, Nebraska holds the lands as a trustee (*Propst v. Board of Educational Lands and Funds* (Neb., 1952), 55 N W 2d 653, 657). On the other hand, some of the Nebraska cases have described the federal grant and the state constitutional provision as constituting a contract or compact between the state and national government relating to such grants (*State v. Board of Educational Lands and Funds* (Neb., 1954), 65 N W 2d 392, *State v. Central Nebraska Public Power and Irrigation District* (Neb., 1943), 8 N W 2d 841). In the latter case, the court stated that the federal act making the grant, the state constitutional provision setting apart and pledging the principal and income from such grant, and the admission act constituted a contract between

the state and national government relating to such grant. The court concluded it follows that the state was and still is under a contractual, as well as a constitutional obligation, to refrain from disposition or alienation of the use of the school lands except as allowed by the enabling act and the constitution. Therefore, the court held that a state statute granting to public corporations or persons engaged in construction of public works the right to obtain rights of way over and across public school lands without compensation was unconstitutional.

The cases in New Mexico and Arizona have held that the state holds these lands only as a trustee and can expend the proceeds therefrom only for trust purposes (*State v. Mcchem* (N.M., 1952), 250 Pac. 2d 897; *State v. State Land Dept.* (Ariz., 1945), 156 Pac. 2d 901). In *Erwin v. United States* (1919) 251 U.S. 41, 64 L. Ed. 128, the Supreme Court of the United States held invalid a New Mexico statute which authorized the expenditure of a certain proportion of public land sales proceeds for advertising the resources and advantages of the state. The court pointed out that the federal grant specifically provided that the lands were to be held in trust with the proceeds of the lands to be devoted to the same trusts. The court upheld a lower federal court decision enjoining the use of the moneys for this purpose in a suit brought by the United States Attorney General (246 Fed. 277). It should be emphasized, however, that the New Mexico and Arizona granting acts specifically impose a trust.

In the Montana case of *Toomey v. State Board of Land Commissioners* (Mont., 1938), 81 Pac. 2d 407, 414, the court declared that the state was a trustee of the school lands by virtue of the granting act and the State Constitution. It should be noted that although the Montana granting act does not describe the state as a trustee, it does require a permanent fund to be established for the proceeds and does fix a minimum sales price for the granted lands (25 Stat. 679). The California granting act does not contain these restrictions.

In the North Dakota case of *State v. McMillan* (N.D., 1903), 96 N.W. 310, the court held invalid a statute which authorized expenditure of school lands proceeds to buy bonds of a state normal school as an investment. The court stated that the granting act required a fund to be set up and preserved and concluded that the entire grant of lands to the state for educational purposes was in trust and the express terms of the grant requires the state as trustee to maintain the funds. It should be noted that the North Dakota act required the special fund to be set up and governed its use (25 Stat. 679), whereas the California granting act does not.

Idaho appears to have taken the view that the state has a compact with the federal government with respect to the granted lands. (In *Newton v. State Board of Land Commissioners* (1923), 219 Pac. 1053, the court enjoined the exchange of state school lands for other federal governmental lands on the grounds the State Constitution provided that the state school lands must be held in trust.)

The court pointed out that the granting act gave these lands to the state for school purposes and required the state to dispose of them only at public auction. The State Constitution provided that the lands and the proceeds therefrom were to be held in trust. The court stated that the granting act, together with the acceptance of the provisions of the

constitution regulating the disposition of the lands, constitute a compact between the federal government and the state "which neither may abrogate or modify without the consent of the other party to the pact" (219 Pac, at p 1054)

In *US v Fenton* (1939), 27 Fed Supp 816, the court also discussed the nature of the Idaho grant and stated that under the granting act and the State Constitution the state acted as a trustee in handling the proceeds of the school lands

Oklahoma also appears to have adopted the contract or compact theory as to its granted school lands. In *Magnolia Petroleum Co v. Price* (1922), 206 Pac 1033, the court held that the granting act and the state constitutional provisions constituted a contract and a compact between the federal government and the state, and the state may not violate the conditions of the grant. The granting act permitted the sale of the school lands in not more than 160-acre tracts, with the proceeds to constitute a permanent school fund, the interest of which only may be expended in support of the schools

Arkansas also appears to have adopted the contract theory. In *Special School District No 5 v State* (1919), 213 S W 961, the court held an Arkansas statute authorizing a particular school district to sell school lands and reinvest the proceeds to be invalid as in violation of the contract between Congress and the state. The Arkansas grant was to the state for the use of the inhabitants of the townships for schools. The court stated that the federal grant gave the lands to the state absolutely without prescribing the manner in which the lands should be used if retained by the state, or, if sold, how the proceeds were to be invested or put to use. In these respects the court said the power of the Legislature is plenary. However, the court concluded the Legislature is under a sacred obligation to carry out the purpose of the grant and it cannot dispose of the lands, or if sold, the proceeds, in a manner which would defeat the trust by appropriating the land or the proceeds to a purpose contrary to that expressed in the contract

From these cases it would appear that a state to which the federal government has granted public lands holds title to such lands as a trustee only if the granting act or the State Constitution expressly imposes such a relationship. If no trust relationship is imposed by the granting act many of these cases indicate that the state nevertheless has a contract or compact with the federal government to use the lands or proceeds as directed by the granting acts. In many of these cases, however, the particular granting acts were more restrictive than the California grant.

The federal act granting the 16th and 32d sections of each township, when surveyed, to California for purposes of public schools in each township does not contain any express restrictions, as do the granting acts for some of the states as to the sale of such lands or the use of the proceeds therefrom

In *Cooper v. Roberts* (1855), 15 L Ed 388, the Supreme Court considered the question of whether Michigan could sell its school lands without the consent of Congress. The court stated that "the trusts created by these compacts relate to a subject over which the power of the State is plenary and exclusive . . . the grant is to the State di-

rectly, without limitation of its power, though there is a sacred obligation imposed on its public faith."

In *Alabama v. Schmidt* (1914), 232 U.S. 168, 58 L. Ed. 555, the court considered the question of whether the title of the State of Alabama to its 16th section could be extinguished by adverse possession for the length of time prescribed by the state statute of limitations. The court held that the state statute did apply because the state has authority to subject this land to the ordinary incidents of other titles in the state. The court said that the gift to the state is absolute although there is a sacred obligation imposed on its public faith. However, the court said this obligation is honorary, and even in honor would not be broken by a sale and substitution of a fund.

While many cases have construed the grant of school lands to California, none have directly considered the State's obligations, if any, under the grant.

However, in the early case of *Wyman v. Banvard* (1863), 22 Cal. 524, the court did conclude that a California statute requiring the proceeds of the sales of school lands to constitute a state fund for the support of schools throughout the State did not violate the congressional grant nor impair the obligation of contract. It had been contended that the grant required the proceeds from each section to be used for the benefit of schools in the particular township. The court did concede that the proceeds could not be used for purposes other than the one specified in the grant. The court stated that Congress did not attempt to impose any conditions or define the mode or manner in which this purpose could be carried into effect. It left the whole subject to the discretion of the Legislature. The intention of Congress was to have the granted lands used to sustain a general system of public schools throughout the State (22 Cal. at pp. 529-530). From this it can be inferred that while the State, under the terms of California's grant, has broad discretion as to how the granted lands shall be utilized to support a system of public schools, there are limits to that discretion.

The cases discussed above at least indicate that a state may not ignore the specific restrictions in its grant of school lands. The only restriction contained in the California grant is contained in the statement of the purpose for which the grant was made, namely, "for the purposes of public schools in each township." While no doubt the State has absolute title to these lands and has discretion to dispose of them as it sees fit, nevertheless it is our opinion that the State probably has an obligation to comply with the provisions of the federal grant. The cases are not clear as to what specifically is the obligation of the State. The federal grant to California does not require, as do some of the state grants, that the proceeds from the school lands be segregated or set aside in a special fund nor that the proceeds be preserved intact and not expended. The state's obligation could be either: (1) to expend for, or dedicate to, the support of the public schools a total amount equal to the value of the lands granted, and once that amount had been expended the obligation would be satisfied, or (2) to devote to public school purposes at all times an amount equal to the proceeds which might be available from the granted lands. If the former is the State's obligation to the federal grant then so long as the State has expended from the General Fund for school purposes an amount at

least equal to that represented by the value of the granted school lands the State's obligation has been fulfilled. It is clear that the State has expended over the years many times this amount from its General Fund. If the obligation is the latter, the State has met the obligation by providing in the State Constitution that out of *all* state revenues there shall *first* be set aside the moneys to be applied by the State to the support of the public school system (Art. XIII, Sec. 15) and also by specifically requiring in the State Constitution the annual apportionment for the support of the public school system of amounts which *far exceed* the proceeds from the granted school lands (Art. IX, Sec. 6).

Thus, in any event the State's obligation has been met apart from the use of the granted school lands and the proceeds therefrom. This being the case, it is our opinion that the federal grant would not prevent the abolition of the School Land Fund and the transfer of its assets to the General Fund.

Very truly yours,

A. C. MORRISON

Legislative Counsel

By OWEN K. KUNS

Deputy Legislative Counsel

APPENDIX V

AMENDED IN ASSEMBLY MAY 16, 1961

CALIFORNIA LEGISLATURE, 1961 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 1868

Introduced by Messrs. Rees and Sumner

February 22, 1961

REFERRED TO COMMITTEE ON TRANSPORTATION AND COMMERCE

1 *An act to amend Sections 143 1 and 183 of the Streets and*
2 *Highways Code, relating to the expenditure of funds avail-*
3 *able for state highways.*

4
5 *The people of the State of California do enact as follows:*

6
7 SECTION 1. Section 143 1 of the Streets and Highways
8 Code is amended to read

9 143 1 The department shall make at least 30 days before
10 each regular session of the Legislature a budget report to
11 the Governor.

12 The commission shall prepare for inclusion, and the depart-
13 ment shall include, in said report a statement of all estimated
14 State Highway Fund revenues and revenues available from
15 any other sources and estimated regular federal aid for the
16 next succeeding fiscal year, together with a statement of pro-
17 posed expenditures or obligations to be incurred during the
18 next succeeding fiscal year for the construction, improvement,
19 and maintenance of the various highways or portions thereof
20 under the jurisdiction of the department under the following
21 headings

22 (a) Administration, including payments for services of the
23 Division of Contracts and Rights-of-Way

24 (b) Maintenance

25 (c) Major Construction and Improvement Under this will
26 be shown all proposed expenditures or obligations to be in-
27 curred in each county group for major construction and im-

1 improvement, including preliminary engineering, segregating the
2 route of each highway to be constructed or improved, the
3 county in which located, the number of miles involved, and a
4 description of the type of work to be done

5 (d) Minor Improvement and Betterment This heading
6 will show the total proposed expenditures and obligations to be
7 incurred for each county group for minor improvement and
8 betterment, including preliminary engineering.

9 (e) Contingencies

10 (f) Rights-of-Way This will show the approximate amount
11 of money needed for the purchase of rights-of-way in each
12 county group

13 (g) Other proposed expenditures, including capital outlay
14 expenditures other than for highway construction

15 The said report as submitted by the department, as may be
16 revised by the Governor with respect to proposed expenditures
17 under headings (a), ~~(b)~~, (e), and (g) above, shall be included
18 in the printed budget submitted to the Legislature by the
19 Governor

20 Except as otherwise provided in this section, the department
21 shall be subject to control by the Department of Finance with
22 respect to expenditure of funds in the same manner and to the
23 same extent as any other state department

24 In administering the fiscal year budget of the Division of
25 Highways, the Director of Finance shall not limit expenditures
26 or incurrence of obligations under headings (c), (d), and (f)
27 above to quarterly, semiannual or other periods of the fiscal
28 years and shall not require any greater detail than that speci-
29 fied in this section and in Section 143 2

30 Contracts for any highway construction and improvement
31 projects for which funds are available during any fiscal year
32 may be awarded on and after the first day of January pre-
33 ceding the beginning of the fiscal year

34 Sec 2 Section 183 of said code is amended to read:

35 183 All money available for the acquisition of real prop-
36 erty or interests therein for state highways, or for the con-
37 struction, maintenance or improvement of state highways or
38 highways in state parks shall be deposited in the State High-
39 way Fund The moneys in said fund are appropriated and shall
40 be allocated and expended for the purposes and in the manner
41 provided in this code, except that no expenditures for the
42 purposes specified under headings (a), ~~(b)~~, (e), or (g) of Sec-
43 tion 143 1 may be incurred until the Legislature has specifically
44 appropriated money from the fund therefor.

45 Sec 3 This act shall become operative with respect to ex-
46 penditures authorized for the fiscal year commencing July 1,
47 1962, and thereafter Expenditures made, and to be made for
48 encumbrances incurred, for prior fiscal years to that com-
49 mencing on July 1, 1962, shall continue to be effective as if
50 this act had not been enacted

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

ROBERT W. CROWN, *Chairman*

SUBCOMMITTEE ON STATE PURCHASING

MEMBERS OF THE SUBCOMMITTEE

JAMES R. MILLS, *Chairman*

Tom Bane	Robert W. Crown
Carlos Bee	Frank Lanterman
Frank Belotti	Nicholas Petris
Charles Conrad	Gordon Winton
Glenn Coolidge (Deceased)	

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Jerald Perry, *Legislative Intern*
Robert Padgett, *Legislative Assistant*
Gail Vessels, *Committee Secretary*

January 7, 1963

Published by the

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OF THE STATE OF CALIFORNIA

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COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE
January 7, 1963

To the Speaker and Members of the Assembly

Your Interim Committee on Ways and Means in accordance with the provisions of House Resolution 451 (Unruh), June 16, 1961, herewith respectfully submits a report on state purchasing.

Respectfully submitted,

ROBERT W CROWN, *Chairman*

TOM BANE
FRANK P BELOTTI
JOHN A BUSTERUD
JOHN L E COLLIER
CHARLES J CONRAD
LEVERETTE D HOUSE
FRANK LANTERMAN
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EUGENE G. NISBET
NICHOLAS C PETRIS
CARLEY V PORTER
THOMAS M REES
JOSEPH C SHELL
BRUCE SUMNER
JOHN C WILLIAMSON

The following members of the committee accept the report, with the exception of Recommendation 2 (A) (B) of the section on Requisitioning, Distribution, and Disposition of Textbooks

CARLOS BEE
PAULINE L DAVIS
EDWARD M. GAFFNEY

JEROME R WALDIE
GORDON H WINTON, JR

SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE
January 7, 1963

HON ROBERT W CROWN, *Chairman*
Assembly Ways and Means Committee
State Capitol, Room 2110
Sacramento, California

DEAR MR CROWN:

Pursuant to your directive, the Subcommittee on State Purchasing herewith submits to the Assembly Interim Committee on Ways and Means its final report as authorized by House Resolution 451 (Unruh), introduced June 16, 1961.

The subcommittee is particularly indebted to Clanton M. Jordan and David L Cox, Senior and Assistant Administrative Analysts, respectively, Office of the Legislative Analyst, principal researchers for the subcommittee. The subcommittee is also grateful to Dr William W Young and Jerold L Perry, who drafted and organized the final report. Robert L Padgett served as legislative intern to the subcommittee during the course of its legislative investigations.

Respectfully submitted,

JAMES R MILLS, *Subcommittee Chairman*

TOM BANE
FRANK BELOTTI
CHARLES J CONRAD

ROBERT W CROWN
FRANK LANTERMAN
NICHOLAS C PETRIS

The following members of the subcommittee accept the report, with the exception of Recommendation 2 (A) (B) of the section on Requisitioning, Distribution, and Disposition of Textbooks.

CARLOS BEE
GORDON H WINTON, JR.

INTRODUCTION

At the beginning of the 1961 Regular Session, certain facts relating to the State's purchase of textbooks for its public schools were brought to the attention of the Assembly Standing Committee on Ways and Means. It was disclosed that 185,000 unused language and music textbooks had been burned by the Department of Education in January of that year, with an unknown quantity destroyed by other means in earlier years.

It was further disclosed that since 1929 California high schools had purchased books at a 20 percent discount from publishers, rather than the 25 percent discount generally enjoyed in other parts of the country.

Under authority of H R 119, a Special Subcommittee on Textbooks of the Committee on Ways and Means was established to investigate the destruction and other disposition of surplus state texts. The efforts of this subcommittee uncovered a waste of public resources in existing methods of contracting for, ordering, printing, storing, and disposing of textbooks which clearly warranted further investigation.

The committee reported that "co-ordination of the entire textbook selection, printing and distribution process has been handicapped by a separation of the functions and responsibilities involved." It also found that this separation had led to "a general lack of concern for the cost to the taxpayers."

As a result, H R 451 was adopted in the 1961 Regular Session authorizing interim study of the State's school purchasing policies. The bill was referred to the Interim Committee on Ways and Means, which established a Subcommittee on State Purchasing. In undertaking this study the subcommittee determined that its major objective would be to promote maximum fiscal efficiency in the purchase of textbooks and other school materials while maintaining California's high educational standards.

A number of public hearings were held throughout the State, giving a wide cross section of witnesses the opportunity to testify. Hearings were held in Fresno on December 20 and 21, 1961, in Sacramento on March 21, in San Francisco on May 10 and 11, and in San Diego on August 13 and 14, 1962.

Among those who appeared were several representatives of the Department of Education and the Department of Finance, the two state agencies directly concerned. Also present were local educators and administrative officials, county school officials, and representatives of the California State Employees' Association and of private firms doing business with the State. In addition, testimony was received from interested private citizens in the communities where hearings were held. This oral testimony was supplemented by information which the committee solicited from local school districts and relevant state agencies on their purchasing policies.

As the subcommittee pursued its inquiries, it became apparent that the subject was manifold and complex. As a consequence, the sub-

committee was forced to direct its attention to a number of sub-areas within the larger topic of state purchasing. Each of these sub-areas is the topic of a section within this report. They are (1) The State Curriculum Commission, (2) The State Printing Plant, (3) Requisitioning, Distribution, and Disposition of Textbooks, (4) Direct Purchasing of Textbooks by Elementary School Districts, (5) Purchasing of School Supplies and Equipment by Elementary School Districts, and (6) Paperback Books.

THE CURRICULUM COMMISSION

Findings

1. The Department of Education requested an appropriation from the 1962 Budget Session of the California Legislature which would allow the Curriculum Commission to employ subject matter specialists to assist it in the development of criteria and the evaluation of textbooks. The requested appropriation was denied.
2. The work for which an appropriation was sought has been and is currently being conducted on a voluntary basis and without cost to the State.
3. It has not been established that financial reimbursement would enable the Curriculum Commission to obtain assistance of a higher caliber than that currently available without charge. On the other hand, it might make volunteer assistance difficult if not impossible to obtain.
4. Despite continuing efforts at improvement, weaknesses are still evident in the criteria which the Curriculum Commission has developed to assist it in the textbook selection process.
5. These criteria are of vital importance because they are used as the basis for the ratings given by commission members and the commission as a whole in preparing their recommendations for adoption and to assist publishers in the preparation of texts.
6. The Special Subcommittee on Textbooks of the 1961 Standing Committee on Ways and Means recommended that "the State Board of Education make an effort to reduce the long period now involved in the textbook selection, printing and distribution process and tighten up the procedure for receipt and acceptance of offers from publishers."
7. The Legislative Analyst has investigated the current status of this recommendation and has found that little action has been taken to implement it.
8. The Curriculum Commission, through the Bureau of Research of the Department of Education, may conduct a Teacher Reaction Survey at the end of the third year of textbook adoption periods.
9. These surveys have constituted a considerable drain upon the facilities of the Bureau of Research, and have been subject to extensive criticism in the past. There is no evidence that they are relied on by the Curriculum Commission to determine re-adoption policies.
10. A revised and improved survey questionnaire has been developed which will require an additional appropriation for the Department of Education to administer.

- 11 The number of different titles adopted by the State of California in connection with its textbook program has increased from 23 for the school year 1913-14 to 210 for the school year 1953-54 and to 358 for 1961-62
- 12 Present Curriculum Commission plans and programs indicate an increase in the number of titles under adoption in the future
- 13 There is a direct relation between number of titles under adoption and cost of the textbook program, and there may be a point of diminishing returns in the educational value of the required use of multiple texts.
- 14 There has been a decided lack of attention by the Curriculum Commission to the economic implications of its educational planning. Expanded criteria and new framework programs anticipate an increased number of titles to implement their objectives, and should be accompanied by an investigation of their fiscal implications
- 15 There has been no attempt by the Curriculum Commission to develop permanent and uniform standards for the selection of textbook distribution ratios, and the selection of particular ratios is frequently given little attention
- 16 The selection of text book ratios directly and profoundly affects the cost of the textbook program
- 17 The types of ratios in use by the Curriculum Commission have become increasingly more complex and difficult to control. The more complex the ratios adopted, the more difficult and expensive the distribution process
18. Where acceptable material has been unavailable from private publishers, the Curriculum Commission has undertaken the task of obtaining the desired publications through its own offices or through those of the Department of Education
19. These efforts have been characterized in the past by a lack of organized planning and inadequate consideration of the cost involved

Recommendations

- 1 A state appropriation to allow the employment of subject matter specialists by the State Curriculum Commission is not recommended
- 2 The Curriculum Commission should continue its efforts to improve its formal textbook criteria, with particular attention to obtaining greater specificity while reducing the number of criteria and the extent of elaboration
3. The State Board of Education and the Curriculum Commission should be directed to take immediate steps to implement the recommendation of the Special Subcommittee on Textbooks of the 1961 Standing Committee on Ways and Means concerning the length of time consumed in the textbook adoption process
- 4 Any additional appropriation to implement the use of the revised Teacher Reaction Survey questionnaire form should be contingent upon demonstration that its use will result in benefits to the Curriculum Commission commensurate with the increased cost to the State.

- 5 The Legislature should take under consideration the advisability of taking action to limit the number of titles under adoption as part of the state textbook program
- 6 The Curriculum Commission should be directed to develop a projected estimate of the number of titles which will be recommended for adoption during the next four years, classified by subject matter area, and according to classification as basic or supplementary textbooks, teacher's editions, etc
- 7 Consideration of fiscal implications should accompany the Curriculum Commission's formulation of new framework programs and textbook criteria
- 8 The Curriculum Commission should be directed to establish a subcommittee which would re-examine existing textbook distribution ratios, and develop a uniform method for determining the distribution ratios to be assigned to selected textbooks
- 9 This subcommittee should include members of the commission, which has the responsibility for establishing the ratios, members of the Department of Education, which has responsibility for distributing the textbooks, and representatives of the teaching profession, which must make actual use of the ratios established
- 10 The Curriculum Commission should be directed to develop and use a chronological and financial prospectus for each publication which it authors directly
- 11 The prospectus should be presented to the State Board of Education, the Department of Education, and the Department of Finance, and be used as the basis for a file in which all progress reports on the development of the publication would be entered
- 12 The prospectus should contain the following information
 - 1 Purpose of the project
 - 2 Projection of contractual services
 - a Estimated total cost
 - b Time allocated for the authoring of the project
 - 3 Projection of the project publication
 - a Estimated cost of the initial work
 - b Estimated unit production costs
 - c Projected printing date
 - 4 Distribution
 - a Number of copies to be distributed
 - b Basis for distribution
 - c Length of distribution period

Background

Article IX, Section 7 of the California State Constitution provides for the loan of textbooks without charge to all elementary school students in the public schools of the State. The Constitution and the Education Code also provide for a system of "single adoption" of state texts for those subjects required by the State in its elementary schools. Under this system, the State chooses one or more texts in each subject matter area, and each school district in the State is furnished with all of the books so selected. The objective is the uniform adoption of textbooks throughout the State.

Legal responsibility for selection of these textbooks rests with the State Board of Education. However in practice, the decisions are most frequently made by the State Curriculum Commission. The commission was established in 1927 for the purpose of studying prospective texts and making recommendations to the board concerning their adoption. With rare exceptions, the recommendations of the commission have been accepted.

The Curriculum Commission has four major areas of responsibility:

1. Establishing minimum standards and developing framework programs for courses of study in kindergarten, elementary, and secondary schools
2. Developing criteria to be used as a basis for the formulation of the various calls for bids and for the selection of textbooks
3. Selecting textbooks and establishing distribution ratios for the selected books
4. Evaluating textbooks that are being used under current adoptions

Minimum standards may be established through the adoption of particular textbooks. They have also been established through the adoption of formal "framework" programs, which provide school districts a guide for subject instruction and provide the commission a guide for textbook selection. In addition, the commission attempts to develop written criteria which will provide a formal basis for textbook evaluation. Where framework programs exist in a given subject matter area, the criteria covering that area are developed directly from them.

Unfortunately, the standards established by the commission sometimes appear so vague and general as to be difficult of specific application, and though the criteria are submitted to publishers as part of the call for bids, questions have been raised as to their value in the preparation of specific texts.

The major responsibility of the Curriculum Commission lies in the actual selection of textbooks for the elementary schools, and in the establishment of distribution ratios for the selected books. There are no statutory requirements, and each member has complete freedom in his methods of textbook evaluation.

In response to the call for bids, publishers submit textbooks to the Department of Education. These textbooks are then distributed to members of the Curriculum Commission for evaluation and selection. Each commission member does not read every book submitted. Rather related books, or texts in a certain subject matter area and/or grade level are assigned to specific commission members. They, in turn, will usually establish advisory subcommittees to assist in evaluating the relative merits of the books submitted.

These advisory groups may meet together and issue joint reports, or individual statements may be relied on. Entire texts, groups of texts, and selected portions will be submitted to individuals and groups. Comments thereon may be unstructured or may use a thousand point scale, based upon the criteria standards, which has been developed to compare the quality of texts.

The number of opinions thus available to the commission members may number in the thousands, depending on their diligence and desires.

Those who participate normally include educators, both teachers and administrators, college and university faculty, technical specialists, and lay people.

However, just as there are no uniform standards for the methods used in textbook evaluation at this level, so the method of obtaining the evaluators is also informal and unstructured, varying with the techniques which have been developed by individual commission members. In this process the commission members and the chairmen they appoint turn most naturally to those who are most accessible to them.

On the basis of the information and opinions thus made available to it through its members, the Curriculum Commission as a whole then selects the books that are recommended to the State Board of Education. While commission members are in no way bound to the conclusions of their own advisory committees, the vote of commission members usually corresponds to the findings of their committees. The commission in turn will usually accept the evaluation of the commission members charged with responsibility for a particular textbook area.

The commission as a whole assigns a numerical score and rank order to each book, and submits its report to the board for final consideration. Accompanying its recommendations are briefs of the various studies conducted, a narrative account of the reasons behind the commission's judgment, a detailed listing of editorial corrections—which may be quite extensive—and a set of the recommended books. Display of the recommended books in at least 10 public libraries prior to board action is required by law.

Where the commission finds that acceptable material is not available from private publishers in a particular instructional area, it will direct the Department of Education to author the desired textbooks and publications, or will do so itself.

State-adopted textbooks in California are divided into two categories: basic textbooks and supplementary textbooks. Basic texts are those intended for use by the pupil as the basic source of study material for the completion of a course or subject. Supplementary texts are intended to supply information in addition to or in extension of that in the regular or basic texts. They are distinguished from reference or library books by the fact that they are supplied in quantities permitting use by the entire class.

In addition to recommending basic and supplementary books to the Board of Education, the Curriculum Commission is also charged with responsibility for establishing distribution ratios for the selected books. Basic textbooks are usually adopted on a 1:1 ratio, which would mean that a textbook would be provided for every student in the State. The only exception has been in reading texts, adopted on a 1:2 ratio. Ratios are similarly established for supplementary texts. However, these are of greater variety and sometimes of far greater complexity than the ratios used for basic texts.

Several changes were made at the 1961 General Session in the regulations governing the Curriculum Commission. Previous to that time, members of the commission were appointed by the Superintendent of Public Instruction with the approval of the State Board of Education. The law was changed so that the commission is now appointed directly

by the board. In addition, the provision was eliminated which required that 7 of the 10 members be persons in specified administrative and teaching positions. Finally, it was required that all meetings of the commission be open to the public.

Initial Adoption of Textbooks

In the 1962 Budget Session, the Department of Education requested an augmentation of its departmental support budget for 1962-63 to allow the employment on a temporary basis of specialists who would work under the supervision of the Curriculum Commission. These specialists were to assist the commission generally in developing textbook criteria and evaluating textbooks, and specifically in formulating a basis for the selection of textbooks in history, mathematics, and specified grades of geography and foreign language.

This request was denied, yet, at the present time, the work for which an appropriation was sought is proceeding on a voluntary basis and without cost to the State. This is the traditional method through which the Curriculum Commission has obtained assistance in establishing standards and evaluating textbooks.

The social studies framework was originally developed by commission members, the State Department of Education, a Special Social Studies Committee, several professional organizations, and other interested individuals. Revisions were subsequently made by a State Central Committee on Social Studies, and adopted by the commission.

A framework program in mathematics has been prepared by an Advisory Committee on Mathematics, consisting of 35 mathematics educators, which is also formulating the criteria for evaluating mathematics textbooks. In addition, a foreign language committee has been appointed by the Department of Education.

Where possible, those persons responsible for developing the framework programs will also develop the criteria for textbook adoption in the same field. Where it has been necessary to develop criteria independent of the framework program, assistance has been obtained from the Bureau of Research of the Department of Education, and through recommendations from college and university specialists, surveys of teacher's reactions, and independent supplementary inquiries and analyses.

In evaluating textbooks for adoption, assistance is frequently obtained from local school district administrators, and a large number of elementary school teachers familiar with the subject under consideration is usually consulted. Others lending assistance include college professors, technical specialists, and interested laymen.

In 1959, over 11,000 persons participated in the evaluation studies of elementary school readers. These included approximately eight teachers to every nonteaching educator, a number of college professors, and about 500 laymen. An attempt was made in this case to obtain a particularly wide sample because of the controversial nature and prime importance of the reading program.

The services of subject matter specialists and others directly concerned have thus always been available to the Curriculum Commission, and are still being used, without cost to the State. It has not been established that, by offering financial reimbursement, the Curriculum

Commission would be able to obtain assistance from specialists of a higher quality than those now available. On the other hand, once the precedent of offering reimbursement from the State for services rendered has been established, it may become necessary in order to obtain the same professional assistance now rendered without charge.

College and university experts and local school districts should be encouraged to continue granting their assistance to the Curriculum Commission and the Department of Education. This arrangement, if properly administered, will continue to afford the commission professional services of the highest quality and in quantities sufficient to assist in the development of all proposed educational programs.

Improvement can be made, however, in some of the methods and procedures currently used by the commission in the textbook selection and adoption process. First, weaknesses are evident in the nature of the criteria which have been adopted by the commission. The Subcommittee on Textbooks of the Citizens Advisory Commission of the Joint Interim Committee on the Public Education System stated in its report to the full committee, dated August 26, 1960.

"To accurately describe the criteria developed for all adoptions, it could best be said that they consist of a great many broad general statements—such as, 'the importance of accuracy should be emphasized,' 'the manner of presentation shall be clear and understandable to the children,' 'the content for each grade should be adapted to the needs, abilities, and interests of pupils in that grade,' 'the format should be appropriate,' etc."

As another example, the general objective of mathematics textbooks for the first and second grades is stated to be "to promote the development of arithmetic readiness." Such general criteria are then broken down into a confusingly large number of subcriteria which tend to elaborate without being more specific.

These criteria are important because they are the basis for the scorecards used by the commission members and the commission as a whole in preparing their recommendations for adoption. Though the concepts behind the criteria may be valid, their number and their generality make accurate scoring difficult and thus detract from the advantages of using a rating as well as a ranking system in reporting to the Board of Education.

In addition, though the criteria are submitted to publishers with the call for bids—presumably to aid them in preparing textbooks—their nature is such that they are not of maximum assistance. There is no mention of specific material to be studied or of specific standards. For example, in the reading criteria no mention was made of vocabulary level desired, the specific types of story to be included, or the reading rate expected.

Though continuing improvement is being made, and the members of the Curriculum Commission are to be congratulated on their efforts in this direction, room for improvement still remains.

A second procedural weakness is the length of time involved in the adoption process. The Special Subcommittee on Textbooks of the 1961 Standing Committee on Ways and Means recommended that "the State Board of Education make an effort to reduce the long period

now involved in the textbook selection, printing and distribution process and tighten up the procedure for receipt and acceptance of offers from publishers."

An example of the problem involved is furnished by the fifth and eighth grade history and geography adoption. Criteria for evaluating the textbooks was formulated from August 1959 through May 1960, at which time the commission recommended to the State Board of Education a call for bids. The call was authorized in July and published in September, with the deadline for submission of textbooks in February and the deadline for submission of bids in August of the following year. Evaluation of the textbooks submitted proceeded from February through November of 1961, at which time recommendations for adoption were made. Bids were opened in December, and the final adoption was made by the board in January of 1962. Printing of the textbooks in the State Printing Plant began in March of 1962. The adoption period begins on July 1, 1963.

The length of time involved in this process makes it more difficult to estimate the cost per book and the number of books which will be required, and generally weakens fiscal control. In addition, the longer the period involved before textbook use actually begins, the more likely the book is to be outdated at an earlier time, and thus subject to earlier revision or replacement with the attendant costs.

Readoption of Textbooks

Since 1957, the Curriculum Commission has sought assistance in evaluating existing textbook adoptions through the use of a Teacher Reaction Survey. These surveys are conducted at the end of the third year of the minimum four-year adoption period. They are designed to obtain a sampling response of approximately 10 percent of the teacher population concerned, although a lesser number usually responds.

The Teacher Reaction Surveys have been subject to extensive criticism by the Legislative Analyst, the Citizens Advisory Commission, and others, and there is no evidence that they have been relied on by Curriculum Commission members to determine readoption policies. In one extreme case, the commission changed the illustrations in the sixth grade textbook *Adventures of Nicholas*, at a cost of over \$117,000, when a survey taken the same year disclosed not one criticism or unsatisfactory comment relating to the existing illustrations.

Subsequently, a revised and improved survey questionnaire form has been developed, which is more detailed in nature. The Bureau of Research, which has the responsibility for compiling and analyzing the data received through the surveys, has indicated that it cannot administer the new survey without additional budgetary support. Even the previous surveys constituted a considerable drain on the facilities of the bureau, both in terms of staff and of equipment. Without the help of the bureau, the office of the Chief of the Division of Instruction, Department of Education, would be responsible for the survey, which would present similar workload problems.

The theory of surveying those most directly concerned, those who have had three years actual experience working with a given textbook, in order to determine its continued usefulness, seems a sound one. How-

ever theory and practice sometimes vary, as they appear to have here. It should be demonstrated by the Department of Education that the revised survey will justify the increased cost resulting from its adoption, and that it will prove of significant value to the Curriculum Commission, before an additional appropriation is made to implement its use

Establishing Number of Titles and Distribution Ratios

Although concern is frequently expressed over the number of volumes of a given title which are printed, little thought has been given to the increasing number of titles which have been adopted. Due to expanded educational programs, reflected in more comprehensive criteria and the development of criteria in a greater number of areas, the number of textbook titles adopted by the Curriculum Commission has greatly increased in recent years. There were 23 state adopted basic texts for the school year 1913-14. By 1961-62, this had been expanded to 88 basic, 53 supplementary, 83 Unitex, 24 Real People, 31 teachers' manuals, and 79 teachers' editions, for a total of 358.

While the Unitex and Real People series are not as expensive as regular hardbound textbooks, each of these small booklets is an individual title and can be ordered individually by a school district. Thus they entail as great a distribution expense as larger and more expensive textbooks. The distribution process increases in expense and complexity in direct proportion to the increase in adopted titles.

The present history and geography adoption for the sixth and seventh grades consists of 13 texts and teachers' editions and manuals, and a Unitex series of 23 booklets. While the proposed adoption for 1964 would eliminate the Unitex series, it raises the number of other volumes to 31, thus vastly increasing the amount of different material to be printed.

There is a direct relation between number of titles and cost of the textbook program. This is true even where the number of titles increase while the actual number of books distributed remains the same. However, over the years, new basic programs and expanding supplementary material have added to the physical volume of books made available as well. The educational benefits of this volume may ultimately reach a point of diminishing returns. There is some question as to whether or not the number of titles under present adoption is already too numerous to be used effectively, and present commission plans and programs indicate an even greater number of titles under adoption in the future.

At the present time, there is a decided lack of attention to the economic implications of educational planning by the Curriculum Commission. Although the number of titles is not determined until the actual textbook selection process, expanded criteria and new framework programs anticipate an increased number of titles to implement their objectives, as has been amply demonstrated in the past. Investigation of cost considerations should accompany the consideration of new and expanded educational programs. Such a policy of advance planning should be part of any efficient program.

In addition, the Curriculum Commission should be specifically directed to develop an estimated projection of the number of titles to be adopted in the next four years. These projections should be related to subject matter areas and based on the requirements established by the

various programs developed by the commission. A definite number of titles should be designated in each subject area, and the titles should be grouped according to classification as basic or supplementary textbooks, teachers' editions, etc. This information could be used in the determination of whether measures should be adopted to limit the number of titles which will be permitted in future adoptions, as well as impressing upon the commission the economic consequences of its conduct.

In addition to recommending textbooks for adoption, the Curriculum Commission is also responsible for formulating distribution ratios for the textbooks it has recommended. There is no established pattern used in determining these ratios, which are assigned by various methods, depending upon the particular commission members responsible for reviewing the books involved.

Although basic textbooks are adopted on a 1:1 ratio (or 1:2 in the case of readers), the ratios used for supplementary texts vary widely. While much time and study is involved in the evaluation of the various titles, the development of ratios is given little attention and is sometimes left to the last minute decision of the commission members, despite the fact that they have a profound effect on the cost of the textbook program.

In the recent social studies adoption, the distribution ratios originally suggested for the text *Our United States in a World of Neighbors* ranged from 1:1 to 1:4. It was finally recommended at a 1:4 ratio, despite the fact that it was a basic text. This was apparently because the commission believed the book to be unsatisfactory. This ratio for a basic text was unacceptable to the Board of Education, and the matter was returned to the commission for further deliberation. In this entire process, there was no scientific attempt made to determine the economic consequences of the various distribution ratios, nor was the information necessary to determine these consequences available for the commission's use. The difference between the cost of a 1:1 and a 1:4 ratio amounted to approximately \$750,000.

During recent years, the types of ratios have become more complex and difficult to control. An example is furnished by the following ratio adopted for the supplementary text *Folk Songs of the United States*:

In elementary schools with 1 teacher, 1 copy for each pupil enrolled in grades 3 to 8, in elementary schools with 2 or more teachers, 40 copies for each 3 classes of pupils enrolled in grades 3 to 8, or the number of copies that will provide 1 copy for each pupil in the largest of such classes, in junior high schools, for each vocal music classroom, 1 copy for each pupil enrolled in grades 7 to 8 in the vocal music class that includes the greatest number of such pupils.

The more complex the ratios adopted, the more difficult and expensive the distribution process. Through the combined efforts of the commission, the Department of Education, and the teaching profession, ratios such as the one above could be simplified. The result would be a standard method of determining the distribution ratios assigned to each selected textbook. Although the ratios themselves may vary, the basic method for determining them should not. The result would be a less costly and more accurate system of textbook distribution.

Direct Authoring of State Texts

Where acceptable material has not been available from private publishers, the Curriculum Commission has attempted to provide adequate material by directing the Department of Education to author the desired textbooks and publications or undertaking the task itself. Some projects have been received favorably, while others have met with failure. Common to all, however, has been a lack of organized planning and adequate consideration of the cost involved.

One example is provided by the financial history of the textbook *Adventures of Nicolás*. In 1959, the commission revised the illustrations in this book at a cost of \$117,316. As of February 1, 1962, 56,579 copies of the revised text had been printed, and the total stock on hand was 62,202. The revision was made even though the book was considered basically unsatisfactory, and likely to be replaced in 1964 when a new social studies adoption will take place.

If the current rate of distribution remains constant, at the beginning of the new adoption in 1964 there will be approximately 26,224 copies of the revised *Adventures of Nicolás* still on hand in the state warehouse. These volumes may then be considered obsolete and surplus. Even if continued as supplementary, they will probably be in addition to other newly adopted supplementary texts.

Dividing the total cost of printing the revised version of the textbook by the number of revised copies likely to be distributed to the schools before the adoption ends, the Legislative Analyst has arrived at an approximate cost per copy of \$5.80 for the revised text, compared with an original version cost of under one dollar.

Another example of inadequate planning is furnished by the commission's conduct in connection with its textbook *Our California Heritage*. Included in the 1959 textbook budget was \$62,500 requested in order to provide the commission with sample copies of the textbook which could be used in determining its acceptability. The commission had made no attempt to determine the most economical way of producing the sample copies, and the State Printing Plant had not even been asked for a cost estimate.

When the sum of \$62,500, having been appropriated but not yet spent, was questioned by the Legislative Analyst during the 1962 budget hearings, it was reduced by the Department of Education to \$6,000. The Legislature approved this reduction, and \$56,500 reverted to the General Fund. With proper planning and an awareness of future costs, the commission could have insured a proper estimate when the original request was made.

If the commission should find it necessary to directly author state texts in the future, each proposed project should be considered carefully at the time of its conception. The commission should be made aware not only of the initial costs of the project, but also of the total long-range costs. If the commission had planned ahead when the revision of *The Adventures of Nicolás* was being considered, it is doubtful that they would have been willing to pay \$5.80 per copy for the revised textbook which originally cost \$9757.

Once the need for a commission consigned textbook or publication has been established, an outline of the proposed chronological and

financial prospectus of the project should be formulated. This outline, once developed, should be presented to the State Board of Education, the Department of Education, and the Department of Finance. The outline and time schedule should then become the basis of a file in which all progress reports on the project should be entered. As the project develops, additional progress reports will be added to the file. Each report will be compared with the original outline. In this manner, shortcomings of the project can easily be determined and steps to rectify them taken.

STATE PRINTING PLANT

Findings

1 Without adequate managerial controls, the State Printing Plant cannot determine the true cost of printing textbooks.

2 The necessary managerial controls can be obtained only through the adoption of basic scheduling and planning programs, production standards, and a machine accounting system that provides for an adequate and timely analysis of all cost and production records.

3 Although scheduling and planning are practiced to a degree, and recently an attempt was made to develop production standards, the State Printing Plant does not have an adequate machine accounting system.

4 The present accounting system, although requiring over four years to install, does not provide management with the necessary controls and reports for insuring an efficient and productive operation.

5 When making the installation, consideration was not given to the particular needs of each department within the plant or to the departmental supervision using the reports.

6 The installation also disregarded the objectives specified in the original accounting system's proposal.

7 The machine accounting reports that are presently being issued are no more than basic accounting documents.

8 The machine accounting reports are not made available to all of management (department and line foremen).

9 The reports are consistently delivered late (five to six days) to the State Printing Plant and the machine accounting reports are not being distributed on a daily basis.

10 The accounting reports do not identify nonchargeable items.

11. The original control records from which the machine accounting reports are compiled are not available to the foremen, and in certain areas of the plant, foremen have less control over their respective areas than when the manual accounting system was in use.

Recommendations

1 The Department of Finance stated at a hearing of the subcommittee on August 14, 1962, in San Diego, that within a period of six months (i.e., by March 1963), the machine accounting system and the necessary production standards would be revised and developed to such an extent that it would be possible to make valid comparisons between these standards and the actual printing runs. At that time an Assembly com-

mittee should make another analysis of the State Printing Plant to determine whether or not the plant is producing textbooks as efficiently and economically as possible

2 In revising and completing the machine accounting system, the State Printing Plant and the machine accounting section, under the direction of the Department of Finance, should pay particular attention to the following

A The accounting system should be tailored to the individual needs of each department in the State Printing Plant Therefore, the operations of the departments should be considered separately In co-operation with foremen and line personnel, the machine tabulating section should develop the type of reports and controls that each department will find necessary for an efficient and productive operation

B While the contents of the reports may vary from department to department, the essential purposes of reports should correspond to the objectives of the machine accounting system as established in the original Remington Rand procedures

Supporting Material

During the past few years, the program of adopting and printing free textbooks for distribution to elementary schools within the State of California has been criticized from many directions One area of the program that has come under severe criticism is the State Printing Plant As previously noted, a major deficiency attributable to the printing plant is that due to the lack of sufficient managerial controls and an adequate accounting system the printing plant cannot determine the true costs of printing textbooks

In considering this deficiency, certain points should be kept in mind. The State Printing Plant can potentially render savings to the State and may have done so in the past when it has served as a yardstick to determine whether prices charged by private publishers are valid To achieve this function and to realize such savings it is essential to know or be able to determine actual printing costs The State Printing Plant, with proper management and controls, should be able to perform at least as economically as private printers In reviewing the printing program we should retain the savings presumably already realized to a certain degree, and, through better management and more adequate controls, attempt to obtain a greater degree of savings

There are many reasons why proper managerial and accounting controls are essential in the operation of the State Printing Plant Three main reasons are:

1. To insure that all cost charges reflect operations which are conducted in the most efficient and productive manner possible.

This is the primary step in establishing "true cost center rates" Cost centers are charges for work accomplished by both machines and labor There is no doubt that management can exercise a certain degree of control over such charges by spot checking certain mechanical operations and continually keeping abreast of the various functions of the labor force It is impossible, however, for management to insure maximum efficiency and productivity over an operation as large as the State Printing Plant by spot checking alone Managerial and accounting controls must be available and must be used

2. To insure that all charges are made to the correct and appropriate cost center.

In order to insure the correct charging of costs for cost center purposes it is imperative that all charges are known. This includes both direct charges such as machine running time and indirect charges such as machine maintenance and waiting time. Until exact identification of all charges has been made there exists a possibility that a cost center could be "loaded," that is, charged with costs more appropriately connected with some other cost center.

3. To afford management with a basis for judging the adequacy of present equipment and determining the feasibility of new equipment.

Managerial and accounting controls should give management the information necessary to make such determinations. Recently, J. W. Rockefeller, Jr., and Associates, submitted a final report to the Subcommittee on Printing of the Joint Committee on Legislative Organization. As proposed in the contract signed by Mr. Rockefeller the report was to provide methods for:

" . . . the establishment of a cost accounting system which will be comparable with that of commercial printers and which will be realistic for purposes of comparison in that it will contain fair increments for overhead, inventory control, management reports, allocation of costs to various jobs, rent, power consumption, management, and other such matters, and through including such items will be above criticism by the managements of commercial plants. A survey should be made of the punched card installation in the Department of Finance to determine whether the printing plant reports which were proposed to be prepared are proper reports for management, whether additional or other reports need to be produced, and why the proper reports for management purposes are not currently being produced "

We do not believe that the final report offered by Rockefeller and Associates, met the objectives outlined in the contract. The report offered no basis or criteria for judging the adequacy of the accounting system, did not cover the mechanized accounting forms presently being distributed to management, and did not offer any solution for obtaining the necessary reports that would allow management sufficient control over the plant operation.

The contract also stated that Rockefeller and Associates would determine the most feasible method or methods for:

" . . . the establishment of a long-term program for bringing about methods and equipment changes necessary to produce the printing needs of the State most economically over the next 10 years, this should include a survey of jobs presently being done, methods used, point of diminishing returns or inefficiency, equipment being used or is [sic] available in plant and if plant layout is proper, . . . "

This was another area which was not covered in detail in the report. The report recommended that the State of California spend over one million dollars on new equipment for the State Printing Plant. The

recommendation did not present a comprehensive analysis of the present and future requirements of the State Printing Plant. If it had, the report would have included break-even and pay-out formulas for the machines in question. It would have included comparisons of cost on the basis of present equipment and production scales and on the basis of each major proposed piece of equipment. Instead, the recommendations were based largely upon general assumptions made by the author. It is impossible to establish accurately whether or not a piece of machinery should be replaced and with what size or production capacity, until such basic information as machine productivity, lost running time, maintenance cost, and degree of utilization have been established. This information was not offered in the report and is presently unavailable in a comprehensive form. Until such information is obtainable, management lacks a basis for judging the adequacy of present equipment and cannot determine the feasibility or proper production capacity of new equipment.

REQUISITIONING, DISTRIBUTION, AND DISPOSITION OF TEXTBOOKS

Findings

1. The Department of Education has had great difficulty in obtaining the full co-operation of the school districts in the process of ordering and distributing textbooks.

2. Although a new form for requisitioning textbooks has been placed in use for the 1962-63 school year, some California school districts are not completing the forms properly.

3. The procedure whereby county offices review requisitions prepared by the school districts has proven inadequate due to the fact that some offices have not taken pains to insure that the districts prepare the forms correctly.

4. School districts vary greatly in their methods of warehousing and storing textbooks. Large districts usually operate year-round central warehouses. Smaller districts use temporary facilities.

5. The administrative staff employed by a district to exercise control over the requisitioning, warehousing, and distribution of state textbooks depends upon the size, wealth, and educational program of the district.

6. Many school districts distribute textbooks to schools on the basis of the district education program rather than on the basis of the distribution ratios established by the State Board of Education.

7. The majority of the State's elementary school districts have not attempted to collect for state-issued textbooks lost or damaged and the Department of Education has not enforced the law requiring school districts to make such collections.

8. The statewide average collection for lost or damaged textbooks in 1960-61 was less than \$ 0.15 per average daily attendance. Some districts with effective collection programs collect as high as \$.33 per ADA.

9. Presently, school districts are permitted to purchase supplementary textbooks from the Department of Education, under Section

9653.1 of the Education Code, but the law is interpreted to mean that they are not permitted to purchase basic textbooks from the department.

10 The Department of Education does not have any surplus or obsolete copies of state-issued textbooks on hand as the results of its program for the disposition of such books.

Recommendations

1 The State Board of Education should recommend legislation to compel county superintendents to comply with that portion of the Administrative Code, Title 5, Section 44.1 which requires requisition forms to be forwarded through the offices of the county superintendent of schools for approval.

2 With respect to the problem of school districts filling out requisitioning forms incorrectly, it is recommended that the Legislature take appropriate action to alleviate this problem. Two possible solutions to the problem are as follows:

A Amend the Education Code to withhold state public school support funds from any district that does not fill out requisition forms correctly. The code could be amended so that after the foundation program allowances of basic and equalization aid have been computed, the State would withhold from the basic aid allowance of the district in question the \$5.00 per ADA that is statutorily guaranteed (that amount by which the \$120 per ADA guaranteed by the Constitution is increased) until such time as the district correctly completes the requisition forms.

B Amend the Education Code to provide that the State Board of Education initiate, or direct, the State Department of Education to undertake, an investigation of, a given local school district to ascertain why the requisition form was not being filled out correctly. Amend the Education Code further to provide that the cost of the investigation (including the salary and per diem of the investigator) be financed either by: (a) a warrant drawn on the school district, or, (b) a sum deducted from the \$21.86 that is available each year from the General Fund to the State School Fund under Education Code Section 17301(b).

3. With respect to the problem of school districts failing to make adequate attempts to collect for lost or damaged books, it is recommended that the Legislature take appropriate action to alleviate this problem, also. The Legislature might consider amending the Education Code in generally the same manner as outlined in Recommendation 2(A)(B) above, relating to the problem of the use of requisitioning forms.

4 Section 9653.1 of the Education Code should be amended so that school districts may purchase, in addition to supplementary textbooks, all basic textbooks that may be required in excess of distribution allowances.

Supporting Material

Estimating Need for Textbooks. Prior to a new adoption, the Department of Education must project the number of textbooks of each

adopted title that will be used by California schools. In estimating future distribution, the Department of Education is faced with a difficult task. The future distribution estimates are dependent upon such factors as enrollment growth, book acceptance, and the durability aspects of the particular textbook. Realizing the deficiencies of information available in the estimating process, it is of prime importance that the estimates be reviewed continually and adjusted whenever necessary.

Requisitioning of Textbooks. School districts requisition textbooks from the State Office of Textbook Distribution five to six months prior to the start of the school year. The purpose of this initial order is to supply the school districts with the total number of textbooks that will be needed during the school year. Supplementary requisitioning forms can be submitted, however, at a later date.

A new requisitioning form has been placed in use for the 1962-63 school year. The form was devised through the joint efforts of the Department of Education, Department of Finance's Division of Organization and Cost Control, and the Legislative Analyst.

Generally speaking, California school districts order free textbooks as conscientiously as possible. However, some districts are of the opinion that they should be able to requisition state furnished textbooks without having to justify the number being ordered or to account for the number of textbooks that had previously been ordered. When such a situation arises, it is impossible for the free textbook distribution program to be conducted in an efficient and economical manner. To insure that the districts complete the requisition form accurately and completely, all requisitions must pass through the office of the county superintendent of schools for approval. This procedure has proven to be quite ineffective. Many county offices seem to have neither the time nor interest to insure that the districts prepare the forms correctly. Some county offices have acted as a "rubber stamp" when approving requisitioning forms.

Distribution of Textbooks. The Department of Education distributes textbooks to school districts in the summer months, prior to the school year in which the books will be used. Distribution is made from state warehouses in Sacramento and, during peak years, from rented warehouses in San Francisco. The school districts are required to inventory the books upon delivery and notify the Department of Education of any discrepancies between the number of textbooks requisitioned and the number delivered. The Department of Education has had great difficulty in obtaining the full co-operation of the school districts in this phase of the distribution process. There have been many instances of the districts accepting shipments without verifying the amounts received. The districts disperse the books to the schools and later, when shortages are discovered, the Department of Education is blamed. In the majority of cases, however, the initial delivery was correct and the textbooks were somewhere within the school district. Each such instance requires voluminous correspondence between the district and the Department of Education, wasting time, money and man hours.

Once the books are received by the school districts, provisions for storage must be made. The methods of warehousing and storing textbooks vary between school districts. As previously noted, some operate year-round central warehouses. Books are dispersed as needed from this location. Smaller districts may use a central storage area only during the summer period when the State ships the yearly supply of textbooks ordered by the district. When these books have been counted, inventoried and distributed to the respective schools, the central storage area is no longer required and the facility is used for another purpose.

The administrative staff assigned in a district to handle the requisitioning, warehousing, and distribution of state textbooks, as stated above, is dependent upon the district's size, wealth and educational program. Many districts keep perpetual inventories, numbering each textbook used in the district. Other districts leave the administration of textbooks in the hands of the various school principals and teachers.

The books, once received and processed, are then distributed to the schools within the district. While the Education Code provides for the distribution of state textbooks to the school districts (Sec 9501), the law does not specify how the textbooks should be distributed within the school district. Some districts issue the books to the schools on the basis of the ratios established by the Board of Education. Other districts group textbooks by title and distribute certain titles to certain schools on a rotating basis. In this manner, textbooks are distributed to the districts on a 1:2 basis but are actually distributed to the schools and used on a 1:1 basis.

Use and Treatment of Textbooks. Section 44, Title 5, Administrative Code states: "... The governing board of each school district shall prescribe and enforce rules for the care of state textbooks, and for the collection of money in payment for willful or negligent damage to or loss of state textbooks. All money so collected shall be transmitted, at the close of the fiscal year during which it was collected, to the Superintendent of Public Instruction." During the 1960-61 fiscal year approximately \$12,000 was collected by the Department of Education in payment for willful or negligent damage to or loss of state textbooks.

The Department of Education has made few attempts to enforce Section 44, Title 5, of the Administrative Code and has become more lenient in establishing textbook care and maintenance policies that the districts are to follow. The enforcement of the code has been left completely to the prerogative of the individual school district. The attitudes of the districts vary greatly. Generally, though, policies for making the required collections are lax or nonexistent. The statewide average collection in 1960-61 was less than \$0.15 per ADA. This average can be compared with isolated districts, having forceful policies, that collect as high as \$0.33 per ADA.

The law is not enforced for various reasons. One district (ADA of over 17,000) which collected no money for loss or damaged textbooks during the 1960-61 school year said that it was "poor public policy" to make such collections. A district whose collections averaged \$0.09 per ADA stated that it required too much work to enforce the law properly. Another district (ADA of over 45,000) turned in no funds and district

officials stated that they were under the impression that the law would soon be changed to allow the district to keep all funds collected. On further inquiry, it was discovered that although this district had forwarded no funds to the Department of Education, over \$1,000 in collections for textbooks lost or damaged had actually been collected during the 1960-61 school year. Other districts have conscientiously attempted to make the proper collections. A district (ADA 3,670) collected \$ 338 per ADA. This district stated that collecting for state textbooks lost or damaged is an important part of the district's educational program. Another district (ADA 3,593) collected \$ 101 per ADA. This district felt that making such collections imposed no additional burdens on either the business offices or the schools of the district.

The Purchasing of State Adopted Basic Textbooks. Since districts may not, under the Education Code, purchase basic textbooks from the Department of Education, districts desiring to provide more basic textbooks for existing educational programs than the distribution ratios allow, must overorder on their requisitioning forms. This has been especially true in the area of consumable textbooks. The school districts should be permitted to purchase all textbooks that may be required in excess of the existing distribution allowances.

Disposition of Textbooks. The Department of Education presently has no surplus or obsolete copies of state-issued textbooks on hand. During the last year, however, over 600,000 copies of the reading adoption which became obsolete in 1961 were disposed of by the Department of Education. The disposition was as follows:

Republic of the Philippines 303,254 copies, Liberia 107,333, Tanganyika 45,858, Pakistan 15,254, Indonesia 24,614, South Korea 23,681, The West Indies Federation 81,996. Distribution was made by the United States Armed Services and the United States Public Information Agency.

Shortly before the expiration of the reading adoption, the Department of Education also attempted to distribute to the California school districts as many copies of the reading adoption as possible. This was accomplished by allowing the school districts to submit a special supplementary requisitioning form for ordering desired copies of the reading series.

DIRECT PURCHASING OF TEXTBOOKS

Findings

1 In addition to the basic and supplementary books furnished by the State, school districts may purchase additional books to supplement their educational programs.

2 The textbook needs of school districts are determined through the joint efforts of district administrators, school officials and curriculum advisors and consultants.

3 District supplementary textbook programs are conditioned by the judgment of the district as to the adequacy of the state-adopted texts.

4 Some districts have stocked a surplus of state-adopted textbooks as the result of having purchased as a supplementary text a book which is later adopted by the State as a basic text and then ordering a full complement of the latter.

5. School districts may purchase textbooks either from private publishers or, if the books are adopted by the State as supplementary texts, from the State Department of Education

Recommendations

1 School districts should be required to report all copies of state-adopted textbooks (both those furnished by the State and purchased from private sources by district funds) on hand and in condition to be used when ordering books from the State

2 If schools have district-owned copies of a particular book on hand when ordering additional copies of the book from the State, the State should furnish the district only with a quantity of books that will equal the difference between the number of district copies on hand and in condition to use and the maximum number of books allowed the district under the state-provided textbook program

Supporting Material

The State of California furnishes free basic and supplementary textbooks to California school districts, grades one through eight. As noted above, school districts may purchase additional textbooks to supplement their educational programs.

This section is concerned with textbooks¹ purchased outright by the school districts, using school district funds. California elementary districts spent \$1,017,105.71 and unified districts spent \$2,233,818.69 for the purchase of textbooks during the 1960-61 school year.² District administrators, school officials, and curriculum advisors and consultants, pool their efforts in determining the textbook needs of particular districts.

Often outside groups are requested to help districts plan their future programs. County committees, professional groups, and consultants from universities and state colleges may also participate. Once a district program has been developed, committees are formed to analyze the programs, determine the needs of the programs, and select the books that meet the established needs.

Often school districts are aided in their selection of textbooks by lists prepared by professional and other organizations. For instance, the State Curriculum Commission is presently compiling a list of acceptable supplementary books, teachers' editions and manuals that can be purchased by California school districts in preparing for the new arithmetic series that will be adopted by the State of California in 1965. Once this list has been compiled, it will be distributed to school districts.

¹ The California School Accounting Manual, 1961 edition, identified textbooks in this connection as follows:

1 Basic textbooks. Intended for use by pupils as a basic source of study material for the completion of a subject or course.

2 Supplementary textbooks. Covers part or all of a subject or course but is not intended for use as a basic text. Supplementary textbooks are supplied in quantities permitting use by a group or the entire class.

3 Teachers' manuals, teachers' editions. Related to specific basic and supplementary textbooks and are intended for the use of teachers rather than pupils.

² It should be noted that districts can purchase books other than those identified as textbooks in the California School Accounting Manual. These include books which have not been adopted by the proper authority for use as textbooks, library books and reference books, and all other books used for reference purposes furnished in quantities too small for group use. During the 1960-61 school year, California elementary school districts spent \$2,133,859.11 and California unified districts spent \$2,022,949.94 for books other than textbooks.

The districts will be encouraged to purchase as many of the supplementary books as necessary to prepare the districts for using the new state-adopted arithmetic series. Another area in which school districts have been encouraged to purchase supplemental materials has been foreign languages. Section 7604, Education Code, states

" . . . a foreign language or languages may but is not required to be included in the course of study in the elementary school until June 30, 1965, and on and after July 1, 1965, such course of study shall include a foreign language or languages beginning not later than grade 6 and continuing through grade 6 or 8, as the case may be."

School districts are being encouraged by the Department of Education to prepare now for the new language programs that will be initiated in many districts. Lists of selective foreign language materials are available and are being used by the districts.

The purchases of the districts are dependent on the books furnished by the State. In subject areas in which districts feel that the State is furnishing books adequate for the district's program, few additional books are purchased by district. If, however, the district can afford it and feels that the state-furnished books are inadequate, additional books may be purchased by the district to supplement the state books. Such action on the part of the district may lead to a surplus of textbooks. To illustrate this point the following example is given. In 1960, certain school districts purchased reading textbooks to supplement the state-adopted reading textbooks. The state books were considered by the district to be inadequate. In 1961 the state reading adoption expired. The new state adoption consisted of the same reading text that was purchased earlier by the school districts. At the time of the new state adoption, the districts had over \$10,000 worth of the books in usable condition. Since the State was furnishing the books, the district's purchases had become surplus. In this case an attempt was made to use the surplus books for class library purposes and for home study purposes. This situation, in which a district can order the maximum allowable number of state-provided books when it already has quantities of the same book originally purchased by the district, obviously does not make the best use of textbook funds.

Most districts budget for the purchasing of textbooks just as they would budget for the purchasing of any item. The district must first determine a total amount that will be available for the purchasing of textbooks during the coming year. This total sum must then be allocated among the schools within the district, depending upon the needs of each particular school. The total budgetary amount and the sums to be allocated are usually determined through the joint efforts of district administrators and the various curriculum committees. The programs developed by the committees must be weighed against the amount of money available. The amount that a district budgets for textbooks will fluctuate from year to year. As new programs are developed or new books adopted, the budget must be increased in order that sufficient amounts of the books may be purchased and distributed to the schools within the districts. Between major district adoptions, the textbook budget will provide minor acquisitions and replacement of textbooks.

As previously stated, school districts can purchase textbooks either from private publishers or, if the books are a supplementary state-adopted book, from the State Department of Education. When purchasing from private publishers, schools obtain a school discount, an amount off the list price of a book that varies from 15 to 30 percent.

PURCHASING OF SUPPLIES AND EQUIPMENT

Findings

1. Since the purchasing of supplies and equipment falls into many different accounting categories, it is extremely difficult to determine the total amount of money spent by California school districts for supplies and equipment.

2. The purchasing organizations and the ordering procedures of California school districts vary greatly from district to district.

3. Large districts often have complete and highly developed purchasing programs while smaller districts do not possess the financial means nor the administrative facilities for developing extensive purchasing programs.

4. School districts may purchase from local businesses, county offices, private suppliers, or directly from manufacturing concerns. Many small districts, however, are required to purchase certain supply and equipment items through their county office, using the county standard supply lists.

5. The purchasing programs and policies of the county offices are as varied as the programs of the individual school districts.

6. The programs of the county offices are reflected in their standard supply lists. These lists are developed by each county office and vary greatly in content and price structure.

7. Certain school districts and counties have developed specialized purchasing programs. Such programs, defined as pool purchasing plans and one-shipment plans, enable districts and counties to purchase quantities of certain items at a savings.

8. Standardization would be particularly applicable for certain types of commodities, such as duplicating or mimeograph paper.

9. Specifications are lacking for items such as flags, classroom supplies, and janitorial materials.

10. Price guidelines are necessary as aids for the purchasing programs of the smaller school districts.

11. Even though the State Purchasing Agent can secure many items at a lesser price, to date no school district has taken advantage of the facilities of the State Purchasing Agent in obtaining school supplies.

12. Certain California state-supported agencies compete with private suppliers in furnishing school supplies and equipment to California schools.

Recommendations

1. California school districts and county offices should consider and adopt the purchasing plans that have enabled some districts to purchase certain commodity items advantageously. Such plans would include various forms of pool purchasing and drop shipments.

2 School supplies and equipment items that are common to all school districts and are used in an identical manner by the districts should be standardized

3 Commodity specifications and price guides should be developed for those items that cannot be standardized. Such specifications and guides would aid those school districts unable to support an extensive purchasing program. The specifications and guides should be formulated either on a county or state level.

4. County offices should formulate and distribute purchasing procedure handbooks, policy guides, and all other necessary information to their respective school districts so that the latter may conduct their school purchasing programs more efficiently and economically.

5 The facilities of the State Purchasing Agent should be utilized to a greater extent both by county offices and by individual school districts.

6 School districts should be encouraged to purchase from state-supported agencies whenever practical. One possible method of encouragement would be to require California school districts to request bids from certain agencies when purchasing items that the agencies manufacture. This would enable California school districts to become more familiar with the goods and prices offered by the agencies.

Supporting Material

It is known that school district expenditures for supplies and equipment comprise a significant part of the total amount spent in California on education. As previously noted, however, it is difficult to determine precisely how much money is spent for supplies and equipment due to the many accounting systems used.

Certain facts are especially worth noting with respect to the diversity of purchasing organizations and ordering procedures utilized by school districts. Some large school districts have more complex and more highly developed purchasing programs than their county offices. These programs may include testing laboratories in which items submitted by prospective suppliers are thoroughly tested and analyzed. Such districts also may have a full-time purchasing agent and purchasing staff and are thus able to keep abreast of current marketing trends and practices. These districts usually possess the buying power that is necessary for securing the most advantageous prices, are able to order various items in large quantities, and are well aware of the prices that similar districts are paying for comparable items.

Smaller districts do not possess the financial means nor the administrative facilities for developing extensive purchasing programs. Administrators of small districts have neither the time nor the technical knowledge to become thoroughly acquainted with the fundamentals of purchasing. In many small districts the principal or the business manager has the responsibility for securing the necessary supply and equipment items. When purchasing supplies and equipment, such districts must rely upon salesmen of private suppliers and upon the county office to furnish the information necessary for making purchasing decisions.

School districts purchase certain supplies from local businesses. Most frequently purchased are items that the districts may use in limited

quantities and items requiring regular or extensive servicing. State-wide suppliers, when contracting with local school districts, will often include local businesses in the contract. In such cases, the local businesses will be designated as the servicing agent and will perform a co-ordinating function between the school district and the supplier. Local businesses have the advantage of being able to offer school districts a customized service consisting of immediate delivery and information concerning the use and service of many products.

As specified in Section 16501 of the Education Code, the county board of education is required to establish rules and regulations under which the elementary school districts governed by school trustees and having an average daily attendance of less than 2,500 shall purchase standard school supplies and equipment through the county superintendent of schools, or when directed by him, through a county purchasing agent. The county board of education also is required to list, as standard school supplies and equipment, items that can be purchased advantageously in quantity.

The rules, regulations, and standard lists that are developed by the various county boards of education vary considerably. Some basic factors that contribute to the determination of the extent and type of purchasing program developed by a county are (1) geographical makeup of the county, (2) distribution of school districts within the county, (3) number and size of school districts within the county, and (4) composition and size of the county office. The standard lists vary with respect to both items and prices. The Legislative Analyst requested copies of the 1962-63 standard lists of the 58 California counties. Of the 50 counties which submitted standard lists, 48 counties included instructional materials on their lists, 23 counties included janitorial supplies, 18 counties included athletic equipment, and four counties included furniture. The number of items ranged from 42 to 2,880 items per list. The prices obtained by the counties for standard list items also vary greatly. The wide differences in prices do not necessarily reflect differences paid for identical brand name products. The differences, however, do reflect the variances paid for products that are supposedly meeting the needs of the school districts. An example would be mimeograph paper, Sub. 20, 8½ x 11 white. The price paid for this paper by 50 counties ranged from \$72 per ream to \$138 per ream.

During recent years certain California counties have initiated various types of pool-purchasing programs. Although not widely practiced at the present time, such programs have proven quite successful. The pool-purchasing programs are conducted in the following manner. Certain commodity items that can be advantageously purchased in large quantities are chosen by the county office. Once a suitable list of such items has been compiled, the list is offered to the participating school districts within the county for the placement of orders. Each district estimates the amount of each listed item that will be needed during the coming school year. The school is obligated to take delivery of the quantity estimated. The county office then totals the amounts required by the various districts and sends the order to bid. The contract will usually include a stipulation that the commodity items ordered will be delivered F.O.B. county office by a single shipment.

Frequently, such a shipment is made directly from the factory rather than from the supply house that bid on the order. To handle a shipment of such size, the county office must provide warehousing space and additional personnel for handling the goods. Since most shipments are made during the vacation months, existing school facilities can frequently be found to house the merchandise. Part-time student help can also be obtained to handle the inventory and delivery of the goods. Shipments to the respective school districts are made on a designated day either by county or district vehicle. There is little doubt that through pool purchasing certain basic school supplies and equipment items can be purchased at a cheaper price. For example, duplicating paper Sub 16, 8½ x 11, costs one county \$94 a ream when ordering from a standard list in 1959. The same paper costs \$857 a ream through a pool-purchase plan, F O B county office in 1960. The paper cost \$593 per ream when ordered through a pool-purchase plan, F O B school district in 1962. The 1962 average price paid by California counties in 1962 is \$89 per ream. The operation of such a program entails both fixed and variable costs. Warehouse space, inventory management accounting functions, and delivery costs are only some of the expenses involved in conducting such a program. The cost of a pool program will generally be in direct proportion to the size and type of program conducted. The average cost of operating pool-purchase programs is less than 4 percent of the total volume dollar of the items purchased.

It would be fruitless to attempt to standardize the purchasing of all supplies and equipment items. For certain items, specifications that meet the requirements of one school district may fall short, or exceed, the specification demanded by another district. In such instances, the items must be chosen to meet the specific needs of the school district. There are, however, school supply and equipment items that are common to all school districts and are used in an identical manner by the districts. Such standardization would be particularly applicable for certain types of paper, such as duplicating or mimeograph paper. Specifications for other standard items such as flags, classroom supplies, and janitorial materials could also be formulated. Specifications should be established, either at the county or state level, by committees familiar with the items in question. Districts should be required to abide by the specifications and standards. Moreover, some supplies and equipment are used in sufficient enough quantities so that several sizes or types could be standardized in a manner which would permit selection by different schools in accordance with their special needs.

Price guides could also be developed to aid districts in determining proper prices to be paid for certain items. It is recognized that some price and quality variance is necessary because of different conditions and requirements among the various schools. However, it is evident that some guidelines are necessary. For example, the prices paid for an 18-inch floor push broom vary from \$2.08 to \$25.95 each. Also, the prices paid for 4 x 6 California Bear outdoor flags vary from \$3.75 to \$8.80 each.

Section 13409 of the Government Code authorizes the State Purchasing Agent to make purchases of materials, equipment, or supplies on behalf of California school districts. No such purchase shall be for

less than \$500. The State Purchasing Agent regularly purchases many supplies used by school districts at lower prices than the districts pay.

For instance, the state average price paid for 5-inch blackboard erasers is \$4.66 per dozen. The State Purchasing Agent can obtain 5-inch blackboard erasers for \$2.88 per dozen. Although not all districts could take advantage of the lower prices obtained through the facilities of the State Purchasing Agent, many large districts and county offices whose purchase orders would be over the \$500 minimum amount could use his facilities, yet none do. Counties participating in pool-purchasing or drop shipment plans should especially be encouraged to extend to the State Purchasing Agent a list of possible items that could be handled through a one-time, drop shipment agreement. Since the service charges of such plans are usually less than 4 percent, there are many items that could be purchased advantageously through the State Purchasing Agent.

Certain California state agencies compete with private suppliers in furnishing school supplies and equipment to California schools. The California Industries for the Blind, for example, manufacture and sell a complete line of janitorial supplies. These supplies are considered to be of equal or superior quality to those items sold by private firms. The prices charged by CIB are also competitive, many prices being lower than the average prices paid for similar items by school districts. This can be illustrated by examining the prices paid by school districts for a 24-inch push broom. The average price being paid by California school districts in 1962 was \$17.53. CIB charged \$7.20 for a broom of equal or superior quality. Although the articles offered by CIB are competitive with those offered by private firms, both in quality and in price, CIB's total sales to California political subdivisions, including schools, for the fiscal year 1960-61 was only \$12,759.

PAPERBACKS

Findings

1 The State of California has previously bound only certain types of state-adopted textbooks with paper covers. These books have consisted mainly of teachers' manuals, consumable workbooks, handwriting manuals, preprimers, and supplemental reference texts.

2 There is a strong possibility that other California state-adopted textbooks presently being bound in hard covers could be economically bound in paper. This would include both books purchased from private publishers and books printed and bound by the State Printing Plant.

3 The binding savings that could be realized by using a paperback cover instead of a hardback cover would be between 10 percent and 30 percent of the cost of the hardback textbook depending upon the type of binding used and the size of the textbook. However, to efficiently bind a textbook in a paper cover, the State Printing Plant must purchase additional pieces of binding equipment.

4 The Department of Education has undertaken a controlled experimental program for determining the feasibility of using paperbacks in California elementary schools. This should provide the department with information it does not now have regarding the durability, life expectancy, or replacement ratio of paperback textbooks as compared with hardback textbooks.

5. The Department of Education has proposed that all textbooks being printed for use in the last year of an adoption period and which are not being considered for readoption be provided in paperback.

6. No state is making extensive use of paperback textbooks in the elementary grades. Many states, however, have expressed an interest in the possibilities of using paperbacks in these grades.

Recommendations

1. The Department of Education should review the book titles presently under state adoption and determine those textbooks that can be economically and practically bound in paper covers.

2. The Department of Education, in co-operation with the State Curriculum Commission, should formulate standards that can be used in conjunction with future adoptions. These standards would allow the State Curriculum Commission to determine those books that could be economically and practically bound in paper covers.

3. The State Printing Plant and the Department of Finance should determine the most economical methods for binding books in paper covers.

4. The Department of Education should expand its program of controlled experiments on the feasibility of using paperbacks.

5. The Department of Education should examine the various paperback programs and studies being conducted by other states, professional organizations and private firms. Data gathered should be carefully evaluated and, where appropriate, related to the State of California textbook program.

Supporting Material

The 1962-63 budget analysis recommended that certain hardback textbooks be bound instead with paper covers. At that time, the Department of Education had not conducted any experiments or studies which would have determined those titles that could feasibly be bound with paper. The Legislative Analyst concluded, however, that those textbooks that would receive a minimum amount of use could be bound with paper covers at a minimum risk. Supplementary teachers editions were selected. These editions receive substantially more care and less use than basic teachers editions or than basic and supplementary pupils textbooks. The binding of approximately 150,000 selected supplementary teachers editions with paper covers will result in a savings in the 1962-63 Budget of approximately \$56,000.

After this recommendation had been made, representatives of the Legislative Analyst's office, the Department of Finance, and the Department of Education met and discussed the pros and cons of binding textbooks with paper covers. Although no general agreement was reached, the Department of Education proposed that "all textbooks being printed for use in the last year of the adoption period and which are not being considered for readoption be provided in paperbacks." This experiment will involve approximately 200,000 textbooks. Binding such books will involve little risk and will constitute a valid experiment. The savings that such an action will effect is presently undeterminable.

The Department of Education is also initiating (in response to a letter from the Legislative Analyst dated December 28, 1961) a controlled experiment using paperback and hardback copies of the same textbook. This experiment will be conducted in the Los Angeles City Schools under the direct supervision of the Department of Education. An experiment of this nature, properly controlled, should enable the department to determine additional hardback textbooks that can feasibly be bound in paperbacks.

In an effort to obtain a view of the extent to which paperback textbooks are being used, and of the success connected with the use of such material, the Legislative Analyst has been in constant communication with many organizations throughout the country. Recently, a questionnaire was distributed to all 50 states, to Puerto Rico, and to Guam. The questionnaire inquired as to the extent of use of paperback textbooks in the states' respective school systems and also as to any studies and experiments related to paperbacks that might be available. Thirty-two replies were received. No state answering the questionnaire is making extensive use of paperback textbooks in their elementary schools. Texas, however, is presently distributing 15 paperbound textbooks on an experimental basis. The textbooks are being bound to the specifications set by the State of Texas. The first report on this experiment will be made on January 1, 1963. Although no other state was actually distributing paperback textbooks to their elementary schools, many states expressed an interest.

The Legislative Analyst has ascertained the views of many professional organizations, publishers, and private businesses with respect to the use of paperbacks.¹ Most of these organizations expressed the opinion that paperback books are not only practical but are very economical. No organization could, however, give examples of paperback textbooks being used in elementary schools.

Savings realized by converting a given book to paperback at the State Printing Plant vary, but ought to be around 30 percent. Statements from several outside sources indicate that the initial cost of paperbacks would be about one-third of the cost for standard hard covers (i.e., a two-thirds savings). It should be emphasized, however, that savings of this magnitude can be realized only by redesigning a traditional hard cover book to paperback through employing such means as (1) limited number of colors, (2) smaller page size, (3) narrower margins, and (4) less expensive paper.

In binding paperback textbooks, three different processes could be used. Books could be Smyth-sewn, side-stitched, or glued (perfect-bound process). The State Printing Plant is presently equipped to bind unlimited quantities of paperback textbooks by the first two methods. Orders requiring perfect bound bindings would have to be sent to the University of California for completion. A high percentage of the textbooks proposed to be paper bound should use the perfect-

¹The National Council of Teachers of English, the National Education Association, the Council of State Governments, the American Textbook Publishers Institute, the United States Testing Company, Scott, Foresman and Company, Book Manufacturers' Institute, Inc., Cardoza Bookbinding Co., James C. Hale and Company, Ginn and Company, MacMillan Company.

binding process since this method would enable the State to realize the greatest savings. If the State Printing Plant is to economically use the perfect binding process, it will be necessary to purchase a Sulby Perfect Binder Model 88. This machine has been requested by the State Printing Plant and could be used to bind items other than textbooks.

It is anticipated that over 350,000 textbooks presently being distributed with hard backs to California elementary schools will be bound during the 1962-63 budget year with paper covers. This number is far from the total figure of books that eventually could be distributed with paperbacks. By analyzing the information gained from this initial paperback experiment, a complete list of possible paperback titles can be compiled. Due to the interest being expressed in other states, and as results are forthcoming from the Texas study, additional information on the subject will also be available.

The subcommittee believes that the principle has been established and the initial steps have been taken in developing an economical program for producing and distributing paperback titles in the State of California.

CALIFORNIA LEGISLATURE

**ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS**

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January 7, 1963

Published by the

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COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
SACRAMENTO, January 7, 1963

HON JESSE M. UNRUH
*Speaker of the Assembly and
Honorable Members of the Assembly
Assembly Chambers
Sacramento, California*

GENTLEMEN. Enclosed is the report on Temporary Military Leave for Training, State Specialized Training Programs and Leave for Civil Air Patrol Duty prepared in accordance with the provisions of House Resolution 456 by the Subcommittee on Leave Pay of the Assembly Interim Committee on Ways and Means

I urge that the Legislature give careful attention to the recommendations and data contained herein

Respectfully submitted,

ROBERT W CROWN, *Chairman*

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SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, January 7, 1963

HON. ROBERT W. CROWN, *Chairman*
Assembly Interim Committee on Ways and Means
State Capitol
Sacramento, California

DEAR MR. CROWN: In accordance with your directive and pursuant to House Resolution 456, Unruh, 1961, the Subcommittee on Leave Pay herewith submits its report on Temporary Military Leave for Training, State Specialized Training Programs, and Leave for Civil Air Patrol Duty.

Contained herein are the results of staff study on these questions and accounts of two hearings held by the subcommittee, in the State Capitol, Sacramento, on May 7, 1962 and in the Los Angeles State Office Building on June 11, 1962. Also contained herein are recommendations as to possible legislative action in these fields, and data which may form the basis for additional legislation.

As it was not possible to cover all types of paid leave authorized by the State of California during this interim session, the present report also has somewhat the function of a pilot study, and certain basic forms applicable to further studies in this area have been described.

The subcommittee is particularly indebted to Mr. Robert Courtemanche, principal researcher for the subcommittee who prepared the final report and to Mr. Don Christian, Assistant Administrative Analyst, office of the Legislative Analyst, for his technical services to the subcommittee.

Respectfully submitted,

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INTRODUCTION

The studies of the Subcommittee on Leave Pay of the Assembly Interim Committee on Ways and Means were conducted pursuant to H R 456, Unruh, 1961 session, relative to leaves of absence for public employees. Also assigned to this subcommittee was A B 64, Carrell, 1961 session, proposing to provide leave with pay for state employees engaging in Civil Air Patrol search and rescue missions.

The types of paid leave under consideration fall into the following five broad categories:

- 1 Leave for military duty
- 2 Leave for rest or recuperation, including holidays, vacations and sick leave
- 3 Leave related to employment, including that for hearings, examinations and training
- 4 Leave for assigned public service, including jury duty and witness duty
- 5 Leave for voluntary nonmilitary public service.

The first four of these categories are presently included in state-authorized paid leaves of absence. The fifth category, which would include the proposed leave for Civil Air Patrol duty, does not encompass any type of paid leave of absence currently authorized by the State.

Certain broad principles were developed as applicable to the investigation of any type of paid leave of absence authorized or proposed for public employees in California. These are:

- 1 The purpose of the leave
- 2 The areas of state and local government in which present and proposed regulations have effect
- 3 How programs within or outside of the agency are affected by the leave policies
- 4 Compensation to the individual concerned
- 5 Permissible duration for the leave
- 6 Costs.
- 7 Controls
- 8 Prevailing practices

The provisions of state law studied by this subcommittee frequently apply also to or set an effective example for other public jurisdictions in this State.

Since all of the types of paid leave of absence authorized by or proposed to the State could not be given proper attention during the interim, it was decided that the 1961-62 period be used for completion of an intensive pilot study of certain areas of leave pay. The three areas which were studied are the proposed Civil Air Patrol leave, state specialized training programs, and temporary military leave for training.

FINDINGS AND RECOMMENDATIONS

1. Temporary Military Leave for Training

Finding No. 1: The State of California authorizes paid temporary military leave for training for a period in excess of that allowed generally by the federal government and by almost every other state, and in an amount in excess of all private industry surveyed.

Recommendation: Any legislative action directed towards placing California's temporary military leave pay provisions in a position comparable to other states or of private industry be made with consideration of prevailing national military needs.

Finding No. 2: The State of California authorizes the continuation of employment benefits for up to 180 calendar days of temporary military leave for training at any one time.

Recommendation: The statutes be amended to limit this benefit entitlement to one 120 day entitlement per fiscal year, and not more than 250 days in any consecutive five fiscal years.

Finding No. 3: Present provisions have permitted situations where the employee taking his entitled military leave has given the agency inadequate notice of his departure, resulting in problems particularly with smaller agencies

Recommendation: The statutes be amended to provide the State Personnel Board and responsible bodies in other jurisdictions with authority to establish policies requiring reasonable notice for the authorization of paid military leave

Finding No. 4: The present policy of diffusing expenses for the military by including them in regular salary appropriations results in the poor fiscal policy of not being aware of how considerable amounts of money are being utilized.

Recommendation: The Department of Finance be directed to order reporting of all funds expended for salaries during temporary or "permanent" military leave, and to devise a mechanism whereby these amounts will be estimated and/or reported in the Military Department section of the annual budget

Finding No. 5: There is considerable concern among those involved in military reserve programs that enlistments are becoming more difficult to obtain

Recommendation: The Military Department of the State of California prepare a study of ways in which the Legislature might act to encourage enlistment and retention of personnel in the reserve forces and National Guard.

Finding No. 6: Confusion or lack of information exists in some jurisdictions as to the meaning and applicability of the military leave provisions.

Recommendation: The Military Department be instructed to issue a booklet or paper explaining the terms and applicability of the military leave statutes, for distribution to all governmental jurisdictions in California, and that a survey be prepared for presentation to the Legislature indicating the application of military leave policies in various jurisdictions

Finding No. 7: Technical problems are suggested in the statutes, with regard to conflicts and ambiguities in certain sections

Recommendation: The Legislative Counsel be requested to draft statute revisions intended to make more specific the statutes in the problem areas

Finding No. 8: The regular military leave statutes, in certain circumstances involving a splitting of the training period into two fiscal years, permitted persons in six-month active duty programs to receive twice the intended 30 days of public pay.

Recommendation: That a provision be added to Section 395 02 of the Military and Veterans Code to limit pay to 30 calendar days in a six-month training program under the Reserve Forces Act of 1955 and any subsequent amendments to that act.

II. State Specialized Training Programs

Finding No. 1: The state specialized training programs are generally well-administered, though certain problems appear relating to under use by the departments, difficulties of procedures, and other minor matters do occur

Recommendation: The State Personnel Board and Department of Finance be directed to continue their efforts toward encouraging use of the programs and simplifying and making more flexible the procedures for arranging participation, and to report to the Legislature on their progress in these areas at the start of the 1964 session of the Legislature

Finding No. 2: The time required for budgetary processing of a training application hinders the effective use of the program

Recommendation: An additional small fund be budgeted to supplement management-specialized training.

III. Civil Air Patrol Leave

Finding: The amount of state employee activity in the Civil Air Patrol and the amount of interest expressed in the proposed paid leave for CPA duty do not justify the entry of the State into the field of compensation for voluntary nonmilitary service

Recommendation: No action be taken to permit leave with pay for Civil Air Patrol search and rescue missions

PART A

REPORT ON TEMPORARY MILITARY LEAVE FOR TRAINING

Proposals to alter California statutes relating to temporary military leave for training were made in the 1959 and 1961 sessions of the Legislature. H. R. 456, Unruh, 1961, proposed a study of leaves of absence for public employees to encompass, but not be limited to, "the subject of leaves of absence with pay for purposes of training or duty with military forces or with reserve and auxiliary components of the military services," which is the subject of this study.

The type of leave primarily considered was recurring military leave, such as the annual two-week National Guard or reserve encampments. Other special military training leave not falling within the normal area of active duty was also considered.

PURPOSES OF PAID MILITARY LEAVE

Five purposes that may be served by permitting military leave with pay are: serving the purpose of national defense, preventing loss to individuals in national service, providing a fringe benefit for employment, improving capabilities of public personnel, and providing an incentive to public service.

National Defense

The basic purpose of temporary military training is national defense. Military forces of the United States operate on an expandable army concept, whereby a limited regular force is augmented in time of emergency from a large ready reserve. There has been no suggestion that leave should not be permitted, and such a policy would not be supportable. The issues raised in proposals for policy changes have related to compensation and to certain technicalities such as notice. Leave would in any case be permitted, with or without compensation, but the public policies regarding compensation have considerable effect on the ability and desire of the individual to engage in military reserve or National Guard activity.

Individuals in active reserve status are normally required to engage in two weeks of full-time military activity each year. In addition, certain technical and administrative personnel find additional military training necessary. Mr. James Frank of the Reserve Officers Association said on May 7,

"The professional standards now being required of officers in the reserves of the armed forces necessitate schooling which is almost impossible to complete without residence courses of three months or longer."

At the June hearing, Assemblyman Frank Lanterman questioned whether the amount of state contributions to programs of national

defense constituted a "dislocation of tax resources," since the State undertakes to support from its limited tax base a considerable part of a basic federal responsibility.

The National Guard does make an extensive emergency force available to the State. According to Brigadier General Carl H. Aulick, Assistant State Adjutant General, the Guard has been out in State service more than 22 times in the past 16 years, with 6,000 man-days of state-paid duty. Although this is not of great significance when considered against the size of the organization, the force remains available for any extensive emergency.

Preventing Loss to the Individual

If temporary military leave without compensation were granted, the public employee going on training duty would lose his employment fringe benefits for the period, any amount by which his normal pay exceeds his military base pay, and any additional unreimbursed costs engendered by the duty.

With regard to fringe benefits, Mr. Arthur Levitas of the All-City Employees Association commented:

"the employee is not doing this for his own benefit but rather for the benefit of everybody and he should be given the same rights that he would have had he remained on the job."

Nevertheless, there has been some question as to the propriety of permitting the accrual of vacation, sick leave and other benefits for extended periods of absence, and large costs to the State are involved.

The amount of public pay required to augment the military pay for the training program to bring it up to the employee's normal salary level makes it possible for the employee to maintain his normal standard of living and family support. Granting at least partially paid military leave makes it possible for the employee also to take his vacations with his family rather than making it economically necessary for him to use his vacations for military training.

If a public employee receives his full public pay in addition to his military pay for the training period, the military base pay represents a "bonus" or increase in his compensation over his normal rate. It has been suggested that this additional compensation covers the individual's increased expenses for food and shelter, clothing, communicating with the family, and necessary social activities at the camp. There is some evidence, however, that the compensation generally considerably exceeds the additional costs for the encampment period, though costs for various other military reserve activities throughout the year may in the balance cause an overall loss to the individual.

Providing a Fringe Benefit

There is some indication that the California provisions for paid military leave for public employees are useful in recruiting personnel. Generally, however, consideration of paid military leave as a fringe benefit is restricted by the fact that the great majority of public employees cannot or will not take advantage of it.

Improving Capabilities of Public Personnel

In many instances reservists and National Guardsmen in public employment have military assignments relating to their civilian occupation, and certain training assignments improve their knowledge. It has also been suggested that the assignment of responsibilities in military duty tends to improve the performance of the person in handling the responsibilities of his regular job. Although these are certainly desirable effects, they would not be sufficient by themselves to justify State military-connected expenses, since specific employee training programs can generally more efficiently bring about these results.

It has been suggested also that, because present leave pay provisions apparently tend to aid retention of employees, public jurisdictions save considerable sums that would otherwise be expended in training new personnel.

Providing Incentive to Public Service

One of the major concerns of military people in discussions of State military leave policies was that public personnel should receive all possible encouragement to participate in reserve and National Guard activities. It was pointed out that the turnover in National Guard membership in California considerably exceeds that in many other states, possibly because the general prosperity of people in the State makes the extra income from reserve duty less needed.

General Aulick expressed the view that the proposed decrease in allowances by the State would hurt enlistments in the Guard. Mr. C. D. O'Sullivan, President of the National Guard Association in California, told the committee nothing is harder or more distasteful than recruiting, and anything that makes it harder or gives more excuses, should be avoided.

There was considerable discussion in subcommittee hearings regarding the seeming conflict between the concept of patriotic public service and the requests to continue the "double pay" allowances—permitting the employee on training duty to receive both his full military pay and his full public pay for the period. The following discussion in May outlined the problem:

Assemblyman Tom Bane: If we cease giving double pay to the 5.9 percent of the Guard who are public employees, then you feel that the 5.9 percent are going to quit the Guard?

Mr. C. D. O'Sullivan: Oh, no, certainly not. They'll continue to make patriotic sacrifices as they have for 400 years.

Assemblyman Bane: Then, really, we're not talking about hurting the Guard, are we? What we're talking about is whether we're going to give double pay or not?

Mr. O'Sullivan: No. You're hurting them by doing them an injury, taking away something that they have reason to expect that they would get when they enlisted . . . that they have gotten for many years, and you're taking it away at a time when greater demands are being made daily upon them.

Assemblyman Bane: Your approach here of the great patriotism involved on the one hand and then if we don't give them double pay they're going to leave . . . it's kind of hard for me to reconcile.

General Aulick, in another discussion, said :

" . . it's still a patriotic thing of the individual. But if individuals do not do it without encouragement, maybe we had better continue to encourage them."

Statutory Issues

The statutory issues involved in this study included the following:

1. What is properly the statutory definition of "temporary military leave of absence"?

Section 389 of the Military and Veterans Code defines "temporary military leave of absence" as "a leave of absence from public employment to engage in ordered military duty for a period which by the order is not to exceed 180 calendar days including travel time for purposes of military training, drills, encampment, naval cruises, special exercises or like activity as a member of the reserve corps or force of the armed forces of the United States, or the National Guard, or the Naval Militia."

If the code were to be amended to reduce the period included in the definition of such leave, it would be necessary to give attention to the words "by the order" and "including travel time," since it could be the intent of the Legislature that individuals going on training missions which *on the face of the order* or with the inclusion of travel time slightly exceed the stated limit of days, should receive compensation and other perquisites for at least a portion of this time.

2. What should be the permissible period for such leave?

Section 395 of the Military and Veterans Code specifically entitles the employee to 180 days of temporary military leave of absence as defined in Section 389. Neither section at present appears to limit the number of times an employee may take such 180 days or less in a year.

Legislation introduced in 1959 and again in 1961 (A B 2876) proposed to reduce the period defined and allowed from 180 to 30 days. The same legislation proposed to limit the entitlement to one 30-day period per fiscal year.

The primary effect of such a change would be to reduce the period for which an employee on temporary military leave could continue to accrue vacation time, sick leave and other perquisites. This is in part a move toward economy.

On this point, Brigadier General Carl H. Aulick, Assistant State Adjutant General, commented.

" the 180-day figure . . . was put in shortly after World War II to enable individuals to go away . . . when they had to take certain specialized training. Now . . . all reserves have become much more technical . . . they have to go away to service schools, not only to advance themselves professionally, but also to be able to perform their assignments "

The proposed decrease in duration of temporary military leave for training permitted was not intended to prevent the public employee from going on extended training missions. It was expected that the

employee could take additional time either as paid vacation or as regular leave of absence without accrual of fringe benefits

Another argument in favor of this change is that there have been some reported abuses in the way of employees going on extended leave with very short notice to the agency. In the case of a very small agency, or a local jurisdiction, this could be a severe problem.

Hearing witnesses were in agreement that a policy requiring adequate notification should be formulated. This might be accomplished by legislation requiring perhaps 30 days notification for authorization of paid leave, with the Personnel Board permitted to waive this requirement in any case where shorter notice was justifiable or where particular hardship would result from the loss of pay. Such a statute would have effect as a warning device, though it might not actually result in the withdrawal of any paid leave privileges.

Another arrangement was discussed by General Aulick

"We have a working agreement with the Highway Patrol. When a member . . . wants to go away to school . . . he must secure a letter with his application requesting clearance from the Highway Patrol to leave."

3 What should be the compensation during such leave?

4 What should be the limitation of this period of compensation?

Section 395.01 of the Military and Veterans Code presently allows 30 calendar days per fiscal year with full pay for public employees on temporary military leave.

Legislation in 1959 and 1961 proposed to reduce the period of payment to 15 days *plus travel time*, and to reduce the state compensation by the amount of the individual's military base pay.

The argument in favor of the change in days allowed is that 30 days is in excess of normal requirements, since the standard summer encampment period is two weeks. On the other point, it has been said that there is an unnecessary and inequitable double compensation of the employee for his time.

A subsidiary point of consideration here is that this section currently operates on a fiscal year basis, although in the past it was on a calendar year basis. If the period allowed were reduced to two weeks, it is very possible that many employees might find themselves taking summer encampment twice in the same fiscal year and losing out on payment for one period. This would seem less likely in a calendar year arrangement. The proposed legislation would also have altered Section 395.03 to coincide with other changes.

5. What guarantee should there be for re-employment of the individual after the training period?

Section 395 of the Military and Veterans Code guarantees an absolute right of restoration to the former office or position or status for the person returning from temporary military leave.

The 1959 and 1961 legislation did not propose to alter this section directly. However, reducing the circumstances under which this section applies could conceivably abridge these rights, and drafting of new legislation would have to be done with care.

6. Additional issues.

The 1959 and 1961 legislation made one further proposal: that no state compensation should be allowed for one who accepts military training duty on a nonpay status

Legislation undertaken in this area would have to meet two other considerations: avoiding conflict with federal regulations, and avoiding conflict with other state laws and policies.

THE BACK-DOOR APPROACH

A key issue in the entire discussion of present statutes regarding paid temporary military leave for training was the idea that providing military service incentives through a policy of double compensation is in principle a poor arrangement and one that leads to certain inequities among members of the reserves and National Guard. The following discussion in May highlighted the issue

Mr. Larry Margolis, Assistant to the Speaker: The premium pay arrangement which this amounts to is a kind of back-door way of encouraging enlistments among the state employees, and there is on the part of many people some feeling that this is a bad principle, apart from the National Guard situation, that it's a bad precedent for the State to provide or allow for double pay in any kind of activity. At the same time, and I'm expressing what I believe to be the speaker's view and motive in presenting legislation like this, there is concern about the enlistment problem in the Guard and the necessity to deal with that problem. Are there not ways of encouraging enlistment or improving morale without using this arrangement which has serious consequences for other kinds of state employment policies?

General Aulick: I am certain that we could work out something that would not completely discourage people. But that is the whole thing we're concerned about, the encouraging of people here, as I say. If the federal government or the State should change its policies, there would be a serious impact on private industry employees . . . What other type of benefit we could give in lieu of the leave with pay, I don't offhand know, but we would certainly be willing to work with any committee to try to resolve it. The Military Department has not made a study of other possibilities.

Mr. Margolis: . . . the point that I'm getting at is that if we say, as I think we should, that this is a service that the State needs and wants, then we ought to go at it through the front door and say, those state employees or public employees who will devote their time to this function which the State regards as extremely valuable will be recognized for that in some direct benefit way without using this arrangement that throws other aspects of state employment out of kilter.

General Aulick: There are a number of things that we could research and come up with some ideas on. But I don't know that there'd be any real savings. But it may be that it puts in a truer perspective what we're actually doing.

There is at present no regular mechanism for determining how much money the State expends for military purposes through the military leave provisions. The cost figures that were made available for this study derived from a special 1959 department by department survey conducted by the State Personnel Board. Committee consultant Larry Margolis commented on this idea:

"Apparently at present there are not very good records of how many state employees are members of the Guard and how many of them take leave and how much they're paid for it and so on, and it might be possible through a directive to the departments or something contained in the budget to require a recording of this information regardless of any changes in policy so that you know how much and what's involved here."

Several hearing witnesses expressed the opinion, however, that much of the cost does not actually accrue to the military service, since the employee frequently crams his work for the period of absence into the time before or following the leave.

Another suggestion made to the subcommittee was that the State might be unfairly discriminating in providing the military service incentive only for the public employees. It was said that morale problems might be created for the majority of National Guardsmen who come from private employment, as they compare their benefits with those of the small portion of public employees in the Guard. However, no evidence of actual resentment was presented.

COSTS AND PERSONNEL AFFECTED

The legislation introduced in 1959 and 1961 in this area was intended to tighten the Military and Veterans Code from a fiscal viewpoint while retaining the benefits necessary to avoid loss to the individual in taking part in military programs.

The amendments to Sections 389 and 395 would have saved the State the costs of continuing certain fringe benefits to individuals on training missions longer than 30 days, which is twice the generally required minimum. The amendments to Section 395.01 would have saved the State the amount of the individual's military base pay for two weeks, and the amount of the individual's state pay for an additional two weeks should he go on a longer leave.

If the individual were to choose to take his military training on his normal vacation time, in which case he personally would get more money although he loses his vacation time, the saving to the State would be in man-hours rather than dollars.

A survey made by the State Personnel Board in fiscal year 1958-59 determined that 1,808 or 3.8 percent of the male state employees took annual temporary military leave. (Of these, about 1,400 were reservists, and about 400 National Guardsmen.) The average length of absence was 10.1 working days, and the average payroll cost per employee was \$259 for this absence. The total cost was estimated at \$468,778. In terms of man-years this would be 82.2. It was estimated that the annual cash savings from the 1961 proposed legislation, A.B. 2876, would be, conservatively, \$250,000.

A new survey has not been made, but Mr. Roy Stephens, Assistant Board Secretary for the State Personnel Board, estimated that as of this fiscal year of 1961-62, the annual cost to the State for this type of military leave of absence is somewhat slightly in excess of \$669,000 in direct payroll cost. This was calculated on the basis of 3.8 percent of the 55,875 male employees taking 10 days of temporary military leave at an average pay of \$315 for the period.

The percentage of the total state payroll of \$541 million involved is less than 1 percent, but is nevertheless a considerable sum. The estimated payroll savings to the State from the proposed legislation for the current payroll level is approximately \$350,000. Since the present statutes apply to all governmental jurisdictions, the estimated savings for all governments were in excess of \$1,350,000.

The Personnel Board survey figures indicated that the average state salary of the person going on military leave in 1958-59 was \$560, approximately \$120 more than the salary of the average state employee. In 1961-62 the average was estimated at between \$600 and \$700. This was believed to indicate that there was a large representation in the higher ranks of reserves.

This reinforces information from a California Military Department memo of November 8, 1961, which states that 5.9 percent of the 25,000 members of the California National Guard are public employees, but 16 percent of the people in leadership positions in the C.N.G. are public employees.

This memo also indicated that 27 percent of the public employees in the C.N.G., about 391 of 1,439, are state employees; about 22 percent are county employees; about 29 percent employees of a city; 22 percent are employees of a school district; and a small portion are employees of a utility district. This offers an indication of the relevance of these laws to other jurisdictions. Present state laws in this area bind all jurisdictions.

PREVAILING PRACTICES

Federal policy with regard to military leave for training is generally that leave of absence without loss of pay, time, or efficiency rating is allowed for up to 15 calendar days per fiscal year. Travel time, unless encompassed by the period of the orders, is not paid. Certain regulations with regard to the type of service, status before and after leave, overtime or differential pay, and other matters also apply.

The policies of other states vary greatly. The subcommittee staff on October 23, 1961, sent out a questionnaire to all other states requesting information on military leave policies. The information is summarized in the following tables.

Table I. This is a state-by-state breakdown. An asterisk in the first column indicates that the full state salary is allowed during the training period. The second column shows those states which grant the state salary less the military base pay. The third column shows those instances in which no pay at all is granted.

The column on the extreme right offers information on how liberal policies are with regard to regular leave for active duty.

Note (f) shows that no states reported an extra pay allowance for travel time, as the 1959 and 1961 legislation proposed to do.

TABLE I
SURVEY OF MILITARY LEAVE PAY POLICIES

State	Full pay	Difference	No pay	Maximum days paid	Work or calendar days	By calendar or fiscal year	Annual limit of leave in this category	Payments on entering regular service
California.....	*			30	C	F	180 days	30 days full pay
(Proposed A B 2878).....	*	*		15	C	F	30 days	No change
Alabama.....	*			16 ¹ / ₂	W	C	No limit	No policy
Alaska.....	*			10	W	C	180 ¹ / ₂	No pay
Arizona.....	*			10	W	C	No limit	No policy
Arkansas.....	*			10	W	C	6 mo unpaid	2 weeks pay
Colorado.....	*			21	W	C	12 mo unpaid	No pay
Connecticut.....	*			21	C	C	30 days	No pay
Delaware.....				(Policies vary among state agencies)				
Florida.....				17	C	A	17 days	30 days pay
Georgia.....	(No response)							
Hawaii.....	*			15	W	C	15 days	No pay
Idaho.....	*			15	C	C	--	No pay
Illinois.....	*			15	C	C	--	No pay
Indiana.....	*			15	C	C	--	No pay
Iowa.....	*			11	C	C	14 days	--
Kansas.....	*			15	C	C	--	No pay
Natl Guard.....	*							
Reserves.....	*							
Kentucky.....	*			15	W	F	No limit	--
Louisiana.....	(No response)							
Maine.....	*			17	C	C	17 days	No pay
Maryland.....	*			15	C	--	15 days	--
Massachusetts.....	*			No limit			--	No pay
Natl Guard.....	*							
Reserves.....	*							
Michigan.....	*			15	C	C	15 days	No pay
Minnesota.....	*			15	C	C	--	No pay
Mississippi.....	*			15	C	C	15 days	No provision
Missouri.....	*			10	W	C	No limit	--
Montana.....	*			10	W	C	2 weeks	No policy
Nebraska.....	*			15	C	C	15 days pay	15 days pay
Nevada.....	*			15	W	C	No limit	30 days pay
New Hampshire.....	*			15	C	C	Varies	--
New Jersey.....	*			--	--	--	No limit	No pay
New Mexico.....	*			15	O	F	--	No pay
New York.....	*			30	C	C	No limit	Varies
North Carolina.....	*			15	C	C	Discretionary	No pay
North Dakota.....	*			30	C	C	--	--
Ohio.....	*			31	C	C	No limit	No pay
Oklahoma.....	(Information not sent)							
Oregon.....	*			15	C	C	No limit	No pay
Pennsylvania.....	*			15	W	C	--	--
Rhode Island.....	*			15	C	F	15 days	30 days pay
South Carolina.....	*			15	C	--	--	--
South Dakota.....	*			15	W	O	15 days	No pay
Tennessee.....	*			15	W	C	15 days	--
Texas.....	*			15	C	F	15 days	No policy
Utah.....	*			15	W	C	15 days	No pay
Vermont.....	*			15	C	F	No limit	No pay
Virginia.....	*			15	C	C	No limit	No pay
Washington.....	*			15	C	C	No limit	No pay
West Virginia.....	(No response)							
Wisconsin.....	*			15	W	C	No limit	No pay
Wyoming.....	*			0	--	--	15 days	No pay

* Twenty-one days allowed at any one time. Number of times per year unrestricted.

b Additional time could be allowed if it were shown that the military training would contribute to the individual's training in his particular state job.

c Paid for all days engaged in field training.

d Restriction applies in any 12-month period.

e Individual receives full state pay for the period of induction. Once he is accepted, pay ceases.

f Forty-three states indicated that no additional payment was authorized for travel time. The remaining states did not answer this question.

g In many cases, even if no salary is paid, other benefits accrue. Some states make payment for accrued annual leave at the time of induction, others hold this leave in reserve until the employee returns from military service.

Table II. This shows that 40 of the 45 reporting states granted full pay to all personnel on temporary military leave

TABLE II
SUMMARY OF MILITARY LEAVE PAY POLICIES—BASIC FORMULAS

1 The employee receives his full state pay for the period in addition to the basic federal military pay and other allowances.....	40 states (including California)
2 The employee receives from the state the difference between the basic federal military pay and his state pay, if the state pay is lower.....	2 states
3 National Guardsmen receive full pay as in "1," and reservists receive partial pay as in "2".....	1 state
4 National Guardsmen receive full pay as in "1," and reservists receive no state pay.....	1 state
5 No paid leave is granted.....	1 state
6 No response.....	5 states
TOTAL	50 states

Table III. Twenty-six states reported paying for only the approximate usual two-week period, ten pay for approximately three weeks, and eight for more

TABLE III
SUMMARY OF MILITARY LEAVE PAY POLICIES
MAXIMUM PERIOD OF PAY ALLOWANCE

1 Unlimited.....	3 states
2 31 calendar days per year.....	1 state
3 30 calendar days per year.....	3 states (including California)
4 21 work days at any one time.....	1 state
5 21 calendar days per year.....	1 state
6 17 calendar days per year.....	2 states
7 10½ work days per year.....	1 state
8 15 work days per year.....	8 states
9 15 calendar days per year.....	19 states
10 14 calendar days per year.....	1 state
11 10 work days per year.....	4 states
12. No response.....	6 states
TOTAL	50 states

Table IV. The majority of states responding have statutes governing policy with respect to local jurisdiction

TABLE IV
APPLICABILITY OF TEMPORARY LEAVE PAY STATUTES

State statutes apply to local jurisdictions in the following states.

California	Maryland	Nebraska	Oregon	Total
Alabama	Massachusetts	New Jersey	Rhode Island	20 states
Arizona	Mississippi	New Mexico	South Dakota	
Florida	Missouri	New York	Texas	
Hawaii	Montana	Ohio	Utah	

Local jurisdictions are not bound by state statutes in the following states

Indiana	Maine	New Hampshire	Vermont	Total
Iowa	Michigan	North Carolina	Virginia	14 states
Kansas	Minnesota	North Dakota	Wisconsin	
Kentucky	Nevada			

TABLE IV—Continued
APPLICABILITY OF TEMPORARY LEAVE PAY STATUTES—Continued

Application varies in the following states:

Alaska	Colorado	<i>Total</i> <i>2 states</i>
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No response to this question:

Arkansas	Idaho	Pennsylvania	Washington	<i>Total</i>
Connecticut	Illinois	South Carolina	West Virginia	<i>14 states</i>
Delaware	Louisiana	Tennessee	Wyoming	
Georgia	Oklahoma			

Table V. Part I shows a variety of policies exists on limiting temporary leave periods

Part II relates to control policies. One state, Idaho, requires that a certificate of attendance be presented after the training period.

Part III shows that most states figure paid leave on a calendar day basis, as California does.

Part IV shows that most states apply the paid leave limits on a calendar year basis rather than the fiscal year basis which California uses

Part V shows that at least 24 states do not grant any pay to the employee entering regular military service. California grants 30 days full pay at the start of active duty.

Private industry generally offers less in this regard than public employers

TABLE V
ADDITIONAL INFORMATION FROM STATE QUESTIONNAIRES

I—Stated limits of "temporary leave" periods:	
Unlimited	13 states
Limitation exceeds paid period	5 states (incl. California)
Limitation equals paid period	14 states
Varied policies	2 states
No information	16 states
II—Presentation of certified copy of orders to agency:	
Required	29 states
Not required	10 states (incl. California)
No information or no general policy	11 states
III—Calendar day or work day basis	
Paid leave figured on work days	14 states
Paid leave figured on calendar days	27 states (incl. California)
Other or no information	9 states
IV—Calendar year or fiscal year basis:	
Limit stated during calendar year	31 states
Limit stated during fiscal year	6 states (incl. California)
Limit stated for any 12-month period	1 state
Other or no information	12 states
V—Pay upon entry into regular active duty:	
30 days full pay granted	4 states (incl. California)
21 days full pay granted	1 state
15 days full pay granted	1 state
2 weeks full pay granted	1 state
Pay granted for period of induction	1 state
No salary granted for any period	24 states
"No policy" (presumably, nonpaid leave)	4 states
Information not available	14 states

Table VI shows the results of a questionnaire sent by the office of the Legislative Analyst to several California employers in 1958 revealed that none offered the full salary in addition to the military leave.

TABLE VI
LEGISLATIVE ANALYST'S SURVEY, 1958
Private Industry Policies on Temporary Military Leave Pay

Two weeks pay less military base pay allowed:
Standard Oil Company of California
Pacific Telephone and Telegraph Company (15 days per fiscal year)
Pacific Gas and Electric Company (per calendar year)
Southern California Edison Company (per calendar year)
Stanford Research Institute, Menlo Park
Atchison, Topeka and Santa Fe Railway Company
Matson Navigation Company (17 days paid less total reserve pay)
Unpaid military leave granted:
Crown Zellerbach Corporation, San Francisco
Grove Valve and Regulator Company, Oakland
Douglas Aircraft Company, Inc., Santa Monica
Lockheed Aircraft Corporation, Burbank
Southern Pacific Company, San Francisco
Kaiser Services, Oakland

Table VII shows the results of a 1959 Michigan survey revealing that Michigan pays the employee's salary less his military base pay and even this is more generous than what the majority of private employers offer.

TABLE VII
1959 STATE OF MICHIGAN SURVEY
(15 Days Paid Leave)

	Public employers	Private industry Salaried employees	Hourly employees
Full pay plus military pay.....	60%	7%	4%
Supplement military pay to equal full pay....	23%	32%	27%
Use paid vacation for military tour.....	19%	48%	39%
Leave without pay.....	10%	37%	51%

Note: Columns add to more than 100% because some employers allow option

Table VIII is a résumé of a portion of a study of the Los Angeles area published in April 1962 by the Merchants and Manufacturers Association. The results reinforce those of the earlier studies.

TABLE VIII
MERCHANTS AND MANUFACTURERS ASSOCIATION SURVEY, 1962

	A	B	C	D
Company pays difference between government and regular pay	14 6%	19.2%	13 3%	28 0%
Full pay not to exceed earned vacation				
Additional time without pay	8 4%	10 0%	12 0%	22 7%
Full pay not to exceed earned vacation Additional time paid difference between government and regular pay	2 1%	2 9%	2 7%	5 3%
Miscellaneous pay practices	2 5%	2 5%	—	5 3%
Leave without pay	61 9%	49 4%	24.0%	37.3%
No established practice	8 4%	18 4%	8 0%	1 3%
"No hourly/salaried employees"	2 1%	2 5%	40 0%	1 3%
A—239 Manufacturing firms—121,849 hourly employees				
B—239 Manufacturing firms—55,983 salaried employees				
C—75 Nonmanufacturing firms—35,686 hourly employees				
D—75 Nonmanufacturing firms—54,119 salaried employees				

The Merchants and Manufacturers Association was also asked what the practice in private industry is with regard to paying the full regular salary in addition to the military salary. Their reply was that they never asked the question because it did not occur to them that this practice would be constant with their salary policies.

The State of Michigan Civil Service Commission, after a period of granting full state pay in addition to the military training pay on February 20, 1961, returned to its former policy of reducing the state pay by the amount of the military base pay. In response to a subcommittee query, the commission wrote:

"The Commission's decision to return to its former policy of paying only the difference between military pay and state pay was the result of two surveys conducted among private and public employers. The first was conducted in 1958 and the second in 1960.

"In addition . . . the Commission held several hearings for the purpose of allowing opponents of the change to present their arguments. Among those heard . . . were representatives of the major veterans groups as well as . . . of the various military reserve components."

Mr. C. D. O'Sullivan of the National Guard Association suggested that the State should not feel bound by practices in private industry because ". . . emergencies are coming up all the time. Private industry is only indirectly benefited . . . the State has a greater direct interest and benefit from the people working for the State and serving in the National Guard."

The following discussion on this question took place in May between Mr. Margolis and Mr. Wallace Henderson of the California State Employees Association.

Mr. Margolis: "Ordinarily, the State Employees Association takes a strong position on this question of employment benefits being comparable to those of private industry. Now, this is an area we've seen in which the State is way out ahead of private industry. Does this represent a change in principle, or is this for some reason an isolated instance in which you would prefer to see industry not be the standard?"

Mr. Henderson: "We think this is a little different because it has to do with the federal question."

Mr. Margolis: "Well, do I gather correctly that your position is that where state employees have some benefit beyond that of private industry you want to hang on to it, and where they don't meet private industry, you want to get that?"

Mr. Henderson: "I believe basically that if we have good benefits, we should keep them. If they're illogical, and we have to be reasonable, then we'd have to give them up . . . we should talk about . . . much bigger areas . . . and not chip away at something that has to do with defense as well as a small amount of money."

Though hesitating to comment on the legislative policies now in effect, Mr. Roy Stephens of the State Personnel Board expressed support for a change, in the following discussion:

Assemblyman Bane: " . . . because you attempt to develop policy and advice on policy that brings the state employee on an equal basis with employees in private enterprise . . . wouldn't you also take a step further and advise that we give the same military benefits to the state employee that are given to the employee in private enterprise?"

Mr. Stephens: "As a general policy that the Legislature has laid down to us . . . we have supported and do support the principle of maintaining equity. . . . And to the extent that the State makes an exception from that, as it does and has historically in connection with members of the armed forces, we have recognized that this is a deviation from that basic policy and one that could perhaps get to be very costly and harmful if it got extended too far."

SETTING AN EXAMPLE FOR PRIVATE INDUSTRY

Mr. James E. Frank, representing the Reserve Officers Association, said at the May hearing, "California military leave provisions have set an example . . . there has been a gradual improvement in the practices of private industry."

General Aulick said at the same hearing, " . . . if government should change its leave policies, we feel that industry will be much tougher on its policy." Other witnesses expressed the same concern. However, no changes have been suggested which would move California behind the known leaders in private industry in providing military leave benefits

CONSIDERATION OF MILITARY RANK

One of the major developments of the May 7, 1962, hearing was the distinction made between the predicted effects of proposed changes on officers of the reserves and National Guard, and the effects of these changes on enlisted men. The following points were made:

1 The cost of transportation is provided for both officers and enlisted men going on training duty

2. Food and housing are provided for the enlisted man; the officer must pay for this separately

3. Certain social and family obligations must be met while the person is on training duty. The presumption seemed to be that these would tend to be more costly for the officer

4. The morale factor was held to be more pressing in the case of the officers because their reserve duty is not obligatory as it normally is for enlisted men

5. The morale factor was held to be more important also in the case of the officers since a disproportionately large percentage of officers in the reserves are public employees

6. It was suggested that living costs for the enlisted men might actually decrease in certain circumstances during summer encampment since food and utility costs at home would go down

7 Several witnesses held that the regular allowances of an officer do not meet his costs during training duty

8 It was also stated that "any officer worth his salt" spends considerably more than compensated time on military duties.

The following figures taken from a recent tabulation of compensation for employees of the California Military Department may help to provide some perspective for this discussion.

State pay rank	State pay	Federal rank	Federal pay		
			Pay for 48 army drills	15 days field training Base and quarters & subsistence	
1 Lieutenant colonel ----	\$10 180	Lieutenant colonel	\$1,088	\$340	\$92 34
2 Lieutenant colonel ----	11 520	Colonel	1,456	455	92 34
3 Captain -----	8,100	Lieutenant colonel	1,152	360	92 34
4 First lieutenant -----	6,840	Captain	816	255	75 24
5 Master sergeant -----	5 605	Master sergeant	496	155	77 10
6 Private first class ----	3,816	Second lieutenant	502	157	60 09

If A B 2876 had passed in 1961, each person's pay during his leave for field training would have been liable to reduction by the amount under the column "Base and Longevity," unless the leave were taken on vacation time. Armory drill pay and quarters and subsistence allowances would not have been affected.

In the case of person (3), the captain, his rate of federal base pay exceeds his state pay, so the reduction would have been two weeks full state pay, approximately \$337. In each of the other cases, some portion of the state pay would have been granted for the two weeks.

These are generally illustrative examples drawn from an extensive chart. Military Department personnel data are shown because the figures were readily available, but the circumstances would be applicable throughout California public service. In these instances, the persons are not necessarily drawing the military pay indicated—these are only entitlements.

With regard to a suggestion that payment might vary according to rank, Mr. Leon Bluestone, representing the League of California Employees Associations, commented in June that the rank and pay of persons in reserve organizations "properly reflect the degree of responsibility they have. This is the principle I adhere to in compensation for any work, and I would hate to see it abused in any manner by legislation."

Nevertheless, there was some evidence that certain officers are realizing considerable profit from their training duty. In response to a question from Assemblyman Bane, General Aulick said that a lieutenant colonel would be paid a little more than \$400 for 15 days of training including allowances except mileage.

Assemblyman Bane observed: "So, for 15 days (a previous witness) received \$400. He told me that in 1961 it was costing him \$7 a day. That's \$105 cost, and he got \$400 pay."

TECHNICAL PROBLEMS

The East Bay Municipal Utility District on June 11 delivered to the subcommittee a list of technical problems encountered in their experience with the California military leave pay program. Their basic comments follow:

"... we have encountered certain problems due to inequities in the law and a lack of clarity in sections dealing with both temporary and extended military leave."

"They may be summarized as follows:

"1. The code provides that any employee with a year of service with a public agency shall be paid his salary for the first 30 days of leave. In the case of temporary leave, previous military service counts toward the year of public agency service. In the case of extended leave, previous military service does not count. In the special case of a member of the National Guard called to active duty, the employee is entitled to 30 days pay regardless of his length of service with the public agency. These varying standards of eligibility are both confusing and unfair. The requirements should be uniform as regards all types of military leave.

"2. The provision that employees on military leave are entitled to 30 *calendar* days of pay results in inequities because of variations in the number of working days during different 30-day periods. It also creates the question: Does leave begin on the day after the employee's last work day?—or on the first day he is absent from work? A simple solution to these problems would be to grant military leave on a *working* day basis.

"3. Many employees called into service must take a day off for a physical examination. If time off with pay is granted for this, shouldn't it be deductible from the 30 days of paid leave allowed for the year? The law should specify.

"4. Sections 395.1 and 395.3 both provide for time limits (after release from service) during which an employee on extended military leave may exercise his right to request reinstatement. But the time limits are different. In Section 395.1 it is three months. In Section 395.3 it is six months. The only apparent difference is that the latter section applies to an employee who has resigned to enter military service. Unless there is some valid reason for granting an advantage to an employee who resigns, all employees entering the service should have equal rights.

"5. There should be an indication in the law (either specific or in the form of a guide as to what is reasonable) as to how soon an agency must re-employ an employee requesting reinstatement in his job. This is important because often a reasonable amount of time may be necessary to initiate a reduction in force, or to establish a new position.

"6. The code provides that a probationary employee going on *temporary* military leave must complete the probationary period upon his return. The section on *extended* leave does not specifically cover this point. It should! The law, as it stands (Paragraphs (b) and (c) of Section 395.1), seems contradictory. One

paragraph implies that the employee could gain permanent status while on extended leave; the other suggests that he is still on probation when he returns to his job.

"7 Section 395 governs temporary (training) duty. Section 395 05 governs the treatment of a member of the National Guard called to service under a proclamation of a state of extreme emergency. Both sections provide that the employee's 'rights to promotion' shall not suffer as a result of his absence. This is rather vague. What is meant by 'rights to promotion'? For example: Must provision be made for the employee to take civil service examinations given during his absence, for which he would be eligible? Must the employee be considered for vacancies which occur during his absence if his name is on an existing civil service list? Should the employee be considered as accumulating experience in his job classification while on leave?

"8. Section 395 1 provides that if an employee who enlists, is drafted, or is called to active duty should voluntarily extend his period of service, he is no longer eligible for reinstatement. The seeming intention of this restriction is to limit the public agency's obligation to the employee's mandatory military service. The question then arises. Shouldn't this same principle apply also to military leave pay in the case of an employee on leave who has satisfied his military obligations as a reservist, but who then volunteers for additional active duty? We feel that paid, temporary military leave should be limited to the period of active duty required of a public employee in order for him to maintain good standing in the reserves."

LEGAL ASPECTS

At the time of consideration of A. B. 2876 in 1961, a communication regarding the measure was transmitted from the office of the Attorney General to the Acting Adjutant General of California, dated May 12, 1961, from Attorney General Stanley Mosk over the signature of William L. Shaw, Deputy Attorney General. Mr. Shaw is also a lieutenant colonel in the California National Guard, and has represented military interests at hearings of the subcommittee.

Mr. Shaw, referring to this letter opinion, stated in June that A. B. 2876 "would raise a constitutional point because a reservist could not satisfy the mandatory six-months period of service with one of the reserve components." There is some evidence that this opinion was used to defeat A. B. 2876 in committee.

The letter opinion made the following points:

"AB 2876 in seeking to abolish in effect the 180 days maximum time for a temporary military leave of absence from public employment, would render impossible of performance, a six months' period of active duty for training under federal auspices (under the Reserve Forces Act of 1955). The bill would allow a maximum of 30 days only for temporary military leave. Accordingly, it would seem impossible for any public employee in California to perform a six months' period of training without jeopardizing his likelihood of return to public employment. . . .

"As a public employee subject to the mandatory provisions of the UMT & SA could not expect to enlist in a reserve component

of the armed forces and there perform a six months' period of active duty for training, he would be constrained to await induction into the armed forces for a 21 months' interval or longer length of time "

Subcommittee testimony, including that from General Aulick, the recipient of the 1961 letter opinion, stated that the six-month training program is not considered included in the temporary military leave provisions. Mr Stephens of the State Personnel Board commented:

"The sections of the law relating to temporary military duty we've always applied as relating only to those short term training periods, and those coming under the Reserve Act of 1955 come under a different provision There would be no question about their military leave rights."

On May 2, 1962, the office of Legislative Counsel issued opinion number 3947, stating, in brief, the following:

"Question: You have asked whether A B 2876 of the 1961 session is unconstitutional for any reason.

"Opinion. No, we do not believe this measure would be unconstitutional.

"We find no violation of the State and Federal Constitution in such provisions We have also checked the federal statutory provisions respecting re-employment rights and we find no breach of any rights given by that law "

PROBLEM OF DEFINITION

On May 4, 1962, the office of Legislative Counsel issued Opinion Number 3900, relating to military leave

The substance of this opinion is that if the period of temporary military leave by definition were reduced from 180 to 30 days, and certain conditions of military emergency or a national conscription act were not in effect, a person going on "temporary" military duty extending in total for a period longer than 30 days would be entitled under state law to none of the benefits in the Military and Veterans Code

(The significance of this is that if the defined period were reduced, it would probably be advisable to amend the statutes to permit portions of a longer leave to be considered as "temporary military leave" for the purposes of providing certain benefits)

Applicability of Statutes to University of California

On May 31, 1962, the office of Legislative Counsel issued Opinion Number 3959 with the following information:

"Question You have asked whether Sections 389, 395, 395.01, 395.02, and 395.03 of the Military and Veterans Code are applicable to the University of California

"Opinion: It is our opinion that these provisions do apply to the University of California."

However, Section 151 of the university personnel rules states the following:

"Leave with pay up to 30 calendar days in any *calendar year* is granted employees who, as members of the National Guard, or Navy, Army or Air Force Reserve Corps, are ordered to duty. Persons must have been employed by the University the equivalent of a year at full time prior to the absence *which must be known in advance to be for a definite period not longer than one month*"

The conflict of the italic portions with state statutes indicates that the university is not in fact operating under the state law. During the interim study, there was some suggestion that the statutes are not being followed in all jurisdictions, possibly in some instances because of lack of awareness of their applicability. However, no other specific instances were brought to the subcommittee's attention.

ADDITIONAL ISSUES

Mr. Roy Stephens, Assistant Secretary for the State Personnel Board, brought to the subcommittee's attention the following problem relating to regular military leave provisions:

"Under the Reserve Forces Act of 1955 and subsequent amendments, persons may . . . receive 6 months training in active military status and remain in active reserve status for 5½ years. In practice it has developed that some of the 6-month periods have been broken into two 3-month periods.

"Under Section 395 02 of the Military and Veterans Code which provides pay for the first 30 calendar days of ordered military duty, an employee going on such a broken leave would receive the 30 calendar days pay for each period providing it is in a different fiscal year. This gives him an advantage over the person who is drafted or enlists for a regular 'hitch'.

"This inequity could be corrected by the following revision of Military and Veterans Code 395 02

"395 02. Every officer and employee of a public agency who is on military leave shall be entitled to receive his salary or compensation . . . for the first 30 calendar days while engaged in the performance of ordered military duty, *provided that no employee shall receive pay for more than 30 calendar days during his six months of training under the Reserve Forces Act of 1955 and any subsequent amendments to that Act*"

LOCAL OPTION

There was also some consideration of the possibility of allowing each jurisdiction to determine its own military leave pay policies. The consensus is expressed in the following comment by Mr. Leon Bluestone, representing the League of California Employees Associations:

"I think that the costs and confusion from the many hearings and laws that would result would harm the reserve programs . . . to provide that a reserve organization has some of its men who are in public service who do and do not receive varying amounts would create tremendous internal morale problems"

PART B

REPORT ON STATE SPECIALIZED TRAINING PROGRAMS

Specialized training is a program that provides for the assignment of state employees to recognized educational institutions and facilities to receive training which meets specific agency needs for scientific, technical, professional and administrative skills. Most of this training is on state time. This program is administered apart from the State's ongoing inservice and management development programs and is specifically authorized by Government Code Section 19451 which was adopted in 1957, and State Personnel Rules 531-537.

Mr. A. M. Loeb, Assistant State Training Officer in the Training Division of the California State Personnel Board, aptly described the program in the following words:

"I would like to point out that specialized training, and this is a distinction from the other types of leave that you are studying, in my opinion, is an assigned and required duty to an employee by the appointing authority."

"To the individual assigned, it represents and constitutes a charge on his time and energy no less directly than were he at his regular place of duty. While it is clearly training for the job, specialized training is not a substitute for inservice training. Under prescribed conditions and limitations specialized training is an extension of inservice training. To use a more descriptive title, and one the federal government uses for its similar kind of assigned training, it might be called 'out' service so as to distinguish it from inservice."

"In the face of a rapidly changing technology, specialized training provides management of state operations with an essential means of making certain that the knowledge and skills of key personnel do not become obsolete."

THE PURPOSES OF SPECIALIZED TRAINING

Mr. Loeb went on to describe the program purposes in the following words:

"... the purposes of specialized training were early made clear and concise and the rules carefully drawn to insure best use and prevent abuse. It was the intent of the Personnel Board study and development of its rules to make sure that the State must always benefit from such assignments and I think this becomes a sort of code word, the State must benefit from specialized training."

"The State Personnel Board and the Department of Finance ... require departments to show in writing that the training is of necessary and direct value to the State, rather than of primary benefit to the individual. We also require that the department show that the subject matter is relevant to the employee's field of work. In this way, specialized training is directed to job performance, not to the acquiring of degrees or certificates. As a further safeguard against misuse, the standards which have been published

prohibit payment for specialized training assignments covering subjects the employee can be reasonably expected to know at the time of appointment to his present position

"Further measures are also taken to avoid abuse

- "1 Specialized training shall be taken only under educational or professional auspices approved by the appointing authorities
- "2 Employees are assigned to full-time educational assignments only if they hold key positions in departments
- "3 Full-time assignments shall not exceed one year's duration unless specifically approved by the Executive Officer of the State Personnel Board
- "4 The employee must maintain satisfactory performance in the assignment, and if his performance . . . drops below a standard which is set by the educational facility at the convenience of the State, his assignment can be terminated "

PRIORITY SYSTEM

The goals are reflected also in the priorities that have been set up for the program. The "*A*" priority relates to management skills for administrative personnel at the division chief or higher level "*B*" priority relates to those skills essential to carrying on a program at all, and "*C*" priority relates to those needed to realize a certain level of service or prevent reduction "*D*" and "*E*" priorities relate to training required for more efficient development of major or normal programs respectively

In practice, the "*A*," "*B*" and "*C*" priorities have generally been budgeted, and "*D*" and "*E*" rejected

These priorities were developed co-operatively by the Department of Finance and the State Personnel Board Mr David Motes, Senior Administrative Analyst in the Budget Division of the Department of Finance, described these as:

"a system of uniform priority and centralized review which permits consideration of specialized training on an objective state-wide basis This approach was adopted to insure that such funds as may be available would be devoted to the areas of greatest need, not only within individual agencies but throughout state service."

These priorities are listed in Section 6397 of the State Administrative Manual entitled "Budget Standards and Specialized Training."

With regard to a question whether agencies might juggle their priority lists in light of the usual disapproval of "*D*" and "*E*" priorities, Mr Loeb commented that the Personnel Board is "relatively certain" that priorities among agencies represent the same level of training need The same training course may be approved for one department and disapproved for another, depending on its relation to the department's needs.

PROCEDURES

Three departments share in the programming of specialized training: the initiating department, the Personnel Board with regard to the training feasibility, and the Department of Finance with regard to the budget.

The State Personnel Board Rule 532 authorizes an appointing authority to assign employees to specialized training. In practice, the assignment is proposed by the department in its specialized training plan, as part of the regular annual budgeting procedure. The actual level of approval in the department varies. After approval by the three departments, the division chief is probably the one who decides when the person will go. After the training, the departmental training officer or some comparable person must certify proper completion, and a special reimbursement form is filed with the State Controller.

Each agency requesting specialized training funds must submit a detailed schedule listing the proposed courses of study, the number and titles of employees to attend, duration of each course, direct and indirect costs, and the priority of courses by the uniform classification system. The Personnel Board Training Division makes an initial review of these schedules, then summarizes approved proposals for the use of the Department of Finance in preparing the budget.

The amounts actually included in the budget are determined in consideration of the relative urgency of training in comparison with other demands, reasonable balance with other methods of upgrading performance, and the financial position of the State.

COSTS

The 1962-63 fiscal year budget provided a total of \$104,000 in state funds to finance the direct cost of the specialized training program through the "C" priorities. Priorities "D" and "E" were eliminated.

During the first full year of the program, 1958-59, 557 state employees participated at a direct cost of \$29,746, which includes tuition and other expenses plus travel but does not include the value of the employees' state salary.

During the 1960-61 fiscal year, the latest full year for which figures are available, participation had increased to 1,127 employees at a direct cost of \$66,471.

Tables 1 through 3 at the end of this section illustrate the costs and level of activity in state specialized programs for the first three years of operation. These are reproduced from the 1960-61 Training Report of the Training Division, State Personnel Board. Because of incompletely developed reporting techniques, the figures are not precise; however, they are accurate enough to show the true picture.

PROGRAM COMPARISONS

Agency-sponsored and company-sponsored training programs are carried on in many other areas. Los Angeles County, for example, operates a highly developed tuition reimbursement program with a very well-defined plan of quality upgrading among its personnel. The City of Los Angeles operates a limited tuition reimbursement, operated largely at the agency level.

Table 4 to this report shows an interesting variety of policies for sponsoring outside training programs. These were selected from a January 1961 Aerospace Industry Association survey.

Table 5 is a summary of information presented in an April 1962 Community Personnel Practices Survey of the Los Angeles area conducted by the Merchants and Manufacturers Association. It indicates the prevalence of such programs in the circumstances shown.

PROBLEMS IN THE PROGRAM

Evidence indicates that the program is generally working very well. However, a number of problems of varying importance have been recognized in the specialized training activities.

Underuse or Lack of Use

As Table 1 indicates, there is a considerable range in the level of use of specialized training programs among state agencies. On this point, Mr. Motes commented:

"Our approach has been to build a statewide perspective into our review of expenditure for specialized training. As a consequence, some agencies receive greater relative allowances for this purpose than do others. This is, in our opinion, as it should be. Our purpose . . . is not to provide equal training opportunities, but to channel the funds available for training into the areas which assist in meeting the most critical needs of the State."

Even allowing for this, however, there was some concern that certain agencies were not giving proper attention to the program. The Highway Patrol, with more than 3,400 full-time employees, has not used it at all. Mr. Loeb commented:

"The San Francisco Port Authority has made slight use of it, and a few departments such as Motor Vehicles, State Compensation Insurance Fund, Employees' Retirement and Public Utilities Commission have never submitted a specialized training policy or plan to the board. The Training Division . . . regularly and annually calls to the attention of all departments the possibilities available . . . and we have offered assistance and consultation . . ."

"The reasons for nonuse are numerous. They may be budgetary limitations . . . lack of need, failure to recognize the training needs, newness of a training program, or inadequacy to mount a training program, or barriers, raised by the involved procedures. Departments have expressed strong objections to the advanced planning requirements which now call for specific long-range plans to be submitted by August 15 for the subsequent fiscal year commencing next July."

PROCEDURAL PROBLEMS

The Governor's Advisory Committee on Personnel and Training in late 1960 inaugurated a study of specialized training, and a subcommittee appointed for that purpose sent a letter to all state agencies asking their views. Mr. Richard T. Soderberg, Training Officer for the California State Division of Highways, was chairman of that subcom-

mittee and testified on its work. The major problems in the program, as seen by the agencies, were believed to be too much control for the size of the program, not enough flexibility in administration at the agency level, difficulty in planning so far in advance, and certain administration difficulties.

Mr. Ralph Littlestone, Personnel Officer for the Department of Mental Hygiene, stressed the idea of overadministration in testimony before the Subcommittee on Leave Pay:

"I'm a little bit afraid that this procedure of specialized training is taking on a life that, really, it never was intended to have . . . (it) basically is a method of providing a means to send an employee outside of the state service for a training that he can't get within it or which he hasn't obtained before coming into the system.

"It's not quite the same as other types of paid leave that have been mentioned, because it's really a part of the general process of training . . . from a rough calculation . . . costs for specialized training are about 2 percent of our total training cost . . . what we're dealing with here is not some special program, but rather a particular budgetary technique. . . .

"The cost of the program I don't think justifies (the elaborate controls) and we don't have these types of elaborate procedural details on our general training activities which are actually more critical and much more expensive.

"My own thoughts as to procedure would be: first, that we place specialized training in its perspective as being a part of the general (state) training activities . . . that it be handled as part of the normal budgeting operations.

"Second . . . that it should be treated as just one part of the annual report (on agency training activities) that is made to the Personnel Board . . .

"Third, that any financial changes in the specialized training be considered jointly by the Department of Finance, the Personnel Board and the agency at the time of the change.

"Fourth . . . although this may be an internal agency matter . . . each agency should establish for its own operations an annual training plan . . . for all training activities, and this should be done in the period prior to the beginning of the fiscal year."

Problems from the present system, Littlestone said, include inconsistent use and nonuse because of the difficulty of the process.

"Part of the problem that bothers me is that the present system, and I suspect even with the modifications that have been proposed, forces an over-budgeting for this type of activity, because (the highly detailed advance planning) means that you have to provide money for programs that you may not be able to use, because of changes in programs and people, so that I would guess that . . . following this procedure, you would over-budget by about 50 percent, which is not necessary if you have the money spent in normal fashion.

"The cost of administration . . . must be very large . . . (with) four different levels all involved in a great deal of detail, and the cost of administering this program I suspect, if you put an overhead on top of the current cost, would be sort of ridiculous "

Testimony indicated that the inflexibility of the system caused difficulty when program changes were desirable, and prevented use of "D" or "E" priorities even in those cases where the agency purpose might be better served than by the technical "A," "B," or "C" priorities

The long advanced planning was said to cause such inconveniences as a situation whereby even the educational institution does not know whether the desired course will be offered at a certain time Mr Loeb commented :

"The lead time is necessary for budget development. However, the generally increased understanding of specialized training and its purpose, together with our experience over the last four years, may make it possible to modify the annual plan so as to require less detail."

Statewide Co-ordination

It was suggested that there is inadequate statewide co-ordination in the program A group of agencies might co-operatively make possible programs impossible to a single agency, by setting up interagency courses or getting enough trainees to persuade an outside institution to handle the course.

Reviewing Procedures

Processes of reviewing the program seem not to have been fully developed, and agency reporting techniques are as yet not perfected. If a department does not report a specialized training program as such, the Personnel Board cannot ascertain whether there is an abuse However, no such general practice is known

Retention of Employees

California State Civil Service Rule 35 requires the employee to provide a proportionate reimbursement to the State for training expense other than salary and wages if he does not remain with the State six months following a full-time training assignment, or twice the length of the training, whichever is greater However, some question as to whether or not this provision is enforceable under law has been raised.

Mr Loeb testified :

"We have not had reason to utilize this rule and I don't think we will since people who are sent for specialized training assignments are superior personnel, key people whose loyalty, interests and reliability is usually without question "

Mr Don Christen commented that some agencies nevertheless consider retention of these trained persons a serious problem

According to Mr Loeb, from 1957 to 1961, only 10 state employees were assigned to so-called full-time specialized training, for 30 working days or longer. Mr Loeb said :

" . . not one of them has left state employment . . and in addition each of the departments which assign persons to this lengthier type of training flags the roster card of the persons involved so that if some change in his status should come about, his responsibility would become apparent to the appointing authority and would be called to his attention . . ."

GOVERNOR'S COMMITTEE RECOMMENDATIONS

On January 16, 1962, the special training subcommittee reported the following recommendations to the Governor's Advisory Committee on Personnel and Training - (Some of the progress on these recommendations is indicated in parentheses)

1 An educational program on specialized training, including active endorsement by the Governor, a handbook for line and staff administrators, and orientation sessions conducted by the Personnel Board. (The latter two are being carried out. The Governor's endorsement has not been requested pending clearing up of certain problems)

2 Counseling on a formal basis scheduled individual counseling by training staff of agency people, and initiative in counseling management where use is not being made of the program and some need is evident. (Counseling is available to department personnel)

3 Maintenance by the Personnel Board of a reference service of available courses (A more complete reference library of courses and facilities approvable is in preparation)

4. Planning by program need, training need, rather than by specific course.

5. Certification by the agencies as to why each requested item should be specialized rather than inservice training, the reason why the trainee should not pay all or part of the expense if he could be expected to know the subject as qualification for the job he holds, and if the proposed training is out-of-state, why comparable training is not available in the State

6 Recommend that changes of program be defined so as to eliminate some minor things, and that agencies deal directly with the Personnel Board in all nonmonetary changes

7 Co-ordination of the program by the Training Division of the Personnel Board to determine what needs might be met better on an inservice basis by grouping of training, or what specialized training that can't be met on an inservice basis might be obtained from nearby educational facilities if all the needs are set out

8 Budgeting of a small fund to the Personnel Board to supplement top management specialized training in the event of new appointments where agency funds were not budgeted

9 Study to determine whether courses now allowed are actually those of highest priority to the agencies, and some liberalization to permit programs with a high benefit, low cost ratio, but presently under perhaps "D" priority under the strict standards.

10. Some adequate attempts at evaluation of the program on a long-range basis to set up standards, "our ultimate objectives would be to first evolve clear-cut standards of specialized training through a process of continuous evaluation of results, and secondly, delegation and de-

centralization to the agencies of the preaudit function now performed by the State Personnel Board as the standards are evolved, and substitution of a postaudit for control

TABLE 1
SPECIALIZED TRAINING SUMMARY 1960-61 FISCAL YEAR

<i>Agency</i>	<i>Number of people</i>	<i>Man-days of training</i>	<i>travel</i>	<i>Cost to State tuition and fees</i>	<i>Total</i>
Agriculture -----	3	296	\$180	\$20	\$200
Corrections -----	138	584	2,392	1,550	3,942
Disaster Office -----	66	315	418	2,078	2,496
Education -----	14	84	88	353	441
Employment * -----	37	46	353	1,651	2,004
Equalization -----	14	78	465	994	1,459
Finance -----	30	211	723	--	723
Fire Marshal -----	7	13	31	4	35
Fish and Game -----	5	25	400	145	545
Franchise Tax Board -----	16	24	18	215	231
Industrial Relations -----	4	10	197	45	242
Investments -----					
Banking -----	3	30	382	600	982
Savings and Loan -----	126	381	--	1,280	1,280
Mental Hygiene -----	96	522½	2,248	3,387	5,635
Natural Resources -----	30	162½	1,920	1,705	3,625
Personnel Board -----	6	11	204	434	638
Professional and Vocational Standards -----	120	1,200	5,950	--	5,950
Port Authority -----	1	--	--	28	28
Public Health -----	97	964	10,501	1,633	12,134
Public Works -----	90	567	7,092	5,572	12,664
Reclamation Board -----	7	--	--	240	240
Social Welfare -----	29	446	809	1,338	2,147
Water Resources -----	7	75	1,950	916	2,866
Water Rights Board -----	12	--	--	--	--
Youth Authority -----	160	563	4,484	1,347	5,831
Total -----	1,127	6,547½	\$40,803	\$25,668	\$66,471

* AWH not known

TABLE 2
COST TO STATE FOR CALCULATED TRAINING
1958-1959, 1959-1960 and 1960-1961

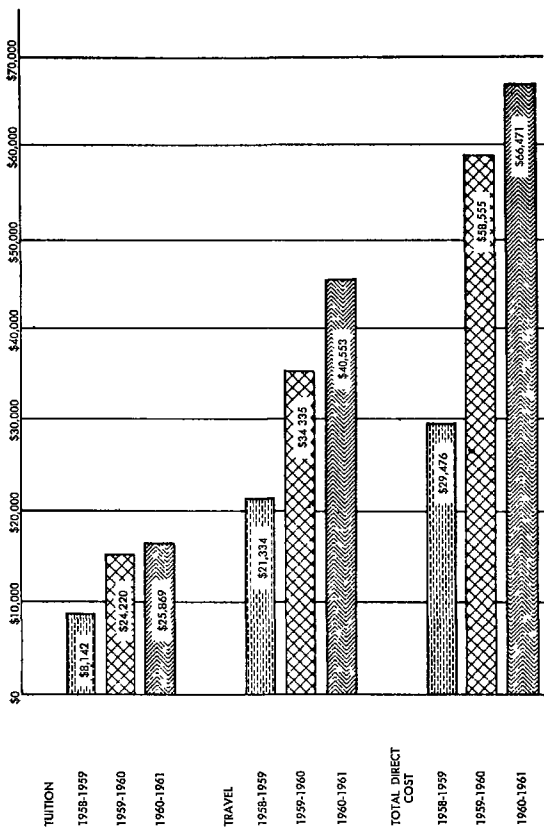


TABLE 3
NUMBER OF PARTICIPANTS AND MAN-DAYS INVOLVED IN SPECIALIZED TRAINING
1958-1959, 1959-1960 and 1960-1961

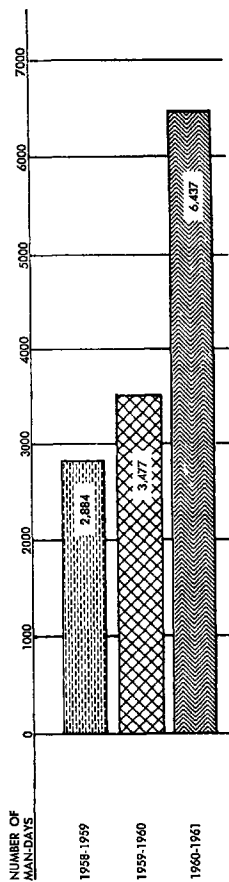
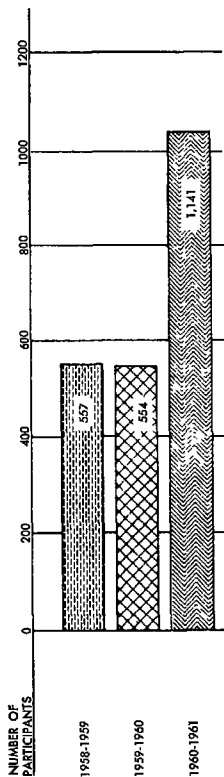


TABLE 4
COMPANY-PAID EDUCATIONAL BENEFITS

Other than on-the-job, vestibule or similar vocational training programs in aircraft trades. For approved courses successfully completed at accredited educational institutions

(From a January 1961, Aerospace Industry Association survey. The complete section is not reproduced—15 of 40 programs shown were selected to show the variety of arrangements made.)

Aerojet	Reimburse two-thirds cost of academic training directly related to work (\$50 limit)
AI Research	Reimburse 85 percent cost (\$75 limit per course). A, B, or C grades required
Beech	Pays one-half total cost of graduate work toward degree
Bell-Buff	Though not covered in union contracts, employees may be reimbursed for courses related to work they do at Bell. Reimbursement is on sliding scale depending on marks earned in each course, i.e., Grade A—90 percent, Grade B—65 percent, Grade C—40 percent, Grade D—0 percent
Boeing-S & W	Scholarship program available for employees taking certain approved courses of study. Reimburse cost of tuition for graduate work toward degree plus \$20 per credit hour successfully completed
Cessna	Reimburse total tuition for successfully completed graduate work toward work-related degree. Reimburse one-half tuition for successfully completed undergraduate work toward work-related degree
Convair-PO & DF	Reimburse full tuition upon satisfactory completion of course that is directly related to his work (\$90 per year limit)
Convair-FW	Reimburse full cost (no limit) one technical course per semester directly related to work
Fair-A & M	Reimburse full tuition for training supplementary to work. Pay all expenses for employees assigned to away-from-plant training
Grumman	For course taken upon prior approval employee is reimbursed on sliding scale as follows: Grade A—100 percent, Grade B—85 percent, Grade C—75 percent, Grade D—0 percent.
Hiller	Reimburse 65 percent if passing grade of "B" or better on approved courses.
Lockheed	None
Marquardt	Reimburse 85 percent costs (tuition, registration, labs, texts) engineering science, mathematics, business, administration, commerce, or economics; reimburse 50 percent cost (tuition only) for all other courses. Must be related to work. \$35 per semester hour maximum for 85 percent courses and \$100 per course maximum for 50 percent courses
Minn-H	Hourly employees are reimbursed one-half cost of tuition upon satisfactory completion of courses related to present or future assignments. Salaried employees are fully reimbursed for required costs (tuition, books, incidental fees) of courses successfully completed and related to employee's principal occupation
North Am	Reimburse two-thirds tuition upon successful completion of approved courses. Reimburse remaining one-third tuition upon attainment of approved degree
Sola	Pay tuition for course of immediate value to company and employee on present assignment. Pay one-half tuition for course of future value to company and employee
Temco	Pay one-half cost when employee enrolls. Upon satisfactory completion of each course, reimbursement is made to employee for the other half
United	For graduate work in engineering science company pays all tuition and other academic fees at the beginning of the semester in which due.

TABLE 5
EDUCATIONAL REIMBURSEMENT ALLOWANCES PRACTICE

(Merchants and Manufacturers Association Community Personnel Practices Survey,
Los Angeles area, April 1962)

A—239 Manufacturing firms—hourly employees

B—239 Manufacturing firms—salaried employees

C— 75 Nonmanufacturing firms—hourly employees

D— 75 Nonmanufacturing firms—salaried employees

	Percent of Firms			
	A	B	C	D
Do have plan * -----	43 1	53 1	25 3	68 0
Do not have plan -----	54 8	44 4	34.7	32 0
No salaried/hourly employees -----	2 0	2 5	40 0	-
Total -----	99 9%	100 0%	100 0%	100.0%
* Reimbursement for tuition -----	23 4	27 2	18.7	33 3
* Reimbursement for books and tuition -----	15 1	20 1	5 3	17 3
* Reimbursement for all expenses -----	4 6	5 9	1 3	17 3
Subtotal -----	43 1%	53 2%	25 3%	67.9%

(Certain figures do not reach precise totals because of rounding)

PART C

CIVIL AIR PATROL LEAVE

Assembly Bill 64, Carrell, 1961, as amended, was referred to the Assembly Interim Committee on Ways and Means, and was assigned to the Subcommittee on Leave Pay for study. This bill proposed the following:

1. Any employee of the State of California who has been a bona fide member of the Civil Air Patrol for more than one year shall qualify under its provisions.

2. Such employee when called to engage in a Civil Air Patrol search and rescue mission by the United States Air Force or other federal, state, or local government agency, shall be given a leave of absence with pay for such purpose.

3. Leave for this purpose shall not exceed 30 days per calendar year, or 5 consecutive days.

4. This leave was to be granted "only at the request of, and with permission of, the supervisor."

5. This act would add Section 19336 to the Government Code.

ISSUES

The points that were found to be at issue in the proposal included the following:

1. This leave would move the State into a new area of paid leave of absence, that for the purpose of voluntary nonmilitary public service. No type of leave presently authorized by the State is included in this category which appears to be quite distinct from the others mentioned in the introduction. It would appear to be a major policy consideration subject to resolution by the Legislature as to whether the State should enter this area.

2. It is possible that entry into this field may subject the State to demands for similar paid leave for duty with other benevolent public service organizations such as police reserves and charities. It would appear to be difficult to establish a defensible hard and fast distinction between Civil Air Patrol duty and certain other types of services.

3. One distinction that has been presented is the quasi-military organization of the Civil Air Patrol.

The Civil Air Patrol was created by an order of the Director of United States Civil Defense on December 1, 1941, in anticipation of auxiliary service in defense of the nation. It performed 18 months of antisubmarine coastal patrol, and provided many other valuable wartime services within the continental United States.

In 1946, the C A P was incorporated under U S law, and in 1948 it was by federal statute made a permanent auxiliary of the Air Force. Air Force personnel are assigned to co-ordinate C A P. activity, and the organization receives a certain amount of federal support through funds or equipment. C A P. members who are injured or killed in performance of an Air Force authorized mission have, since 1956, been

afforded certain compensation for themselves and/or their families under the Federal Employees' Compensation Act

However, federal agencies have recognized that the C A P is not, per se, a military organization. The Army, the Navy and the Bureau of the Budget in 1951 opposed plans to provide reimbursement of up to \$9 per day for actual expenses of C A P members on Air Force-authorized missions. The Bureau of the Budget also disapproved of a proposal to authorize the Air Force to budget new equipment funds for the C A P. According to the booklet, "Introduction to Civil Air Patrol," published in 1960 by the national headquarters:

"This disapproval was based upon the fact that the Civil Air Patrol was chartered as a self-supporting group who volunteered their services and equipment to help their country; hence, support from federal funds was not in accord with the purposes for which the Civil Air Patrol was established."

Major Alvin B. Baranov, Legal Officer for the California Wing, Civil Air Patrol, commented that:

"The Civil Air Patrol signed a contract with the office of Civil Defense of the State of California last year, and now all wing officers of the Civil Air Patrol are members of the Sacramento Office of the California Disaster Office."

Lieutenant Colonel Greene testified that the C A P would not draw any State compensation in its activities in connection with the Disaster Office.

The C A P differs from other public service organizations which might ask the same benefits in that it provides a unique type of service, Major Baranov said, and is the only such organization federally authorized. Others are government supported or charitably supported, but the C A P is not. "We are . . . a nonprofit federal corporation . . ."

Lieutenant Colonel Greene, Deputy Wing Commander of the California Wing, Civil Air Patrol, commented that the proposed \$9 per day reimbursement for C A P members of patrol duty was not presented by the C A P, as such, but by others in their behalf.

"It was an effort on the part, I think, of the Air Force to try and compensate us for the many man-hours that we contribute to these search and rescue programs."

4 The staff was not able to find an instance in a public agency where such leave is presently granted. There is a federal civil service provision allowing for the granting by the heads of individual agencies or departments of administrative leave with pay for an unspecified number of days, but it is not known what application is made of this.

No instance was found of the granting by private industry of paid leave for Civil Air Patrol duty. However, it is generally known that some industries assign personnel to work for certain periods in other services in the category of voluntary nonmilitary public service, and the County of Los Angeles as an example operates its A I D. charities program on "company time."

Major Baranov testified that in many cases supervisors and employers in various state governments and in private industry do grant leave

with pay for Civil Air Patrol duty In Alaska, particularly, the C.A.P. performs services essential to the state

"I don't believe the cost in time and money to the State of California, by granting this leave pay . . . would amount to very much. In some areas, in many groups, we have no state employees directly connected to Civil Air Patrol."

5. Some fear has been expressed that permitting leave with pay for C.A.P. duty may tend to cause a disproportionate use of state employees in search and rescue missions

ORGANIZATION AND OPERATIONS OF THE CIVIL AIR PATROL

Colonel Green and Major Baranov presented the following information about the operations of the C.A.P.:

Though a voluntary operation, the Civil Air Patrol, as the only civilian organization authorized by the U.S. Air Force to conduct search and rescue missions, receives considerable staff support from the Air Force. The Air Force assigns more than 400 personnel to the program, including staffing of the national headquarters at Ellington Air Force Base and liaison officers assigned to each of the eight regions and each of the 52 wings. The liaison officer has such duties as approving fuel and lubrication reimbursement, arranging support from the federal services, arranging occasional airlifts, and various co-ordinating work.

There are some 75,000 members nationally, including some 5,200 California members in 130 units, plus a varying number not carrying I.D. cards. In 1961, 63 missions were carried out in California, and the C.A.P. flew 1,463 sorties. These missions were generally in mountain areas where it is difficult to find downed planes. The C.A.P. also operates an extensive communications setup, which is involved in its agreement with the disaster office. Each 1961 mission was Air Force authorized, and carried an assigned mission number.

From 10 to 50 people may be involved in the various activities of a mission. The missions will run from one hour to two or three days, but no one member will be called on to take a long period away from his duties. Participation in any mission is strictly voluntary, but it is rare that a person called on does not respond because he can't leave his job or for any other reason.

It was estimated that about 80 state employees would be interested or used in C.A.P. search and rescue missions or any activities that would require time being taken away. State employees have taken part in missions, presumably on vacation or compensated time off, but probably not more than 10 were involved in 1961.

THE BASIC POLICY

Following is a portion of the June 11, subcommittee hearing, relating to basic policy objectives, in digest form:

Mr. Roy Stephens, Assistant Secretary, State Personnel Board:

In seeking useful information, we contacted all of the major state agencies through their personnel offices. "In making these contacts, we found only one agency, the Division of Highways, in which they had memory of an inquiry related to the Civil Air Patrol." The divi-

sion, on this request, indicated that the man should be free to go, being paid either on compensating overtime or vacation time ". . . we concluded that the number of state employees (involved) was not large . . ."

"The main question probably is that presented . . . as to whether the State wishes to extend its policy of paying for time for which a person does not perform work for the State and extend that into areas where they are providing services for other volunteer, civic, or community disaster groups

"At the present time the State's policy on the matter of providing pay for time when work is not actually performed is more liberal than that of the typical employer." The paid sick leave program costs about 2.6 percent of the payroll, compared to about 1.4 percent in private industry. Vacations cost about 5.3 percent, compared to 3.8 percent in industry. Paid holidays take 4.1 percent, compared to 2.3 percent. Leave with pay for military or jury duty takes one-tenth percent.

"The total picture is that at the present time our payroll costs are being significantly increased by the amounts of money we are paying for time during which an employee does not actually do the services for which he is hired. We are concerned about any extension of that policy beyond the already liberal levels."

Assemblyman Lanterman: "I just wondered how you adjust these differentials in benefits that you have just set forth with the pay comparability in private industry for the determination by the Personnel Board of comparable pay for state employees."

Mr. Stephens: "In setting state pay, we compare benefits." In some areas, overtime compensation for example, the State is less liberal, and overall there is pretty much of a balance. "But it's in this area of time off with pay that the State significantly leads already and where we could raise the caution of extending it further into a new area of paying for time when persons are not actually working for the State but are providing voluntary services for other groups."

Federal offices have advised that "other than for the Air Force where they have provisions to grant time off with pay, it is the federal practice in their general administrative agencies to give time off charging it against vacation or overtime, the same as the State does."

Mr. David Motes, Senior Administrative Analyst, Budget Division, Department of Finance:

The department feels that the Civil Air Patrol is a very worthwhile organization, as are various other voluntary service agencies. ". . . this leave program would set a precedent and it would be difficult, in our opinion, if we became more liberal here to draw the line on other organizations."

Members of these organizations can take vacation time off or compensating time off.

"In view of the relatively small number of employees involved in this particular program, it would appear to us that this would be extending a benefit to a very small number of employees which the majority of state employees would not enjoy. While we feel it is a matter of legislative policy as to the leave program, we do feel that, from a fiscal point of view, this would add some increase, while small, in the cost of state government."

ADDITIONAL CONSIDERATIONS

Though possibly intended to parallel the statutes relating to temporary military leave for training, the C A P bill, A B. 64, Carrell, 1961, had some significant differences in effect or form:

1. The 1961 bill pertained only to certain state employees. Section 18526 of the Government Code defines "employee" as "a person legally holding a position in the State Civil Service."

2 The 1961 bill proposed to permit 30 days per calendar year, but, as amended, not more than five consecutive days at a time. This means a minimum of six separate occasions was permitted, with the possibility of a total of 30 work days, or six work weeks of leave permitted.

3. The bill does not, as many other provisions of state law do, provide for a minimum state service before leave is permitted.

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS
ROBERT W. CROWN, *Chairman*
SUBCOMMITTEE ON INSTITUTIONAL COSTS

MEMBERS OF THE SUBCOMMITTEE

NICHOLAS C. PETRIS, *Chairman*

Carlos Bee	Lester McMillan
John A. Busterud	Bruce Sumner
Glenn Coolidge (Deceased)	Jerome Waldie
Frank Lanterman	John Williamson
Lloyd W. Lawrey	

Louis J. Angelo, *Committee Consultant*
Dr. William W. Young, *Legislative Assistant*
Robert L. Padgett, *Legislative Assistant*
Gail Vessels, *Committee Secretary*

January 7, 1963

Published by the

ASSEMBLY
OF THE STATE OF CALIFORNIA

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HON. JEROME WALDIE <i>Majority Floor Leader</i>	HON. JOSEPH C. SHELL <i>Minority Floor Leader</i>
ARTHUR A. OHNIMUS <i>Chief Clerk</i>	

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COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

January 7, 1963

To the Speaker and Members of the Assembly

Your Interim Committee on Ways and Means in accordance with the provisions of House Resolution 361, paragraph 1(x), June 9, 1961, herewith respectfully submits a report on institutional costs

Respectfully submitted,

ROBERT W CROWN, *Chairman*

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SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE
January 7, 1963

HON. ROBERT W. CROWN, *Chairman*
Assembly Ways and Means Committee
State Capitol, Room 2140
Sacramento, California

DEAR MR. CROWN Pursuant to your directive, the Subcommittee on Institutional Costs herewith submits to the Assembly Interim Committee on Ways and Means its final report on subject matter authorized in House Resolution 361, paragraph 1(x), June 9, 1961

The subcommittee is particularly indebted to Robert L. Padgett, principal researcher for the subcommittee, and to Dr. William W. Young, who drafted and organized the final report

Respectfully submitted,

NICHOLAS C. PETRIS, *Subcommittee Chairman*

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INTRODUCTION

The Assembly Interim Ways and Means Subcommittee on Institutional Costs has been charged with the responsibility of investigating the continually rising cost of operating our state correctional institutions. Preliminary staff inquiries and conferences between subcommittee members and other members of the Assembly indicated two areas of institutional costs which could be fruitfully studied. These were the role of the California Adult Authority as the term-fixing and parole-granting agency for adult male felons and the research programs of the Department of Mental Hygiene dealing with the problems of the mentally retarded. Thus, although the directive from the full committee suggested a comprehensive study of all institutional costs, the subcommittee, in the interest of effective operation, decided to limit its inquiry to these two areas. In carrying out its assignment, the subcommittee determined that its primary concern would be to ascertain the extent to which these programs are being carried out in an efficient and economic manner.

The subcommittee has concluded its study of the Adult Authority and this report sets forth the findings and recommendations issuing from that study. Meanwhile, the office of the Legislative Analyst has undertaken a study of the cost of operation, efficiency, and general effectiveness of the research programs on the problems of the mentally retarded of the Department of Mental Hygiene. Upon completion of its inquiry, the office of the Legislative Analyst will transmit a report to the Legislature pursuant to H.R. 26 (Mulford and Waldie), 1962 Second Extraordinary Session.

In conducting its study of the Adult Authority, the subcommittee held hearings on February 6, 1962, and March 14, 1962. The following witnesses testified: Richard A. McGee, Administrator, Youth and Adult Corrections Agency; Laurence Stutsman, Deputy Director, Department of Corrections; Richard Ellsworth, Department of Corrections, Folsom State Prison; Fred Finsley, Chairman, Adult Authority Board; Thomas H. Pendergast, Acting Chief, Adult Paroles Division; Edward Poin-dexter, Adult Paroles Division, Sacramento District Office; James V. Hicks, Chief of Police, City of Sacramento; Lt. Eugene Souza, Criminal Investigation Division, Oakland Police Department; and Walter Dunbar, Director of Corrections.

In an attempt to gain as much firsthand knowledge as possible of the operation of the Adult Authority, the subcommittee visited the following hearings: Adult Paroles Division Calendar, July 27, 1962, San Francisco Ferry Building; Parole Violator Calendar, July 27, 1962, California State Prison at San Quentin; Regular and Parole Violator Calendars, August 1, 1962, California State Prison at San Quentin; Regular Calendar, August 6, 1962, California Men's Colony, Los Padres.

FINDINGS, RECOMMENDATIONS, AND SUPPORTING MATERIAL

Finding No. 1: Due to the increasing caseload of the Adult Authority Board, the membership of the board should be increased and the role of the board's case hearing representatives should be redefined. These steps should be taken to insure the board's predominant position in the field of term fixing and parole granting

Recommendation No. 1: Sections 5075 and 5076 1 of the California Penal Code should be amended as follows:

- 1 The membership of the Adult Authority Board shall be increased from seven to nine members (Section 5075)
- 2 The Adult Authority Board shall meet in panel hearings, two members per panel, and shall consider cases of major importance. The hearing representatives shall also meet in panel hearings, two representatives per panel, and shall consider cases of minor importance. The Adult Authority Board shall reserve the right to review any case heard by the hearing representatives. (Section 5076 1)
- 3 It shall be the responsibility of the Adult Authority Board to determine what constitutes cases of major importance and cases of minor importance (Section 5076 1)

Supporting Material for Recommendation No. 1: It is generally acknowledged that a single term-fixing, parole-granting board is the most effective means of fulfilling the purpose and intent of the theory of indeterminate sentences in which sentences are not fixed by a court but by an administrative agency. And it is further acknowledged that such a board should consist of members possessing broad experience and knowledge in the fields of sociology, penology, criminology and law.

From its inception in 1944 until 1951 the Adult Authority Board consisted of three members. By law the board included an attorney, a sociologist, and a person experienced in handling adult prisoners. By 1951 it became evident that the three-man board could not give adequate attention to all the cases coming before it. As a consequence, the Legislature increased the size of the board to five members in 1951. The continually rising prison population and caseload from 1951 to 1957 led the Legislature to increase the membership of the board again in the latter year to seven.

In 1957 the Legislature enacted a statute permitting the board to employ qualified civil service personnel (to be called case-hearing representatives) to assist the board in its duties. This law was an outgrowth of an experiment which had been carried on in the Department of Corrections wherein qualified personnel participated in panel hearings and prepared case reports for the Adult Authority Board. Presently the case-hearing representative may sit with one member of the board as a hearing panel. Cases in which the hearing representative participates must be reviewed and approved by another member of the board, a time-consuming action, incidentally, which does not appear to be justified in view of the heavy caseload.

The subcommittee is impressed with the very significant role played by the hearing representatives in the entire term-fixing and parole-

granting process, a role perhaps more significant than the Legislature intended. These representatives sit on panels that hear cases of the gravest importance. It would be well at this point to refer to the law authorizing these representatives:

The Adult Authority may employ case hearing representatives who shall participate with the authority in the hearing of cases relating to term fixing and paroles. The case hearing representative assigned to participate in the hearing of any such case shall prepare a case study and evaluation which he shall submit to the authority.¹

The language of this statute does not seem to suggest more than an advisory role for the hearing representatives and certainly not the dynamic, initiatory role which they now play. In this connection, it should be pointed out that the hearing representatives come up through the prison ranks, hence there is the danger of imposing a narrow "professional staff view" on the Adult Authority.²

The subcommittee understands that the Adult Authority intends to submit a request for additional hearing representatives in its 1963-64 budget. Such a request, if it is forthcoming, should be scrutinized with great care by the Legislature.

Finding No. 2: Cases involving parolees who have been convicted of new crimes and sent back to prison by order of the court are presently heard on both the Adult Paroles Division (APD) Calendar and the Parole Violator (PV) Calendar. Such duplication of effort unnecessarily consumes the time of hard-pressed Adult Authority members.

Recommendation No. 2: Cases involving parolees who have been convicted of new crimes should be heard only on the PV calendar either by Adult Authority Board members or hearing representatives when all participating members of the Adult Paroles Division agree that this procedure should be followed.

Supporting Material for Recommendation No. 2: Hearings on the Adult Paroles Division (APD) Calendar deal with cases involving suspension, cancellation, reinstatement and revocation of parole. The APD is presently obligated to report recommendations for specific action to the Adult Authority Board. The APD recommends revocation of parole, which is under consideration here, only after extensive investigation into charges of violation. But in the case of parolees with new convictions investigation by the APD is unnecessary since the parolee has clearly violated the terms of his parole. It seems an unnecessary waste of time to place such cases on the APD Calendar. The APD can

¹ California Penal Code, Section 5076.1.

² The qualifications for hearing representatives are set forth by the California State Personnel Board. There are two categories. The job applicant must possess either (1) one year of full-time paid experience in the California Department of Corrections in planning, organizing and directing the classification and treatment program of an institution or the parole program of a major region of the State, or (2) three years of full-time experience in a large penal or correctional program in (a) an administrative or staff capacity with departmentwide responsibility, or, as (b) a member of a board or panel providing final review of findings relating to the disposition of juvenile delinquents or convicted felons, or, in (c) a combination of (a) and (b). The applicant in the second category must have the equivalent of graduation from college, although qualifying experience may be substituted for up to four years of the required education on a year-for-year basis.

merely sanction a decision which, in effect, has already been made. This simply takes up the time of the APD and lengthens the wait which the violator must undergo before appearing on the Parole Violator (PV) Calendar.

Finding No. 3: Legal restrictions, public attitudes and the characteristics of certain crimes markedly reduce the possibility of removing portions of the prison population from high-cost custodial care to low-cost parole supervision. The subcommittee, nevertheless, finds that the Increased Correctional Effectiveness (ICE) program of the Department of Corrections has been relatively successful in demonstrating the feasibility of early release dates in certain cases. The success of the ICE program plus an analysis of data collected appear to indicate that prisoners in offense groups having a high parole success potential should be released from custody as soon as possible after adequate time for diagnosis and treatment.

Recommendation No. 3: Resolution No. 184 of the Adult Authority Board should be amended to insure that persons in the following offense groups are given parole hearings not later than the eighth month of their imprisonment: manslaughter, assault without deadly weapon, robbery other than first or second degree, i.e., attempted robbery (Penal Code, Section 664) and assault with intent to rob (Penal Code, Section 220), and receivers of stolen property.

Recommendation No. 3a: Legislation is recommended to require contributions from parolees toward the costs of the administration and supervision of their parole.

Supporting Material for Recommendations No. 3 and 3a: The subcommittee was most interested to learn of the substantial disparity between costs for custodial care and costs for parole supervision. Presently the average annual cost for keeping an inmate confined is approximately \$1,800 as compared with about \$300 for keeping a person on parole. A parolee thus saves the State about \$1,500 annually. This does not include savings in capital outlay resulting from reducing the need for increased prison facilities.

The subcommittee was concerned to find means whereby the Adult Authority could place more inmates on parole without jeopardizing the safety and well-being of the citizenry. The Department of Corrections presented material regarding its ICE program. The remarkable strides made by ICE in placing more inmates on parole are attested to in a special progress report presented in January 1962, to the Senate Finance Subcommittee and the Assembly Ways and Means Subcommittee on Institutional Costs. Though this report was based upon data relating to adult female felons, there was some indication that data presently being collected will demonstrate equal success with adult male felons.

It is apparent from an analysis of statistics compiled by the Department of Justice relating to men paroled from 1946 through 1949 that certain offense groups are much better parole risks than others. Some of the more outstanding in terms of successful completion of paroles are the following offense groups: manslaughter, 83 3 percent; assault

other than with a deadly weapon, 74.4 percent; robbery other than first or second degree, 60.3 percent, and receivers of stolen property, 63 percent.^a

If the in-prison time within these offense groups could be reduced by three months per prisoner, based upon foregoing figures on in-prison cost as compared to parole cost, a savings of about \$275 per man per year would accrue to the State (based upon present data). This does not, moreover, take into consideration the savings from increasing the "prison bed" capacity by reducing the prison population.

With respect to the recommendation that parolees be required to contribute to the costs of parole supervision, it should be noted that parolees are required to be gainfully employed as a condition of their parole. To the extent the financial status of the parolee permits contributions from him, the subcommittee feels that such contributions would benefit the parolee by increasing his sense of responsibility, and the State by helping to defray the costs of the parole operation.

Finding No. 4: Limited observation of hearings indicates that an excessive amount of time is given to those who are interviewed during the first part of the hearing, and, as a result, that an insufficient amount of time is devoted to those who are interviewed toward the end of the hearing period.

Recommendation No. 4: The Adult Authority Board should conduct time studies of a representative number of hearings to determine the average time given to individual interviewees, whether inequities do exist and to what extent, and how long different kinds of cases take. After gathering this data, the board should consider the feasibility of establishing general time interview standards for each type of calendar offense. Such standards might be considered as guidelines to follow in order to insure that each interviewee is accorded the fairest treatment possible.

Supporting Material for Recommendation No. 4: Observation of panel hearings by subcommittee members indicates that there is little attempt made to hold interviewees to specific time limits. The Adult Authority Board member in charge of the hearing encourages the inmate to speak freely and, in effect, to talk as long as he wants. Situations thus can easily arise in which the time devoted to hearing cases at the beginning of the calendar results in a press for time at the end of the calendar. Subcommittee members were of the impression that from time to time hearing panels must run hopelessly behind schedule.

In attempting to acquire more data on this aspect of the hearing procedure, the subcommittee requested information from the Adult Authority Board regarding time spent interviewing various classes of offenders. The board does not have such information, however, and the following excerpt from the board's March 1962 report indicates why.

In keeping with the fundamental philosophy of the correctional process, the Adult Authority subscribes to the principle that each case must be handled individually and geared to meet the needs of the person involved. No records of average lengths of interview time devoted nor other statistical records that would tend to categorize individuals into "pigeon holes" are available or used during

^a See Appendix A

the interview process. The interview is directed towards the attainment of the intent of the Legislature: study of the causes for anti-social behavior; the formulation of plans to modify such behavior; and the measurement of the degree of accomplishment of that inmate towards preparation for his return to free society.⁴

While recognizing that the board's statement is a reasonable justification for not attempting to establish time "pigeon holes," the subcommittee believes that in order to insure equitable consideration for all inmates the board should have some conception of the time which can reasonably be allotted to any given interviewee.

Finding No. 5: The role of the field agent in the state parole program is presently hampered by the requirement which obligates him to make written reports of cases involving parolees under his supervision who have been tried and convicted of innocuous crimes.⁵

Recommendation No. 5: The Adult Authority should re-examine Section 3060 of the California Penal Code with a view toward simplifying the reports required of field parole agents in cases where the parolee has been convicted of an innocuous crime and given a jail sentence not exceeding 90 days.

Supporting Material for Recommendation No. 5: The procedure for investigating all suspected parole violations is initiated by the field parole agent. He first discusses the matter with the parolee and then interviews persons connected with the incident. After bringing the information to his district supervisor and consulting with him, the field parole agent is required to file an initial emergency report in quadruplicate setting forth the circumstances surrounding the alleged parole violations. The agent then prepares a report summarizing the activities of the parolee subsequent to the alleged violation. This summary concludes with recommendations for action pending a final report to the Adult Authority Board. The final report to the board includes the specific violations with which the parolee has been charged plus the supporting evidence on each charge and concludes with recommendations for action. The preparation of all these reports is the direct responsibility of the field parole agent. In making its decision the Adult Authority Board relies heavily upon the parole agent's various reports.

One can readily appreciate the sizable amount of paperwork the field parole agent has to do in order conscientiously to discharge his duties with respect to alleged parole violations. Considerable sentiment has been expressed regarding the feasibility of modifying existing policy to lessen the amount of report writing for which the parole agent is responsible.

Finding No. 6: Many potential parolees have been held beyond scheduled parole dates because of failure or inability to secure employment. While the State Department of Employment and several private agencies have been most helpful in placing potential parolees, there

⁴ Adult Authority Report, March 8, 1962, Part II, Section IV.

⁵ An innocuous crime is one in which the act committed is not considered to be dangerous or vicious. Examples are alcoholic checkwriters, jail walkaways, auto theft cases (joy riders), and receivers of stolen property.

has been a general reluctance on the part of numerous state agencies to employ parolees or to help them secure employment elsewhere

Recommendation No. 6: The Department of Public Works, the Department of Mental Hygiene, the Department of Water Resources and other state agencies are urged to co-operate with the Department of Corrections in the placement of capable, qualified parolees

Recommendation No. 6a: The Adult Authority should make necessary modifications of its policy toward possible parolees who are unemployable so that such persons will not be denied parole because they are in this category.

Supporting Material for Recommendations No. 6 and 6a: An inmate is seldom released on parole unless he has a definite promise of employment. When an inmate's parole date is set he is assigned to a parole agent whose duty it becomes to seek employment for the prospective parolee. Attempts are made elsewhere within the prison system to find employment for those whose release dates are definite. For example, the correctional counseling center at San Quentin has a prerelease orientation program at which representatives from the Department of Employment appear and discuss job possibilities with prospective parolees.

Inquiring further into the problem of employment for parolees, the subcommittee was interested to learn that many inmates receive training while in custody which parallels fields of employment in several of the state agencies. It was discovered that the agencies which might very well use skills possessed by parolees have made little effort to hire such persons, and, as a consequence, that very few parolees are employed by the agencies.

Finding No. 7: The budgetary allowance allocated to the activities of the correctional counselors does not appear to be proportionate to the vital role played by these employees in analyzing data and preparing reports which are utilized by the Adult Authority Board.

Recommendation No. 7: The Department of Corrections should attempt to give special budget consideration to that portion of the counseling operation directly concerned with preparing reports used by the Adult Authority Board. Insofar as practicable, a higher proportion of funds available to the department should be used to raise the salaries of correctional counselors and to hire necessary clerical personnel.

Supporting Material for Recommendation No. 7: The correctional counseling centers of the various institutions serve the Adult Authority by preparing what is called the Adult Authority Board report. This report consists of an evaluation of the inmate's rehabilitative progress based upon a review of his case file and a personal interview. Walter Dunbar, Director of Corrections, has emphasized the major role played by the correctional counselor in preparing the report which the Adult Authority Board relies upon so heavily in deciding whether to release an inmate on parole.

The correctional counselor shares in another aspect of the parole program by participating in preparing the inmate for release. Besides helping the inmate through the period of adjustment before his release,

the correctional counselor also makes contact with the community in which the inmate will be released and attempts to prepare the family and locate employment.

Upon learning of the key role played by the correctional counselor the subcommittee was surprised to learn that little more than 0.08 percent of the Department of Corrections' budget is allocated to this vital work. In a survey made by the Division of Organization and Cost Control of the Department of Finance it was recommended that the number of correctional counselors be increased. The Department of Corrections responded by saying that "budget considerations have prevented this."⁶ The department did not, however, introduce any data supporting this contention.

Though the American Correctional Association recommends a ratio of 150 inmates to 1 counseling caseworker in general institutional programs, the inmate counselor ratio in California institutions is 400 to 1. In view of the central position occupied by the corrections counselor, the subcommittee is at a loss to understand the failure of the Department of Corrections to make a greater attempt to reduce this disproportionate ratio.

⁶ Letter dated March 13, 1962, from Walter Dunbar to Assemblyman Nicholas C. Petris.

APPENDIX A

CALIFORNIA FIRST PAROLES

OFFENSE AND NUMBER OF PAROLE VIOLATORS AND NONVIOLATORS

Men Paroled to California Supervision

FIRST PAROLES

1946-1949

Offense	Total	Non-violators	Violators					
			Total		Convicted of a felony		Not convicted of a felony	
			Number	Percent	Number	Percent	Number	Percent
Total.....	5,070	2,805	2,805	50.6	1,142	20.2	1,723	30.4
Homicide.....	358	296	62	17.3	9	2.5	53	14.8
Murder 1st.....	100	84	16	16.0	2	2.0	14	14.0
Murder 2d.....	85	68	17	20.0	4	4.7	13	15.3
Manslaughter.....	156	130	26	16.7	3	1.9	23	14.8
Manslaughter—traffic.....	17	14	3				3	
Robbery.....	890	445	454	50.5	187	20.8	267	29.7
Robbery 1st.....	440	223	217	49.3	96	21.8	121	27.5
Robbery 2d.....	396	184	212	53.6	90	20.2	132	33.4
Other robbery.....	63	38	25	39.7	11	17.5	14	22.2
Assault.....	303	198	105	34.7	24	7.9	81	26.8
With deadly weapon.....	280	166	94	36.2	22	8.5	72	27.7
Other assault.....	43	32	11	25.6	2	4.7	9	20.9
Burglary.....	1,024	438	586	57.2	262	25.6	324	31.6
Burglary 1st.....	205	85	120	58.6	54	29.4	66	32.2
Burglary 2d.....	815	352	463	56.8	206	25.3	257	31.5
Other burglary.....	4	1	3		2		1	
Theft, except auto.....	575	270	305	53.1	100	17.4	205	35.7
Grand theft.....	450	217	233	51.8	78	17.4	155	34.4
Petty theft with prior.....	79	24	55	69.6	16	20.3	39	49.3
Receiving stolen property.....	46	29	17	37.0	8	13.1	11	23.9
Auto theft.....	373	180	243	65.2	116	31.1	127	34.1
Forgery.....	919	330	589	64.1	277	30.2	312	33.9
Sex offenses.....	508	381	187	32.9	35	6.2	152	26.7
Rape.....	198	137	61	30.8	16	8.1	45	22.7
Lewd and lasc. conduct.....	228	154	74	32.5	13	5.7	61	26.8
Sex perversion.....	65	43	22	33.9	2	3.1	20	30.8
All other sex.....	77	47	30	39.0	4	5.2	26	33.8
Narcotics.....	172	94	78	45.4	29	16.9	49	28.5
Deadly weapons act.....	33	19	14	42.5	6	18.2	8	24.3
Escape.....	212	70	142	67.0	62	29.3	80	37.7
Habitual criminal.....	79	36	43	54.5	16	20.3	27	34.2
All other.....	155	98	57	36.8	19	12.3	38	24.5

Reproduced from California Male Prisoners Released on Parole 1946-1949 Ronald H. Beattie, Chief, Bureau of Criminal Statistics, Department of Justice, 1953

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

ROBERT W. CROWN, *Chairman*

SUBCOMMITTEE ON LAKE EARL

MEMBERS OF THE SUBCOMMITTEE

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January 7, 1963

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COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

January 7, 1963

To the Speaker and Members of the Assembly

The Interim Committee on Ways and Means herewith submits its final report on Assembly Concurrent Resolution 51 (Belotti), introduced February 15, 1961, and subsequently referred for interim study.

Respectfully submitted,

ROBERT W CROWN, *Chairman*

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SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

SACRAMENTO, January 7, 1963

HON. ROBERT W. CROWN, *Chairman*
Assembly Ways and Means Committee
State Capitol, Room 2140
Sacramento, California

DEAR MR CROWN Pursuant to your directive the Subcommittee on Lake Earl herewith submits to the Assembly Interim Committee on Ways and Means its final report on A C R 51 (Belotti), introduced February 15, 1961.

The subcommittee wishes to acknowledge the assistance which it has received in conducting its investigations and preparing its report from Mr Joe Creisler, Flood Control Co-ordinator, Del Norte County, and Mr Donald Benedict, Principal Administrative Analyst

The subcommittee is particularly indebted to Mr. Jerold Perry, Legislative Intern, who edited the subcommittee's hearing transcript and prepared the final draft of this report

Respectfully submitted,

CARLOS BEE, *Subcommittee Chairman*

FRANK BELOTTI
JOHN L E COLLIER
ROBERT W CROWN
PAULINE DAVIS

LEVERETTE HOUSE
CARLEY PORTER
THOMAS M REES
JEROME WALDIE

INTRODUCTION

Lake Earl is a small body of water lying adjacent to the Pacific Ocean, four miles north of Crescent City, in Del Norte County in the extreme northern part of the State. It is a fresh water lake subject to salt water intrusion. The lake is bordered by land used primarily for agricultural purposes and is occasionally used for fishing and hunting waterfowl.

The most significant characteristic of the lake is its fluctuating water level, which affects sewage disposal in the surrounding area, raises problems of flood control and mosquito abatement, and also bears upon the recreational and agricultural development of the land affected.

At the request of the Del Norte County Board of Supervisors, A C R 51 was introduced by Assemblyman Belotti at the 1961 Regular Session. This resolution requests the Department of Fish and Game, the Department of Water Resources, the University of California Agricultural Extension Service, and the Department of Public Health to study and report to the Legislature on the problems and potentials of the Lake Earl watershed.

The resolution was referred to the Assembly Interim Committee on Ways and Means, which established a subcommittee on Lake Earl, with Assemblyman Bee as chairman.

PROCEDURE

In preparing this report, the Subcommittee on Lake Earl solicited testimony from all those who would be directly affected by adoption of A C R 51. A public hearing was held in Crescent City on the afternoon of August 15, 1962, with the morning left open so that members of the subcommittee could visit the site of the lake.

Representatives of the Departments of Public Health, Fish and Game, and Water Resources were present at the hearing to present their recommendations on Lake Earl, and answer questions relevant to their particular fields of competence. In addition, testimony was received from representatives of local agricultural and sports interests, holders of property around the lake, and other interested parties from the local community.

Representing the Del Norte Board of Supervisors and the local flood control district was Joe Creisler, flood control co-ordinator.

FINDINGS

1. The Department of Water Resources has officially recommended that no further flood control studies of the Lake Earl watershed be conducted and expressed its opinion that flood control benefits attainable do not warrant the expenditure necessary for the least expensive possible flood control project.

2 The Department of Public Health has expressed its opinion that the mosquito control benefits of a comprehensive mosquito control project on Lake Earl would not warrant the expense involved.

3. The Department of Fish and Game has expressed its opinion that existing conditions on the lake are best for the encouragement of fish and waterfowl. Since hunting and fishing appear to be the primary recreational uses which might be made of the lake, any change made in present conditions would thus be a detriment to the lake's recreational development.

4 All of the land which borders on Lake Earl is in the hands of private owners.

5 A quiet title suit has been brought against the State of California by a single private party seeking to establish his ownership of the entire lake bottom. In the event that the State should prevail in this suit, there still remains a possibility of further legal action by other landowners seeking to establish their own rights to portions of the lake bottom.

6 Although Lake Earl might be regarded as an important natural resource, its development would be justified primarily in terms of its potential contribution to the local area or region.

7 A consensus is lacking among local residents as to the water level at which the lake should be stabilized and as to the desirability of its public recreational use. These are policy decisions preferably to be made by those most directly affected.

8 These decisions are in no way dependent upon information not already available and have a direct bearing on the necessity for, and advisability of, further expenditure of state funds.

9 The studies requested under A.C.R. 51, if authorized, would require an additional minimum expenditure of \$21,000 and anticipate the commitment of substantially greater amounts to implement their recommendations.

10 Regular channels for planning assistance under already established state and federal programs have not been fully explored.

11 Local resources have been utilized for temporary and immediate solution of the problems arising from Lake Earl's fluctuating water level. However, no attempt has been made to establish a local reserve from local tax sources to implement permanent long-range solution. Such a program would be further evidence of a willingness to attempt self-help before requesting outside assistance and furnish evidence of the intensity of local desire to develop the Lake Earl watershed.

RECOMMENDATIONS

1 The studies which A.C.R. 51 would authorize should not be undertaken until such time as the state departments and services which would conduct them find such studies necessary.

2 The following additional qualifications should also be met before authorization of such studies:

- a The legal position of landowners with holdings around the lake be clarified and the legal status of the body of the lake fully determined.

- b. A greater unanimity of opinion be obtained among the people who would be most directly affected by any changes in the lake and its use
 - c. Existing alternative sources of revenue to finance the studies, including utilization of local resources, be fully investigated and exhausted.
3. The committee therefore recommends no further action on A C R 51 at this time

BACKGROUND

The following description of Lake Earl is taken from a report prepared by John M. Haley, Chief, Northern Branch, Department of Water Resources

"Lake Earl lies within the Smith River Plain adjacent to the Pacific Ocean, four miles north of Crescent City and seven miles south of the mouth of the Smith River. Its normal water level is four feet above mean sea level, and it covers an area of about four square miles. Approximately 30 square miles drain into Lake Earl, chiefly through Lake Talawa, lying to the west and adjacent to the Pacific Ocean. Lake Talawa does not have a permanent outlet to the ocean because a sandbar formed by wind and wave action closes the outlet of the lake to the ocean most of the year. During heavy winter rains this closed outlet to the ocean causes the levels of Lakes Talawa and Earl to rise. The rising of the levels of the lakes is compounded by flood overflow from the Smith River."

During this flood period the water level will rise to approximately 10 feet above sea level. The land subject to flooding amounts to about 1,500 acres which constitutes 22 percent of the land owned by the 25 landholders whose property borders on the lake.

The flood control measures which have thus far been adopted are largely informal and primitive in nature. When the water level rises to a sufficient degree to flood the pasture lands of various farmers with holdings around the lake, they contact the local board of supervisors. The board then makes arrangements to have a bulldozer open up a channel in the sandbar through which the water drains out into the ocean.

This channel will usually remain open until the lake has drained to the four-foot level at which time wave and wind action act to again close the bar. The channel will be opened three to six times during the course of a year at a cost of \$75 to \$100 for each operation.

LEGAL PROBLEMS

A quiet title suit involving the bed of Lake Earl has been brought against the State of California in the name of Endert and others in the Del Norte County Superior Court (*Endert v. State*). Mr. Loren C. Bliss is prosecuting the suit as lessee of the property concerned with an option to buy. The suit is still pending, and attempts have been made on the part of attorneys for both parties to work out a satisfactory compromise agreement.

The following summary of the legal and factual issues involved is taken from a statement prepared by Paul M. Joseph, Deputy Attorney

General, at the request of the Assembly Committee on Ways and Means:

"... action was commenced pursuant to authority contained in Chapter 1991 of the Statutes of 1959 to quiet title to certain lands embraced within Swamp and Overflowed Lands Surveys Nos 89 through 96 of Del Norte County. The plaintiffs traced their title by mesne conveyances to patents from the State. The state patents were issued pursuant to the authority under the Political Code sections authorizing the conveyance of land received by the State from the United States as swamp and overflowed land.

"The State's position with reference to the land in question is that at the time the State of California was admitted to the Union in 1850 and at all times thereafter the land in question was covered by navigable waters and such land was and is owned by the State in its sovereign capacity; that the title of the State to the land in question was not derived from the United States pursuant to the United States statutes making the swamp and overflowed lands grant. There was no authority in any officer of the State to convey sovereign lands and, therefore, the patents to which the plaintiff in the above action traced their title were unauthorized and void.

"The topographic configuration of the lake basin is such that the engineers representing the plaintiffs and the engineers of the State Lands Commission are experiencing difficulty in determining the position of the low waterline which may be considered as the boundary between the validly patented upland or swampland areas and the bed of the lake which is sovereign land of the State. There seems to be an insufficient history concerning hydrographic conditions in this lake basin to permit a ready definitive determination of the boundary."

In addition to the unresolved legal questions presented by the *Endert* suit, questions also exist as to the rights of other landholders in portions of the lakebed. Statements were made by landowners with holdings around the lake during the course of the public hearing expressing a belief in such rights, and taxes are being paid by private parties on such land. The existence of these claims was confirmed by Mr. Joe Creisler, Del Norte County Flood Control Co-ordinator.

LOCAL ATTITUDES

Lake Earl represents a local resource of major importance. There are 25 landholders whose properties border the lake. In addition, other residents and landowners in the vicinity would be directly affected by any project which decreased the mosquito breeding qualities of the lake, increased its recreational potential or affected the water table of the surrounding land.

During the course of the hearing held in Crescent City on August 15, 1962, six local residents and landowners testified as to their attitudes, and the attitudes of their neighbors, toward projects affecting Lake Earl.

All those concerned seemed to favor a constant water level at the time of the hearing. However, conflicting attitudes also emerged, particularly toward the development of the lake for public recreational purposes, and on the question of the most desirable permanent level for the lake's waters.

These attitudes seemed to depend primarily upon whether or not the opinions expressed were those of residents with holdings directly on the lake. Attitudes toward recreational development of the lake seemed lukewarm on the part of those with property on its borders, while more enthusiastic on the part of others in the community. The exception to this was Mr. Bliss who, as indicated, claims ownership of the entire body of the lake and desires to develop it privately.

Similarly, those whose land would be directly affected seemed to favor the permanent establishment of a lower water level, while others indicated support for a "high-level lake," usually on the assumption that this would enhance the lake's recreational potential.

Mr. Jim Brady appeared on behalf of the Lake Earl Grange. He testified that, "The majority of our Grange members voted at our last meeting . . . to support the action to develop Lake Earl's recreational potential." He also testified, "We vigorously oppose the draining of Lake Earl, contending it would result in the lowering of the water level in a very wide area, thereby endangering the health and welfare of many people." Mr. Bliss also testified in favor of a high-level lake and Mr. Irving Hardleven, a local merchant, stated his strong support of recreational development.

Mr. Mervyn McLaughlin, Mr. Howell B. Hight, and Mr. Frank Layton, Jr., all with holdings directly on the lake, all testified against raising the water level if the result was a permanent flooding of land around the lake. Mr. McLaughlin stated that he favored a high-level lake, but *only* if it was obtained by dredging the lake bottom rather than building up the water retained on the existing bottom. He testified that the landowners around the lake were in general agreement that they did not want "any excess flooding."

Mr. McLaughlin also testified that landowners with holdings on the lake varied in their attitudes toward its recreational use, and he, himself, expressed reservations.

PRELIMINARY SURVEYS AND DEPARTMENTAL RECOMMENDATIONS

By the time of the public hearing in Crescent City, preliminary surveys had already been made by the three state departments which would be affected by A.C.R. 51, and a final report had been prepared by the Agricultural Extension Service of the University of California. In addition, representatives of the Departments of Public Health, Fish and Game, and Water Resources were present at the hearing to further present their views and answer questions.

Agricultural Extension Service

The University of California Agricultural Extension Service report on the agricultural problems and potentials of the Lake Earl watershed requested under A.C.R. 51 has already been completed and made available to the Del Norte County Board of Supervisors. It was undertaken by the university at the request of the board as one of its services normally available to local areas without special authorization or additional appropriation.

Department of Water Resources

During the course of the hearing, Mr. Joe Creisler, Flood Control Co-ordinator for Del Norte County and spokesman for the Del Norte County Board of Supervisors, and Mr. Harold Del Ponte, Del Norte County Supervisor, both indicated that they were now primarily interested in a flood control survey by the Department of Water Resources, and considered the reports already submitted to the subcommittee by the three other agencies adequate.

Mr. Creisler, by letter of February 24, 1961, had requested the Department of Water Resources to prepare cost estimates on studies of the Lake Earl watershed, including the following:

- 1 Sounding of Lake Earl and Lake Talawa for depth.
- 2 A correlation between intensive rainfall runoff and rise per foot of Lake Earl and Lake Talawa
- 3 The effect of Lake Earl and Lake Talawa on the ground water table during summer months and during flood stages
- 4 Recommendations on keeping Lake Earl and Lake Talawa at a constant level, disregarding the Department of Water Resources' 1954 study of Lake Earl and Lake Talawa for the Wildlife Conservation Board

The Department of Water Resources indicated, by return letter, that such a study would require an expenditure of about \$21,000 and recommended that such a study not be undertaken at this time.

Representing the Department of Water Resources at the hearing was Mr. John M. Haley, Chief, Northern Branch. Mr. Haley submitted a prepared statement to the committee which outlined the flood control problems in the area and summarized the findings of previous and present investigations.

Several alternative methods of disposing of the floodwaters of Lake Earl were considered by the department in its most recent investigation. All involved stabilizing the level of the lake at a lower level, since most of the benefit to be derived from a flood control project of this nature would be in the increased utilization of land otherwise subject to overflow. The report stated:

"Very preliminary studies indicate that annual flood control benefits from the foregoing alternatives, to convey floodwaters through Lake Talawa to the ocean, would be approximately \$3,000. Of this amount, \$1,800 annually could be attributed to agricultural benefits, according to a report on Lake Earl prepared by the Agricultural Extension Service of the University of California dated July 1961. In addition, \$1,200 in annual savings would result by eliminating the annual maintenance cost for clearing the present outlet. The annual flood control benefits of \$3,000 represent the maximum annual cost for a project that could be justified for flood control alone."

Thus, it was stated, "with flood control benefits having an annual value of \$3,000 and with an interest rate of 4 percent and project life of 50 years, a flood control project costing about \$60,000 could be economically justified." The least expensive possible project was estimated by the department as being in excess of \$100,000. For these

reasons, the report concluded that a flood control project in the Lake Earl watershed, "would not be economically justified at this time."

Possible benefits in terms of mosquito control and recreational development were not evaluated

Department of Public Health

Mr Richard F Peters, Chief, Bureau of Vector Control, and Mr Richard P Maynard, Coastal Representative, Bureau of Vector Control, were present at the hearing representing the Department of Public Health. It was the opinion of these men that the constant fluctuation in the lake's water level, even when it amounted to only a few inches, was the critical element in the breeding of mosquitoes in the area. Thus, the establishment of a stable water level was considered to be, in the words of Mr Peters, "a prerequisite to effective mosquito prevention."

However, it was also their opinion, as expressed by Mr Maynard, that an effective program of mosquito control on the lake would be "inordinately expensive." The office of the Legislative Analyst has estimated that a mosquito ecology study would cost a minimum of \$50,000.

Department of Fish and Game

Mr Harry Anderson, Deputy Director of the Department of Fish and Game, was also present. Mr Anderson stated his opinion that, "the existing water conditions in Lake Earl are the most suitable for fish and waterfowl resources," and that, "any changes that would stabilize the level of Lake Earl at either a high or a low level would, in all probability, downgrade the water as a producer of fish and an attractor and feeder of waterfowl."

It was his conclusion that additional investigation on the part of the Fish and Game Department was not necessary at the present time.

ALTERNATE SOURCES OF PLANNING ASSISTANCE

Even though A C R 51 is not adopted by the Legislature, there are alternate sources of planning assistance which might be available under currently existing programs.

One alternative would be a grant from the Department of Conservation—Division of Soil Conservation. A grant could be made from the State Soil Conservation Commission for the purpose of planning in the Lake Earl watershed if there were a suitable recipient for the funds. This would require the establishment of a soil conservation district which does not exist in the vicinity of Lake Earl at the present time.

Even without the establishment of a soil conservation district, funds might still be obtained from the federal government under the Federal Watershed Protection and Flood Prevention Program (P L 566). This program is administered by the United States Department of Agriculture Soil Conservation Service.

A third source of funds and of planning assistance is the River and Harbor Act of 1930, and related federal legislation, particularly Public Law 685, 84th Congress. These programs are administered by the Corps of Engineers of the Department of the Army.

Although it is true that a previous investigation of the Lake Earl watershed by the Corps of Engineers in 1948 reached conclusions unfavorable to further development or investigation of the area, the liberalized method of determining benefits utilized under the present administration might lead to a favorable recommendation at this time.

A thorough investigation of these and other established channels for assistance in planning and flood control should be made. In addition, further attempts might be made to utilize local resources through using local taxation, through the flood control district or any other feasible means, to establish a reserve fund which would constitute a local contribution to the solution of local problems.

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ASSEMBLY INTERIM COMMITTEE REPORTS
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REPORT OF ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE

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VERNON KILPATRICK, *Vice Chairman*

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PHILLIP BURTON
GORDON COLOGNE
ROBERT W. CROWN
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CHET WOLFRUM

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MAXINE MOORE, *Committee Secretary*
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OF THE STATE OF CALIFORNIA

January 1963

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Speaker

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Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore

HON. JOSEPH C. SHELL
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Chief Clerk

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE
ON CRIMINAL PROCEDURE
SACRAMENTO, CALIFORNIA, January 8, 1962

HON JESSE M UNRUH, *Speaker of the Assembly*
and Members of the Assembly
Assembly Chamber, Sacramento, California

GENTLEMEN In compliance with the provisions of House Resolution No 361, the Interim Committee on Criminal Procedure herewith submits a report on a number of subjects assigned to this committee for interim study. A supplemental report covering our hearing on the abortion laws will be filed later.

We have made, in this report, a number of recommendations. We believe that the adoption of these recommendations would improve the administration of justice in the State of California.

Respectfully submitted,

JOHN A O'CONNELL, *Chairman*

PHILLIP BURTON
GORDON COLOGNE (with reservations on some of the recommendations)
ROBERT CROWN
LOUIS FRANCIS
(with exceptions)
VERNON KILPATRICK

JOHN T KNOX
NICHOLAS C PETRIS
BRUCE SUMNER
HOWARD THELIN
(with reservation)
GORDON WINTON
CHET WOLFRUM

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PART 1
DANGEROUS DRUGS

RECOMMENDATIONS

FEDERAL

1 We support federal legislation to insure that only duly licensed persons receive shipments of barbiturates and amphetamines

2. We support federal legislation to require manufacturers of barbiturates and amphetamines to maintain adequate records of quantities manufactured and sales made, such records to be available to appropriate federal officials

STATE

1 At the state level we believe that present duplicate purchase order forms are adequate records of purchase of hypnotic drugs. As to the amphetamines, it would appear that adequate control could be exercised by requiring the maintenance of invoices for a period of time to be determined by conferring with enforcement officials and pharmacists. Dispensing records are already available by way of prescription files.

2 That California enact a statute similar to Section 151.48, Federal Internal Revenue Code, Reg 5, providing for the use of narcotic and dangerous drugs in research activities of qualified personnel

3 That a section be added to the Penal Code specifying a misdemeanor penalty for any person who calls a pharmacist on the telephone and falsely represents himself as a doctor in order to obtain any drug which is sold upon prescription only

4 A standing council on drug addiction should be created to provide advice to the Legislature in formulating legislation on this subject. Members of this council should reflect a broad view of the problems involved. It should include people in the following fields: medicine, pharmacy, psychiatry, law, law enforcement, sociology, penology, social work, judiciary, and education. The Lieutenant Governor and the Speaker of the Assembly should be ex officio members of this council

5 Great care should be taken in adding restrictions to the legal manufacture and sale of barbiturates and amphetamines. Some witnesses pointed out that, unlike narcotics, these drugs can be manufactured by almost anyone from readily available materials. This could lead to an underworld supply of drugs manufactured under uncontrolled conditions. Already such drugs have turned up on the shelves of pharmacies in some sections of the country. Severely repressive legislation could create a prohibition-type situation and mark California for invasion by organized crime. The cure could easily be worse than the disease.

6. An addict who wishes to seek help in withdrawal from drugs should be able to find it short of committing himself to the treatment program of the Department of Corrections. The program of the Department of Corrections was designed to serve the addicted criminal. Some other treatment facility should be available to the noncriminal addict. It is unrealistic to expect such a person to commit himself voluntarily to the care of the Department of Corrections. We recommend the passage of A.B. 173 as introduced at the 1961 session of the Legislature.

DANGEROUS DRUGS

In June 1961, the Governor's Special Study Commission on Narcotics made public its Report on Dangerous Drugs. The recommendations in that report called for several changes in our laws regulating dangerous drugs on both the federal and state levels.

This committee held a hearing on October 20, 1961, for the purpose of hearing testimony from the medical profession as to the desirability of adopting the proposed legislation. Since that time a number of persons and organizations have made proposals for legislation on the subject of dangerous drugs. Most of them reflect reactions to the commission's recommendations and we have considered a number of them in studying this problem.

In considering this subject it immediately becomes clear that a certain amount of definition of terms is in order.

As defined in Section 4211 of the Business and Professions Code the term "dangerous drugs" includes literally thousands of drugs as subsection K encompasses, "Any drug which bears the legend 'caution: federal law prohibits dispensing without prescription.'" Usually speakers urging more stringent legislation limit their proposals to some degree. Most often mentioned are the hypnotic (barbiturate) and the stimulant (amphetamine) drugs.

Efforts to delimit the number of drugs included are usually made on the degree to which a drug is addicting. Here, again, it is necessary to define the term. The words "addicting" and "habituating" have become so interwoven by careless usage that they no longer convey an exact meaning. Dr. Maurice Seevers, a member of the AMA Council on Drugs, attempted to clarify this confusion by means of a table comparing medical characteristics of common habit-forming and addiction-producing drugs. This table was included in an article on habituation and addiction that appeared in the *Journal of the American Medical Association* on July 14, 1962. Because it is so helpful in understanding the problems that must be faced in legislating on dangerous drugs we are including this entire article as Appendix 1-A.

SCOPE OF "DANGEROUS DRUGS"

In testimony and letters the committee received a wide variety of opinions as to which drugs should be considered in this category. Alcohol was mentioned by several witnesses and it is interesting to note, on Dr. Seever's table (see page 51) that alcohol and barbiturates score exactly the same.

DR. THOMAS N. BURBRIDGE

Department of Pharmacology, University of California, San Francisco

"Dr. Burbridge . . . People that want to use chemicals in an abuse, can do it. No matter how you try to control it. Back in the old days in New England in the colonial days, people used to have nutmeg parties because there is some ingredient in nutmeg which gives you a sense of well-being. I have been told recently that if you can sneak into San Quentin an ordinary grocery store size can of nutmeg, you can get \$20 for it.

Mace is another one. People will, if they are neurotic enough, they will find some way to abuse themselves.

"Q. What is the effect on the body of drinking a combination of aspirin and coca-cola?

"Dr. Burbridge. None, that is a myth.

"Q. Is that myth? What about sniffers? What do they use in sniffers beside airplane glue?

"Dr. Burbridge. Oh, well those are volatile solvents like ether. If you smell a little ether you can get an effect very much—it was quite avid among medical students a generation or so ago, to have ether parties where they would sniff a little ether and they would get a sense of euphoria.

"Q. What is the effect of sniffing gasoline?

"Dr. Burbridge. The same —

"Q. The same thing —

"Dr. Burbridge. During the depression, the alcoholics, when they couldn't get—well and during the depression and prohibition, it was hard to get alcohol. In the San Francisco area, they drank white gas and buttermilk. It made a perfectly good way to get a euphoric and to get a kick.

"Q. Well there are then, all these things available that can't possibly be put on a proscribed list—if someone is really determined to get that reaction. Thank you very much."¹

DR. GORDON ALLES

Professor in Residence, University of California, Medical School,
Department of Pharmacology, Los Angeles

"Dr. Alles. . . I read with a great deal of interest the Interim Report of the Special Study Committee and noted a number of specific things that I would think should be called to the attention, too. Initially, in their first paragraph, the term 'dangerous drugs' was limited, without any particular reason or justification, to the barbiturates and amphetamines. Whereas these two particular classes represent no more intrinsic potential for harm from misuse by juveniles or adults than the other many, many other substances that are included in the Dangerous Drug Law. All of these compounds, and most other drugs, may be lethal under conditions of misuse and many also have potential for habit formation or addiction, depending upon how you use these terminologies. Alcohol and nicotine are also just as regularly found associated in use by those participating in the illegal trades of heroin and marihuana as are the barbiturates and the amphetamines. Certainly alcohol and nicotine can afford just as equally difficult problems of habituation, addiction, and liability to death and misuse.

"In the second paragraph on page 63, the assertion is made that because the illegal use of dangerous drugs is potentially as harmful to the mind and body as is the illegal use of narcotics, and that is why the commission is calling attention to these at the present time.

¹ Assembly Interim Committee on Criminal Procedure hearing, Dangerous Drugs, October 20, 1961, Los Angeles.

And as substantiation to their statement, they quoted out of context from a popular exposition on drugs by Harris Isbell and say, 'That since it is now well known that addiction to barbiturates is more dangerous to the physical well-being than is the addiction to morphine, the same precautions should be used in prescribing barbiturates as are employed in dispensing narcotics.' But it is equally important to note that Dr. Isbell in the same place also says, 'Like the analgesic drugs, the barbiturate drugs are among the most useful therapeutic agents at our command and should not be withheld from the majority of patients who need them and use them properly, because the minority of individuals abuse such drugs.'

"In such connection it is important to keep in mind that it has long been known that addiction to alcohol is also more dangerous to the physical well-being than is addiction to morphine. Yet the use of alcohol in all of its slightly flavored forms is left entirely to the discretion of the adult individual, without regard to any of its mental and physical problems. The ideas and extent of evidence that Dr. Isbell does or does not have for his opinions have long been known to the health and drug enforcement divisions with the federal government and its legislature and they have not seen fit to change the present legislation with regard to those matters.

"In the 1956 Congressional Hearings that were directed towards narcotics and specifically also to barbiturates and amphetamines, the Commissioner of the Food and Drug Administration said 'That we are sure that you will agree that the ideal legislation is that which will prevent misuse of these drugs, but preserve them for every use which may be directed by physicians in healing the sick and alleviating suffering and, at the same time, add to the burdens of manufacturers and distributors as little as possible.' The Commissioner of the Food and Drug Administration went on to say 'the barbiturates and amphetamines are now restricted by law to sale on prescription only and let's keep them so.'

"The last paragraph on page 65. The offered argument is now made to include tranquilizers as a problem despite the initial statement in this report that the dangerous drugs referred to throughout this report include hypnotics and the stimulant drugs from the amphetamines. It now becomes unclear whether the study commission is now proposing that the tranquilizer class of drugs are to be also declared subject to full narcotic inventory and prescription control with possession of the nonprescribed tranquilizer made a felony offense. Where would bromides and cold preparations containing antihistamine tranquilizers come under such a law? Where would a new drug claimed to be the successor to tranquilizers come under such a law?

"It is my opinion that lophophora materials were erroneously and improperly defined as narcotics by the California Legislature and Governor in 1943. Sections 11001 L and 11540 should be removed from the Narcotic Act and placed in the Dangerous Drug or Prescription Drug Act where they belong. I have gone into this simply to show you that, due to misinformed, made-

quately informed pushing of legislation onto the Legislature I think you have actually had enter the narcotic law of the State of California, a substance which is not a narcotic and has no business being in there—should properly be classified in the Prescription Drug Act

“There are many other things I might say with regard to the classification of chemicals and medicinal chemicals. I think one thing that must be kept in mind is that essentially all of these materials are active and may produce death when misused en masse. We obviously do, however, have to have categories and classifications, but distinguish or attempt to distinguish poisons, prescription drugs and narcotic prescription drugs. It is difficult to draw the dividing line, but we should not neglect to remember that such distinctions must, for practical purposes, be made so that people who benefit from the proper use of these kinds of drugs are not caused to pay the penalty for those that misuse the drugs. Nor should there be undue emphasis on any part of this large problem.

“Q. Dr. Alles, could you tell us how many drugs are included in the category of dangerous drugs altogether?”

“Dr. Alles: Actually the number that is enumerated in the listing is not very great in size, but there is contained in the listing—the definition of dangerous drugs, one particular section which is K and this section says, ‘any drug which bears the legend “caution, federal law prohibits dispensing without prescription”’. Now in this category are, I would say, many hundreds of drugs, digitalis, antibiotic, quinine is not there, but a quinidine—many heart drugs, all cancer drugs—there’s a large number of drugs that are subject to ‘prescription only’ control by virtue of this inclusion and properly so.”

DR. JOEL FORT

Director of the Center for Treatment and Education on Alcoholism in Alameda County
and Chairman of the Subcommittee on Alcoholism and Dangerous Drugs of
the Alameda, Contra Costa Medical Association

“Dr. Fort: One point that I would like to bring up is the possibility of broadening the list of dangerous drugs. The barbiturates and the dexedrine or amphetamine drugs certainly constitute the major portion that needs to be studied and legislated on. But there are also other sedatives such as chloralhydrate, the bromides and the drug that is known as miltown or equanil—all of these drugs actually can be abused just as barbiturates and the committee, I would recommend, should study the possibility of including them in whatever safeguards you feel is necessary to take. One problem here is the widespread misconception, I would say, and misleading advertising which exists in the pharmaceutical industry. Miltown or equanil is thought of, both in the medical profession and by the public, as being a tranquilizer, whereas pharmacologically, tranquilizers have quite a different formula and quite a different effect on the body. And in terms of the addicting properties, which was defined for you before by Dr. Burbridge, the develop-

ment of tolerance and the presence of a withdrawal syndrome if the drug is withdrawn, Miltown or equanil and possibly librium, another drug classified as a tranquilizer, fall into the same category as the barbiturates and other sedatives''³

MR. ARTHUR HOLZMAN

Inspector, California State Board of Pharmacy

"Inspector Holzman . . . I seem to get the feeling that the commission did not mean to include all the dangerous drugs as such. Dangerous drugs are defined in Section 4211, subsection K, as any drug which contains the prescription legend which reads 'caution—not to be furnished except on the prescription of a physician' Might I point out to you, gentlemen, that if you are going to do this and bring it under the same control, under tripligate which I will speak about later, and inventory control and special order forms for these drugs, this would be a physical impossibility for any pharmacy to handle these drugs for there are thousands, literally thousands of these legend drugs on the market. This book (displays book) has in very fine print in four columns on each page, many, many drugs, and I would venture to say that 70 percent of the drugs listed in this book here, this is a price book, are dangerous drugs, under the definition of 4211, subsection K. I don't believe it was the commission's intent to include all these. I believe what they meant was to include the hypnotics and the amphetamines as such and we recommend the inclusion some of the more potent tranquilizers.

" . . . But I think that our Board of Pharmacy, and all these men are pharmacists, and they are equipped to decide whether or not these new drugs have become a problem and whether or not they should be included under possession under Section 4230. I think they should be given that power to add drugs occasionally as they come along and are found to be a problem in that respect''⁴

The following excerpt is taken from a letter written to the committee by Harris Isbell, M.D., Director, Department of Health, Education, and Welfare, Public Health Service, National Institute of Mental Health, Addiction Research Center, U.S. Public Health Service Hospital, Lexington, Kentucky, November 8, 1961.

"With respect to the report on dangerous drugs, I note that these seem to be defined essentially as barbiturates and amphetamines. I should like to point out that there are drugs that are not barbiturates or amphetamines that cause effects similar to those of either type of drug. For example, paraldehyde, chloral hydrate, meprobamate (miltown, equanil), glutethemide (doriden), and possibly methammediazepoxide (librium) are all capable of creating the same type of addiction that is caused by the barbiturates. Examples of nonamphetamine drugs with stimulant effects similar to those of the amphetamines could be quoted. There are in addition drugs that would fall in neither category, but which by virtue of marked changes in behavior of sorts different from those caused

³ *Ibid*
⁴ *Ibid*

by barbiturates and amphetamines might represent a potential hazard to the public health I therefore feel that the statute controlling dangerous drugs should be couched in more general language if this is possible legally. Perhaps language such as 'any drug affecting the central nervous system shall be classed as a dangerous drug and subject to the provisions of the act until it has been shown that it does not represent a sufficient hazard to public health to require the controls of the act.' might serve. A somewhat more restrictive statement might be as follows: 'Any drug, whatever its chemical structure, will be declared a dangerous drug and subject to the provisions of this act if it has been shown that it is capable of producing the same sort of ill effect and the same sort of addiction as produced by barbiturates and amphetamines.' In either case one would then have to set up a system for determining which drugs would come under the provisions of the law as the drugs were discovered.

"You may also have to consider what to do about the users of the 'dangerous drugs.' They will require treatment, just as do narcotic drug addicts, and as is true in narcotic addiction, treatment may be a very expensive and difficult procedure."

Before considering the recommendations of the Governor's Special Study Commission on Narcotics, as they relate to dangerous drugs, we would like to discuss some of those conditions that were cited as making new legislation necessary.

BARBITURATES AS A CAUSE OF DEATH

There were several statements relating to this topic. First, on pages 61 and 62 the following language appears:

"... The commission was told that there is evidence that persons using dangerous drugs prescribed for them by a physician have a higher death rate than nonusers for 10 causes of death."

Some reactions to this statement follow.

"Q Doctor, would you care to comment upon this quotation from the same report on the top of page 62, it says, 'There is evidence that persons using dangerous drugs prescribed for them by a physician have a higher death rate than nonusers for each of the top 10 causes of death.'"

DR. LOUIS T. BULLOCK

Specialist in Internal Medicine, Representing the Los Angeles County Medical Assn

"Dr. Bullock: Speaking briefly, I think that's a bunch of hokum. Now I have many patients die from the ten top causes of death and many of them are getting barbiturates and the barbiturates have absolutely nothing whatever to do with their deaths. If I have a cardiac who is short of breath, struggling to breathe and not sleeping, rest is the main thing he needs—of all things, rest and sleep. Barbiturates—narcotics first, then when it gets a little better, barbiturates are what he needs and he requires. I don't think there

is any validity in the implication that the barbiturates that these people get in the 10 leading causes of death—have anything to do with their death”⁵

DR. HORACE MOONEY
Research Scientist, U C L A.

“Dr. Mooney Second point was, from the report, ‘persons using dangerous drugs prescribed for them by a physician have a higher death rate than nonusers for each of the top ten causes of death’ This statement, if true, does not prove anything. It does not demonstrate a direct cause and effect relationship between taking dangerous drugs and death, but the vagueness of the statement and the apposition of the words ‘dangerous drugs’ and ‘death’ implies that physicians are killing people with these drugs.”⁶

The implication of the statement quoted above from the Final Report of the Special Study Commission on Narcotics seems to be that many people die from using drugs that have been prescribed for them by physicians. It appears to us that an obvious and more accurate explanation of this statistic is the fact that doctors usually prescribe a barbiturate or narcotic to terminal patients in order to relieve their suffering.

We know of no evidence demonstrating that carelessly prescribed barbiturates constitute a serious hazard to patients in California. Naturally, there will be cases of unethical conduct on the part of a few members of any profession. The commission’s report outlined such a case:

“(2) In 1958, a Los Angeles doctor was convicted by a jury in the federal court on 20 counts for illegally dispensing dangerous drugs. Investigation into the doctor’s conduct was commenced in 1955 by the United States Food and Drug Administration, the Bureau of Narcotics Enforcement, and local police agencies. Over 100 purchases of dangerous drugs were made by federal, state, and county officers working undercover. This doctor conducted a cursory physical examination of those who came to him for drugs. The ‘patient’ was then asked if he wanted ‘reducers’ (drugs for reducing purposes) or ‘sleepers’ (barbiturates). The doctor’s nurse testified that 8,000 pills were sold weekly at 10 cents a pill. Undercover agents who were extremely thin, asked for and received reducing pills. One sheriff’s deputy who received ‘reducers’ was 5 feet 11½ inches and weighed 136 pounds. A staff member was on duty at the office on holidays and weekends, dispensing pills up to 10:30 p.m. to anyone who was a ‘patient.’ Some of the regular ‘patients’ received an average of 12 pills daily for several months without any medical examination, discussion of symptoms, or other checks of his need for medication. The doctor was given a \$100 fine for each of the 20 counts for which he was convicted; however, the imposition of these fines was suspended. The doctor was not placed on probation, and the court expressly stated that no moral turpitude was involved in these crimes. This doctor is practicing medicine in Los Angeles at the present time.”⁷

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Final Report, Special Study Commission on Narcotics, State of California, 1961, p. 73.*

In 1959 the Legislature added Section 2399.5 to the Business and Profession Code to correct an apparent hiatus in the law. Its effect is to give the Board of Medical Examiners broad disciplinary power in this area.

“2399.5 Prescribing dangerous drugs without examination or medical indication. Prescribing dangerous drugs as defined in Section 4211, without either a prior examination of the patient or medical indication thereof, constitutes unprofessional conduct within the meaning of this chapter.”

Following are comments made by witnesses at our hearing:

DR. JOSEPH DE LOS REYES,
Member of the Board of Medical Examiners and in charge of the
Southern California office of the Board

“I read this with a great deal of interest, the Special Study Commission on Narcotics. It was very surprising to me that the only agency in the State of California that has to do with doctors, not only in licensing but in disciplinary action, that knew probably more about the narcotic conditions in the State, when it comes to the profession of medicine, was never invited to either participate or were never asked to give our information or our thoughts individually or collectively. You have on page 63, [sic] a Los Angeles doctor—Dr. Quinn referred to it a minute ago. At the end of that paragraph, that the doctor is practicing medicine in Los Angeles at the present time. We have been castigated very ardently by the members of our profession because such a thing resulted. But we have to tell them two things, you fellows in the Legislature did not make that law retroactive. When he began his selling of these amphetamines the law was not in existence. Later on when he was presented to us, we revoked the license and then certain mitigating circumstances and other legal aspects were brought in and we were told to reconsider the action of the board. We reconsidered it but that man now is under a sentence of 10 years probation. He has to report annually in person to the Board of Medical Examiners. He has to send an affidavit quarterly to the Board of Medical Examiners, under oath, stating what his conduct and what he has done in the previous three months. He has to, also, obey all the laws of the State of California, the United States and subdivisions, and all other statutes and rules and regulations of the Board of Medical Examiners. We have found out that when a doctor is an addict or is under the influence of alcohol, that we place them usually under five years’ probation. Less than five years’ probation, we have found out, is not good. 92.5 of those doctors that have been derelict in their obligations to the public and in their ethics to the profession become rehabilitated. Since 1948 and 1952, it says here, 92.5. We have found that to be throughout the years until now.

“We get over 50 calls a day—some picayunish, some of merit in the Board of Medical Examiners’ office in Los Angeles County. We don’t like anonymous communications from a doctor to us. We do like conferees to have the intestinal fortitude to stand up and be counted. But those individuals, those calls that come in even with the limited facilities that we have for investigation in the new

Division of Investigation in the State of California, are thoroughly investigated. And anyone of those individuals that is found to have cause to be brought before the Board of Medical Examiners, gentlemen, we deal with them very severely.

"Q Doctor, do you believe that the present powers which the Board of Medical Examiners has under state law are sufficient to give the board adequate support in dealing with doctors who may be using dangerous drugs in a manner which is unprofessional or unethical?"

"Dr. de los Reyes: I have always been very, very jealous of the liberty and purposes and rights of the individual per se and I think on the board now we have sufficient. The trouble we have is the lack of help that comes from the public and sometimes from some of the members and likes of the judicial powers regarding to the narcotic inspectors and to our investigators."*

DR. LOUIS T. BULLOCK

"In general, one thing that impresses me about this report is that there are now laws to handle physicians who are improperly prescribing barbiturates. The most precious possession of a physician is his license to practice. Without the license he cannot prescribe barbiturates, legally he can't do it. The Board of Medical Examiners considers the improper prescribing of barbiturates in the same manner as unprofessional conduct as they consider the improper prescribing or the use of narcotics. The license will be revoked if this can be proven to continue. Now there is a case in this report about a physician who practiced in 1958 and sold a lot of these drugs. In my opinion I see no reason why any physician should be allowed to sell the drugs. I don't need to sell anybody any drugs, I write prescriptions and the drugstore fills it. And any law that would make it illegal for a physician to sell these drugs himself unless he was in some mountain county where there were no pharmacists would have my approval. I would see nothing wrong with that, I don't see why a physician should. Any physician who has any mercenary interest in passing this along has—does not have my sympathy.

"But on the other hand, if I am out at a patient's house at night and he is not sleeping and I've been called out to see him, I want to be able to give him two or three or a half dozen seconal tablets—capsules and not have to keep a record of it—write it down, go back and then write some more records the next day about how many are gone and how many I have. We have enough problems with records now. Everytime we treat a cold, we have to fill out a two-page insurance form, and to keep some more records every time we gave a patient a barbiturate capsule is absurd and ridiculous. We are interested in taking care of patients and not in keeping a lot of records. Now if we can be shown that keeping these records would do any good—we're for you, but there is nothing in here that shows that all of this recordkeeping by these doctors is going

* Committee hearing on Dangerous Drugs, op cit

to prevent anybody from improperly using it, from buying from drugstores without prescriptions, from getting it from Mexico or any other more frequent use of these drugs improperly

"Now when I was talking about the penalties on the doctor now—you can get all these doctors to do all this writing—well, the Board of Medical Examiners will take action. This case is described about who sold all of these drugs and then he is still practicing. Well, what I want to know is, was that called to the attention of the Board of Medical Examiners? Did they send somebody out? Now there is one advantage about the Board of Medical Examiners—a court may not be able to say whether this was good medicine or proper practice or not, but the Board of Medical Examiners is composed of doctors and they can. If a doctor is not doing it right they know it and they are of a professional stature where they can say so and legally say so and revoke the license if it is not proper, and if he is doing it in any way which endangers anybody. I want to know whether this was taken to the board and if not, why not? I talked to a member of the Narcotic Enforcement Division of the State of California and he didn't even know that he could take it to the Board of Medical Examiners without going through a court. He thought you had to go to a court—you don't have to go to a court at all. Report it directly and I am sure you will have their complete co-operation. Doctor de los Reyes is in the room here today and he will give you the attitude of the board. In our opinion, there are provisions now, for the elimination of physicians who are improperly using the drugs. In our opinion, requiring all of this recordkeeping would in no way change the doctor who is using them improperly."⁹

DR. HORACE MOONEY

"Second point was, from the report, 'persons using dangerous drugs prescribed for them by a physician have a higher death rate than nonusers for each of the top 10 causes of death.' This statement, if true, does not prove anything. It does not demonstrate a direct cause and effect relationship between taking dangerous drugs and death, but the vagueness of the statement and the apposition of the words 'dangerous drugs' and 'death' implies that physicians are killing people with these drugs."¹⁰

DR. WILLIAM QUINN

Member of the State Board of Medical Examiners

"Now this is a very stiff thing to have hanging over a doctor. This isn't like a bookie paying a \$50 fine once in a while as a part of his overhead. The doctors themselves will determine this, as Dr. Bullock has mentioned. This they have done with narcotics. The fact that a doctor writes a prescription for a narcotic for someone who theoretically has a kidney stone and does it for

⁹ *Ibid.*

¹⁰ *Ibid.*

six months and doesn't check his urine—we think he is selling narcotics and revoke his license and have done so in such cases. It is quite understandable, of course, that if a doctor wants to do this badly enough, he could fake a physical examination. But it has been my observation that if people are that crooked, they are also very greedy and eventually they get caught. And certainly a little entrapment might not be out of order here, in sending someone in with a 50-dollar bill. I am sure you could get the prescription without a physical and this would be all that the Board of Medical Examiners, I think, would need.”¹¹

We asked Dr de los Reyes to provide us with information as to disciplinary action taken by the Board of Medical Examiners under Section 2399 5.

“August 8, 1962

“JOSEPH M. DE LOS REYES, M D
 “*Board of Medical Examiners*
 “*2010 Wilshire, Suite 506*
 “*Los Angeles 57, California*

“Dear DR DE LOS REYES

“In considering the necessity for new legislation relating to dangerous drugs, this committee would find it helpful to have the following information.

“1. How many complaints have been placed before the Board of Medical Examiners, alleging unprofessional conduct with regard to careless or excessive prescribing of dangerous drugs?

“2. How many such complaints have been found by the Board of Medical Examiners to be valid?

“3. In such case, what action was taken by the board?

“We would be very grateful if you would provide us with this information

“Sincerely,

“(signed) JOHN A. O'CONNELL”

JAO/mlm

We received the following reply:

“September 5, 1962

“HON. JOHN A. O'CONNELL, *Chairman*
 “*California Legislature*
 “*Assembly Interim Committee on*
 “*Criminal Procedure*
 “*Room 2128, State Capitol*
 “*Sacramento 14, California*

“Dear Mr. O'CONNELL:

“In reply to your letter, I assume you have reference to the provisions of Section 2399 5 of the Business and Professions Code,

¹¹ *Ibid*

said section relating to unprofessional conduct and reads as follows.

"2399 5. Prescribing dangerous drugs as defined in Section 4211, without either a prior examination of the patient or medical indication thereof constitutes unprofessional conduct within the meaning of this chapter."

"The records of the board show that six accusations have been filed during a period from July 1, 1960, to the present time alleging that the licentiates have been guilty of unprofessional conduct as provided in the above-mentioned section. Four of the accusations have been heard either by the board or a hearing officer acting for the board, and a decision entered. Two of the accusations are pending a hearing.

"Relative to the four accusations considered, all licentiates have been found guilty, in one case the license was revoked, and in the three other cases the licenses were revoked, the revocation stayed and the licentiates placed on probation for a period of from three to five years under probationary terms and conditions. In one case, the probationary order provided for the cessation of practice for 90 days and the passing of an oral examination prior to his again resuming practice, and another case provided for the cessation of practice for 180 days.

"In one case a petition for a writ of mandate has been filed and a stay order issued by the court. The hearing on the petition for writ of mandate has not been scheduled at the present time.

"In the event additional information is desired by the committee, please contact me.

"Sincerely,

(Signed)

"J. M. DE LOS REYES, M.D.

"Chairman, Legislative
Committee, Board of Medical
Examiners, Los Angeles"

We see no reason to believe that new laws are necessary in this area. Co-operation between enforcement agencies and the Board of Medical Examiners provides an effective tool with which to discipline doctors who are guilty of prescribing dangerous drugs in a careless or unethical manner.

Another statement relating the use of barbiturates to deaths appears on page 66 of the Narcotics Commission's Final Report.

"Strong evidence of the seriousness of the dangerous drug problem and the lack of effective controls on distribution or accurate information concerning the effects of these drugs can be found from the study of statistics concerning the number of deaths connected with their use. According to information received from the California Board of Pharmacy, 383 persons were reported as having died from the use of barbiturates between July 1, 1959, and June 1960. Of this group, 81.5 percent (312) were suicides, and 18.5 percent (71) were accidental. Thirteen persons died from a mixture of alcohol and barbiturates. Of this group, 8 (61.5 percent) were accidental and 5 (38.5 percent) were suicidal."

In the same year (1959-1960) 2,502 persons committed suicide in the State of California. They most often used a gun. Other methods included pills, hanging, fumes from a car, jumping, and various industrial, agricultural, or household poisons.

Witnesses who testified on this subject were in general agreement that it would be futile to place further restrictions upon the legal use of barbiturates in the hope that it would curtail the number of suicides.

Dr. Thomas N. Burbridge had this to say:

"Q. On page 66 of this narcotics report, they refer to the number of deaths from the use of, I believe it's barbiturates, overdose of some of these medicines. When you look into the statistics then, I think it's about 80 percent of those deaths are the result of suicide. Is it your feeling that making these drugs unavailable would decrease this number of suicides or would they just resort to some other

"Dr. Burbridge. Obviously some other means of suicide. You can go to a drugstore and as long as you sign a slip you can get strychnine. In our area there is always the Golden Gate Bridge.

"Q. What's the control of cyanide?"

"Dr. Burbridge. None that I know of. If you can get sodium cyanide or some chemical from a chemical plant—I can order from a —

"Q. That would be really more effective maybe, than barbiturates?"

"Dr. Burbridge. Well in causing deaths, yes. In a much lower dose. "12

Dr. Louis T. Bullock made the following comments:

"Dr. Bullock. The statement that these drugs are as dangerous as narcotics is, in our opinion, grossly in error. The statement that the doctors are not familiar with the dangers of these drugs is, in our opinion, grossly in error. The facts are that the doctors know not only the dangers, but also the great advantages and the tremendous good that these drugs do. I have been practicing in Los Angeles for 30 years. I have treated thousands of patients with barbiturates and other members of the so-called dangerous drugs. I have never, in 30 years experience, seen a single patient who ever developed addiction, who ever developed any withdrawal symptoms or who ever committed suicide. Now that is true of the experiences of 95 or 99 percent of the doctors in this area. Our experience in the matter is tremendous, the number of patients using these drugs under various conditions is very large.

"Now we are frequently faced, I am faced, with patients who are prone to suicide. Now, if a patient comes in to me and is anxious and upset and disturbed about a family problem, friction with a husband or something of that sort and can't sleep and is getting more jittery and upset, and says, 'Doctor, life isn't worth living, my husband doesn't love me, what shall I do?' Now I recognize in such a patient there is a danger of suicide. I have faced this problem many times. Now I have a clear-cut decision

¹² *Ibid*

to make and I make it deliberately Shall I tell this patient, 'Well I'm sorry, I think you might commit suicide so I'm not going to help you and I'm not going to give you anything to allay your nerves, just let you go along by yourself and just accept my sympathy' and let it go at that? I'm a doctor and I'm interested in the welfare of my patients and I want to get them well It is my opinion that when a patient commits suicide with barbiturates, he does not do so because he has some barbiturates at his side. He commits suicide because of a psychological imbalance, emotional tension, emotional pressures, and the question of how he uses it and what he uses to commit suicide is immaterial. If he didn't have barbiturates, if you eliminated barbiturates from use in this country, in my opinion, the number of suicides would be exactly the same.

"Now it happens that barbiturates are one of the most frequent mechanisms of committing suicide and the reason for that is that newspapers come out with a story—this person committed suicide by taking an overdose of sleeping pills and so people hear about that and know about it and when they get in the mood that is what they may turn to But if they were in the mood and if they wanted to commit suicide, the absence of barbiturates wouldn't stop them. They would use cyanide, which you can buy in any photographic store without any restrictions of any kind or sort No prescription, no nothing, you can just buy it and commit suicide with the least bit of trouble Take arsenic, rat poison, any one of 19 other medicines that were used in the past year, according to the coroner's office, to commit suicide in Los Angeles County Recognizing the fact that the presence of barbiturates is not the cause of the suicide, I do my best to protect my patients I warn them, I try to get them under psychiatric care Many won't go, I have to do my best as a psychiatrist at times, but I do use barbiturates regularly and frequently to allay anxiety, decrease tension It is my impression that I have saved hundreds of lives from suicide by sympathizing with these people, using barbiturates to allay their anxiety, getting them over this troublesome period and getting them back to a normal existence Now, if we want to talk about the deaths, we also have to talk about the lives that are saved And tremendous numbers are saved by help at the proper time by prescription, doing this properly " ¹³

Dr William Quinn made the following comment

"possibly it isn't in the best taste to talk about suicide facetiously but the rate for suicide in San Francisco was almost double that of Los Angeles and I commented to a friend of mine there and he had a nice answer, he said, 'Well, you can't change your mind when you jump off the bridge whereas if you take too many nembutals you can go to the receiving hospital and have your stomach lavaged and you have a chance to change your mind ' " ¹⁴

¹³ *Ibid*
¹⁴ *Ibid*

Dr. Horace Mooney made this comment:

"Point 5 is suicide—Controlling barbiturates will not abolish suicide. Suicide can take many forms. If barbiturates are not available, it probably will be by some other means. Also, there is reason to believe that barbiturates may be replaced by drugs which will induce sleep but are not lethal even in large doses. When such a drug becomes available and clinical testing has established its safety, physicians will probably prescribe the safer drug. The reason such a drug is not available now is because there have been some nonlethal adverse effects. There is some doubt as to whether it will be approved by the Federal Drug Administration. Research has been done and is being done. The pharmaceutical firms, the medical profession, the universities and the federal government are concerned about the problem and, what is more, are trying to do something about it." ¹⁵

The following excerpt is taken from a letter to the committee from Seymour Fisher, M.D., Hospital Medical Director, General Medical & Surgical Hospital, Veterans Administration Center, Wilshire and Sawtelle Boulevards, Los Angeles 25, California, October 26, 1961:

"We are in agreement with those who have testified to the effect that we do not believe the stringent regulations suggested on control of dangerous drugs would reduce the number of suicides or the number of emotionally disturbed individuals, since substitute drugs which were not considered under 'dangerous drugs' can be easily obtained on the open market.

"In our opinion, this act, if placed on the books, would place medicine back many years because many worthwhile drugs would be withheld from the patients because of the 'paperwork' involved."

We think it most likely that the 71 deaths attributed to an accidental overdose of barbiturates were caused by drugs obtained unlawfully and taken without any medical supervision. Legislation imposing further restrictions upon doctors' use of drugs will not affect this situation.

DOCTORS' AWARENESS OF DANGEROUS DRUG PROBLEM

Most of the medical testimony we heard took issue with the following statements from the Narcotics Commission Report as to the doctors' awareness of the problems posed by dangerous drugs:

"The commission was informed that many practicing physicians are unaware of the dangerous consequences which can result from the use of these drugs over a period of time." ¹⁶

"The commission was advised that many doctors who prescribe dangerous drugs do not understand the true properties of these drugs and their effect on their patients. For example, the commission was advised that there is some evidence that persons who are using tranquilizers die at a higher rate than nonusers in each of the top 10 causes of death. This may be due to the fact that

¹⁵ *Ibid.*

¹⁶ *Narcotics Commission Report, op cit., p. 61*

those persons who are more seriously ill are furnished tranquilizers. The fact remains that adequate information is not available for the doctor concerning these drugs, nor is any independent research being conducted by a university or by a public agency to test the claims of the drug manufacturers."¹⁷

Criticism of these conclusions was voiced by several doctors

"Dr. Louis T. Bullock: 'There is a statement here that the doctors don't know of the dangers. Well, in my opinion they do. They know the good parts as well. But assuming that it were true that the doctors don't know of the dangers, in my opinion, the answer—well, let's educate them. If anybody could find a doctor who didn't know it, I'd be glad to be sure he did. Now, have these people who did all this testifying ever come to the profession and said, "We want to publish a paper?" If they want to talk about these dangers, if they want to inform the doctors, the County Medical Association will be delighted to publish an article on the subject in the *County Medical Bulletin*. *California Medicine* will publish a paper on it. *A.M.A. Journal* will publish a paper on it. The opportunities for educating the physicians are tremendous and there is no opposition to that and if anybody wants to claim that the doctors don't know and hasn't done something to educate the doctors, he is guilty of negligence of some sort, because the doctors want to know all about this, everything about it and the facilities for letting them know are freely open and available and they read this material all the time. All you have to do is give us the article, we'll publish it—every doctor will read it. So the problem of not knowing can be handled in other ways.'"¹⁸

Dr. de los Reyes had this to say:

"We do not believe either, that the doctors are in ignorance of the dangers of barbiturates. That is—unlimited number prescribed or the dangers that may accrue from using barbiturates and then driving. I do believe frankly, that the doctors are aware. Naturally, when we have almost 27,000 practicing physicians in California, some of them perhaps, are ignorant. We have ignorant doctors like you fellows probably have ignorant lawyers and ignorant legislators, with all due respect.

"... I have never seen a real addict on nembutal barbiturates or seconal. I have never seen any withdrawal symptoms from any of them. I have never seen any of them say that they are going to commit suicide and I have been practicing here since 1934."¹⁹

Dr. Mooney commented:

"... It says 'physicians are unaware of the dangerous consequences which can result from these drugs.' I think this is not true. The habit forming characteristics of these drugs are taught in pharmacology and clinical medicine in medical schools. Medical literature, particularly the *Journal of the American Medical Association*, regularly features articles which report the adverse effects

¹⁷ *Narcotics Commission Report, op cit.*, pp 65-6

¹⁸ *Committee hearing, op cit.*

¹⁹ *Ibid.*

of drugs and evidence of addiction or withdrawal effects. Clinical experience in general practice and many specialties has given most doctors considerable knowledge of the use and misuse of these drugs . . .²⁰

DR. KEITH S. DITMAN, M.D.

Assistant Professor in the Department of Psychiatry at U.C.L.A. and
Director of the Alcoholism Research Clinic in Los Angeles

" . . . The report makes what I would consider an exaggerated claim that physicians lack understanding as to the potential harmful effects of these so-called dangerous drugs. While many physicians are uninformed as to their dangerous effects I think that most physicians, at least in my experience, are."²¹

One doctor expressed strong support for the commission's statement and suggested research on the extent of the problem. Dr. Joel Fort had this to say:

" . . . I disagree with the previous speaker, Dr. Bullock, in that it is my experience that there is widespread misunderstanding and misinformation in the medical profession about the potential dangers of these drugs. I also feel that if a person is suicidal, it is quite true to say that the barbiturates do not cause them to commit suicide. But they certainly are an added factor. If an excessive quantity were prescribed it would be comparable to giving a loaded pistol to an individual who told you that he was contemplating killing himself. In other words, it provides added opportunity and added accessibility to a potentially dangerous weapon, that would be an excessive intake of barbiturate.

"Often doctors who are very knowledgeable about the great usefulness of barbiturates, and I think the profession is entirely agreed on this, that it is one of the basic drugs and it's very necessary to provide sedation and sleep with people who have various physical diseases. Also, the psychological characteristics of the addict or habitue of these drugs is very similar to the psychological characteristics of the narcotic addict. They are people that are intolerant to frustration, unable to handle the stresses and strains of life and seek an artificial escape or euphoria through the excessive intake of these drugs. In addition, they constitute social problems because of the highway accidents, the industrial accidents and injuries, the suicide associated with it, and the illegal criminal traffic with these drugs.

" . . . Perhaps most important of all, since there is a wide area of ignorance in this whole problem, we need to work out means of compiling much better statistics on the real extent of both the use and abuse of these various drugs and a much more extensive research program. I think this could be done by setting up a special department either within Public Health or another state agency, but I do think it requires specialized attention and concentration if we are to get some of the answers on it."²²

²⁰ *Ibid*

²¹ *Ibid*

²² *Ibid*

EXTENT OF THE THREAT POSED BY DANGEROUS DRUGS

"Because the illegal use of dangerous drugs is potentially as harmful to the mind and body as is the illegal use of narcotics, the commission has concluded that no distinction should be made between the illegal trafficking in dangerous drugs and in narcotics."²⁴

Since it is now known that addiction to barbiturates is more dangerous to the physical well-being of the patient than is addiction to morphine, the same precautions should be used in prescribing barbiturates as are employed in dispensing narcotics."²⁴

Dr Bullock testified:

"The statement that these drugs are as dangerous as narcotics is, in our opinion, grossly in error. The statement that the doctors are not familiar with the dangers of these drugs is, in our opinion, grossly in error. The facts are that the doctors know not only the dangers, but also the great advantages and the tremendous good that these drugs do. I have been practicing in Los Angeles for 30 years. I have treated thousands of patients with barbiturates and other members of the so-called dangerous drugs. I have never, in 30 years' experience, seen a single patient who ever developed addiction, who ever developed any withdrawal symptoms or who ever committed suicide. Now that is true of the experiences of 95 or 99 percent of the doctors in this area. Our experience in the matter is tremendous, the number of patients using these drugs under various conditions is very large.

"Now, one can imagine, for instance, in order to evaluate this statement, if the same number of patients were taking the same number of narcotic drugs as are now taking barbiturates, the eventual difference would be tremendous. It is entirely true that people can take barbiturates one or two a day as their doctor prescribes over long periods, never develop addiction, never require more, never have any trouble of any kind or sort . . ."

Dr Burbridge testified:

"... In other words, the action of barbiturates, chlorhydrate, is essentially the same as that of alcohol. Society permits alcohol. We create a class of people who spend their time in distributing and selling this drug and yet at the same time we want to legislate against a drug whose action is essentially the same as that of alcohol. Furthermore, may I point out that the drugs like the barbiturates may be misused, but their misuse will never approach, under any circumstances, as far as death, bodily harm, damage to society generally, the harm that will be caused by alcohol. Furthermore, the drugs when used, are most of the time, 99 percent of the time or more, are used properly. Now and then someone abuses the drugs.

"Secondly, let us talk about the central nervous system stimulants. I might add, before we go to the stimulants, that the chance of bodily damage is much less with the barbiturates or nembutal

²³ Ishell Harris, M.D. (Chief, Addiction Research Center, National Institute of Mental Health, Public Health Service Hospital, Lexington, Ky.) *What to Know About Drug Addiction*, p. 8.

²⁴ *Narcotics Commission Report, op cit*, p. 63.

than it is with alcohol for a very interesting reason. Alcohol is probably the only drug that the human being intakes that furnishes calories. So then you not only run into the problem of the action of the drug, the pharmacological effect of the drug, but you run into the fact that the drug furnishes calories. People do not eat properly, therefore, the problems of malnutrition and actual organic disease occur as a result of taking alcohol. This could not occur with barbiturates unless, of course you kept yourself asleep all day so that you couldn't eat. So I could actually put up a strong argument that we should legislate against alcohol and let the public use barbiturates. It would be much more reasonable."²⁵

DR. THOMAS HALEY

Research Pharmacologist, U C L A Medical Center

"In perusing the information sent to me, I find that there are certain discrepancies in the quotations, particularly on page 63 of the Report on Dangerous Drugs, in which it is stated that dangerous drugs, the illegal use of dangerous drugs is potentially as harmful to the mind and body as the illegal use of narcotics. And it quotes from the work of Doctor Harris Isbell of the U S Public Health Service, Lexington, Kentucky. I believe this should be clarified. The type of withdrawal symptoms that Doctor Harris reported were produced by doses which were raised up to at least 2 grams of Amytal daily, over a considerable period of time. This is considerably different than the type of thing of the usual use of the barbiturates in medical practice. It is also, considerably different than some of the other bits of discussion in this report, where you are talking about 10 capsules, very much different. And furthermore, it is taking a chronic administration of a drug and trying to equate it with an acute intoxication produced by a single, rather small size dose in comparison. Acute effects and chronic effects are not the same. And furthermore, upon recovery from the effects of the chronic intoxication, produced over a long period of time, there is no real evidence of the type of mental and physical deterioration which one sees with chronic alcoholism or with the chronic use of narcotic drugs. By that I mean the type of drugs that can only come under the classification of opium derivatives. I say these things because I believe the record should be clear on this particular point. I do not believe that the physician or the patient should be penalized because we are afraid of the chronic intoxication or the abrupt acute intoxication produced by barbiturates, the amphetamines or the other drugs listed under the Dangerous Drug Act. Furthermore, I do not believe that you will find that in the legal use of such drugs for their great medical benefits that you can come into the type of things that has been quoted in the report. Now the illegal use of them is another story."²⁶

Dr. Joel Fort testified

"I would like to first answer the two specific questions that were asked in the letter which I received inviting me to testify. I feel

²⁵ Committee hearing, *op cit*
²⁶ *Ibid*

that the first part of the quotation is accurate with respect to all drugs in the dangerous drugs category, and that is the clause, 'The illegal use of dangerous drugs is potentially as harmful to the mind and body as is the illegal use of narcotics.' I will briefly elaborate why I agree with that. The effects of the narcotics as most of you know, are mainly important for their sociological and criminal implications. In terms of the physical effects on the body we—their chronic use produces constipation, loss of appetite, impotency in the male and sterility in the female and usually some weight loss due to the loss of appetite. All of these effects are completely reversible when the individual is physically withdrawn from narcotics. One other aspect of that—the withdrawal symptoms from narcotic addiction consist of nausea and vomiting, diarrhea, severe muscular aches and pains, etc. This is in the untreated condition. Now if we compare that with the effects of barbiturates and related sedative drugs, the physical effects are far more damaging. It produces loss of coordination, which would include staggering, difficulties in doing any kind of skilled activity, slurring of speech, extreme restlessness and irritability. Also a loss of appetite and emaciation and then with the withdrawal from barbiturates or other sedatives, you have a much more serious picture than you do with the narcotics. The individual in about half the cases, in addition to having extreme discomfort and nervousness, will have either convulsions or a toxic delirium, toxic psychosis, neither of which occur with narcotics withdrawal. It is, for these reasons, as well as some of the general statistics on the incidence of use and abuse of barbiturates and stimulants, that I feel that this quotation is entirely accurate.

"In terms of the second question, whether the proposed solution would have the support of the medical profession, I think you have already had sufficient indication that some groups or individuals within the medical profession would not favor, at least some of these regulations. I personally feel that the Special Study Commission Report makes very intelligent, well-informed and comprehensive recommendations and with very minor exceptions, I would fully support all of them, on the basis of my experience in the field. I do agree with the previous speaker that filling out prescriptions in triplicate would be fairly useless, but I did not find that being recommended as part of the change in state law here. I do think that other techniques which I will get into in a minute, would be valuable as enforcement, steps towards better enforcement."

. . .

"Q I have heard the statement made on numerous occasions that many addicts of heroin for example, start in with these dangerous drugs as the first step in the road to addiction. Is this within your experience?"

"Dr. Fort. Well, I preface my answer by pointing out a very basic thing in this whole area and that is there are widespread individual differences in drug effects and consequently widespread differences in a drug that a person finds to be pleasant or euphoric

for them. For an example, if you give two people from the same neighborhood, exposure to heroin or marijuana, one may find it very pleasurable and the other might find it very unpleasant and never seek it out again. Now to answer your question specifically, most of the heroin addicts began by using marijuana. There is a definite correlationship from the standpoint of availability and early knowledge and use between marijuana and heroin and the other narcotics. However, there is very little relationship with these drugs that we are primarily discussing today. For the reason—I think for the reason that I prefaced my answer with, that is, that they don't get any kick out of these drugs. They get a completely different effect or even an unpleasant effect and therefore don't like it nearly as well. So they don't tend to use barbiturates or amphetamines, except sometimes in combination with it. There are combinations that they enjoy for special kicks occasionally—mixing a barbiturate and heroin, for example. But by and large the pathway is through marijuana to heroin with only minor side pathways into the use of these other drugs.

Dr. de los Reyes stated at our committee hearing:

"I disagree very much with Dr. Fort. In our experience in the Board of Medical Examiners, those individuals who have gone to Lexington or Fort Worth for the treatment of barbiturates have been those individuals that usually were psychotic or mentally ill—in some form or otherwise obfuscated.

"We do not believe, either, that the doctors are in ignorance of the dangers of barbiturates. That is—unlimited number prescribed or the dangers that may accrue from using barbiturates and then driving. I do believe frankly, that the doctors are aware. Naturally, when we have almost 27,000 practicing physicians in California, some of them, perhaps, are ignorant. We have ignorant doctors like you fellows probably have ignorant lawyers and ignorant legislators, with all due respect.

"I have never seen a real addict on nembutal barbiturates or seconal. I have never seen any withdrawal symptoms from any of them. I have never seen any of them say that they are going to commit suicide and I have been practicing here since 1934."

Dr. William Quinn said:

"I think the problem again, on the dangerous drugs, has to be viewed in its aggregate. With the enormous number given possibly the percentage of the trouble that occurs is reasonably low and is kept to a reasonable minimum. Certainly, there is a substantial difference. You can make an addict, narcotic addict of almost anyone in a short time, whereas these drugs are given to many people who do not become addicted to them."

Dr. Gordon Alles testified:

"In the second paragraph on page 63, the assertion is made that because the illegal use of dangerous drugs is potentially as harmful to the mind and body as is the illegal use of narcotics,

and that is why the commission is calling attention to these at the present time. And as a substantiation to their statement, they quoted out of context from a popular exposition on drugs by Harris Isbell and say, 'that since it is now well known that addiction to barbiturates is more dangerous to the physical well-being than is the addiction to morphine, the same precautions should be used in prescribing barbiturates as are employed in dispensing narcotics.' But it is equally important to note that Dr. Isbell in the same place also says, 'like the analgesic drugs, the barbiturate drugs are among the most useful therapeutic agents at our command and should not be withheld from the majority of patients who need them and use them properly, because the minority of individuals abuse such drugs.' "

The following letter was received by the committee from Edward H. Crane, Jr., M.D., President, Los Angeles County Medical Association:

"October 18, 1961

"We are in receipt of your letter of October 13, and we would not hesitate to state that the first clause of the following quotation of said letter is certainly not entirely accurate from the standpoint of the medical profession:

" 'Because the illegal use of dangerous drugs is potentially as harmful to the mind and body as is the illegal use of narcotics, the commission has concluded that no distinction should be made between the illegal trafficking in dangerous drugs and in narcotics. The same penalties, regulations and controls should apply.' "

"Dr. Lewis T. Bullock will be present and represent the Los Angeles County Medical Association at this hearing on October 20th.

"Sincerely yours,

"EDWARD H. CRANE, JR., M.D.
"President"

Dr. Burbridge testified on this point as follows:

"I would also like to say that legislation here could not possibly be as effective as it is with the narcotics for one reason. Morphine or heroin must be taken from a plant that is grown in a special part of the world under special conditions and cannot be synthesized. You can't start out with a simple derivative, a simple chemical and build up a molecule of morphine or heroin, whereas barbiturates are a matter of such simple chemistry that a person of ordinary intelligence and of a high school education can be taught to make it by the pound in his basement. This is a very important fact. The same is true with the amphetamines, the stimulants, they are very easily made. It is quite a common experiment, laboratory experiment, for pharmacy students all over the United States to do this as a laboratory exercise in their elementary organic chemistry. They are just that easy to make. To legislate that that is made for legal use would not help very much at all. . "

Dr. Haley was asked about this problem .

"Q We heard some testimony this morning that some of these drugs could be readily manufactured Do you concur in that, Doctor?

"Dr Haley Yes, sir, I do

"Q In other words, someone could get the raw materials fairly readily to manufacture dexedrine or something like that?

"Dr Haley Yes sir, they can These are all common chemicals That is the main difference between drugs which are from natural sources where you have to obtain the crude drug, then you have to extract and in many cases, the total yield is very, very low compared to the synthetic organic chemical where you buy the parts and assemble it and in a manner like you assemble a hi-fi set and in many cases your yields are 50 to 80 percent of your starting materials and you don't need a very complex or complicated setup to do many of these synthetic processes, and furthermore you don't need a large amount of education Many of the synthetic processes you can go to the library and get a book on organic chemistry, preparatory organic chemistry, and just go right ahead cookbook style and make it So it presents an entirely different problem in that materials are readily available and very difficult to trace "

"Q Would putting these drugs in the same category as narcotics be likely to lead to a black market gangster type of situation in selling and in manufacturing them so that they . would not be manufactured under the proper sanitary conditions and so on?

"Dr Haley Yes It would do that We have right at the present time in the United States a situation of bootlegging of almost any variety of drug that is a big seller The one area that I can think of offhand is the adrenalquaticalsteroids, cortisones and that type They have been picking up people mostly in the eastern part of the United States who are bootlegging this type of material and it ends up on the drugstore shelves and the next thing it ends up in your home and maybe you're not getting what you paid for and maybe under certain circumstances it could not only be detrimental but it could result in a death "

COMMENTS UPON RECOMMENDATIONS OF THE DANGEROUS DRUG REPORT OF THE GOVERNOR'S SPECIAL STUDY COMMISSION ON NARCOTICS

Federal Laws

"1 Illegal intrastate trafficking in dangerous drugs should be made a federal offense because the regulation of intrastate commerce in dangerous drugs is essential to the effective regulation of interstate commerce in such drugs because of the fact their place of origin ordinarily cannot be determined in the form in which they are consumed "

²⁷ Narcotics Commission Report, op cit , p 74

Opposition to this proposal was voiced by the California State Board of Pharmacy and the California Pharmaceutical Association.

California State Board of Pharmacy

"1 It is most certainly not felt that the federal law should be made applicable to dangerous drugs in intrastate commerce

"Our experience indicates that since the now famous Sullivan Decision in the Chicago U S District Court, that F D A has devoted considerable time to enforcement at the consumer level, with less regard to their primary responsibility of controlling illegal interstate shipments of dangerous drugs

"Our state enforcement agencies have done a competent job of controlling the intrastate problem. However, it is extremely difficult to prevent or control shipments coming into this State from eastern sources and from Mexico. Proper enforcement of the existing federal law would be of great benefit to local enforcement officers and emphasis should be placed on the enforcement of existing laws at the federal level, rather than to expand their authority.

"Perhaps a resolution by our State Legislature, requesting the federal government to increase its drug enforcement program in an effort to reduce the incident of illegal interstate shipments, would be effective

"An effort should also be made to have the federal government enact legislation which would provide for better control over importations of dangerous drugs. The vast majority of drugs found on the illegal market in California are illegally imported from Mexico. The Customs Department should have broader authority to seize illegal imports of dangerous drugs and for criminal prosecution of violators."

California Pharmaceutical Association

"First, I believe that we should proceed with caution in recommending changes in federal laws in respect to intrastate commerce. Our own State enforcement agencies are doing a good job in controlling the distribution of dangerous drugs within this State. The primary function of the F D A is to control the distribution and quality of dangerous drugs in interstate commerce and the importation of dangerous drugs from foreign countries. The enforcement problem in traffic of dangerous drugs in this State is the illegal importation of drugs across the Mexican border. More effective enforcement of existing statutes by federal enforcement agencies would minimize the problem in this State." ²⁸

Committee Comments

We believe that it would be preferable for the federal government to increase its efforts to prevent the illegal importation of narcotics and dangerous drugs. Legislation or added funds may be needed by the Department of Customs. Federal police power should not be extended to intrastate enforcement activities unless local enforcement is entirely

²⁸ This committee invited the California State Board of Pharmacy and the California Pharmaceutical Association to comment upon the recommendations of the Special Study Commission. This statement and others from the same sources were made in response to our request.

inadequate. We think California law enforcement is capable of doing this job with the co-operation of federal authorities working on the interstate and international levels

Since recommendations 2, 3, 4, and 5 all deal with record keeping we shall consider them together

"2 Such legislation should include a requirement that records be kept by any manufacturer or processor of dangerous drugs of the kind and quantity of such drugs manufactured, compounded or processed

"3 Complete records of all stocks of barbiturates and amphetamines on hand be maintained by every person engaged in manufacturing, processing, or otherwise disposing of such drugs, subject to the inspection of the federal officers responsible for the enforcement of the laws regulating dangerous drugs

"4 Such federal legislation should also require that every person selling, delivering or otherwise disposing of such drugs shall prepare or obtain a record of the kind and quantity of such drugs sold, delivered or otherwise disposed of, together with the name and address of the person from whom it was received and to whom it was sold, delivered, or otherwise disposed of, and the date of such transaction. All such records should be required to be available for inspection and copy by the appropriate federal agents

"5. No dangerous drugs should be sold without a signed federal purchase order form, a duplicate of which must be sent to the appropriate federal agency (See H R 3967, introduced February 7, 1961)"²⁹

The Board of Pharmacy and the California Pharmaceutical Association made the following comments upon these recommendations

California State Board of Pharmacy

"2 There seems to be a misunderstanding in reference to the application of the term 'dangerous drugs'. Any effort to apply this recommendation to thousands of drugs classed as dangerous drugs would be impossible. There is, however, a need for more stringent controls over those drugs which are classed as hypnotic drugs [Section 4211 (a)] and stimulant drugs [Section 4211 (c)]

"There is no doubt a need at the federal level for more adequate records of the manufacture, and particularly more records of the distribution of those drugs which fall into the hypnotic and stimulant drug classifications. The vast majority of cases of misuse involve drugs coming within these two categories

"There are presently a number of bills in Congress which include provisions for requiring more records of manufacture and distribution of these drugs and it does not appear as if additional recommendations would be of value. It is felt, however, that any bill enacted by Congress should also require that the name of the manufacturer of the drug, as well as the name, etc. of the distributor, should be shown on the label of any drug shipped in interstate commerce

²⁹ Narcotics Commission Report, *op cit*, p 74

"Here again, perhaps a resolution, encouraging Congress to enact such legislation and provide better control, would be in order

"No 3, No 4 and No 5 are covered by comments above

"Every effort should be made to oppose any extension of the federal law, which would in any way extend the authority of the federal government to control intrastate commerce in dangerous drugs. If an adequate enforcement job is done at the federal level, the state enforcement problem would be greatly reduced."

California Pharmaceutical Association

"Regarding recommendation No 2, there is no question that recommendations for tighter control in the distribution of drugs in interstate commerce should be made to ensure that only *duly licensed practitioners* receive such shipments and adequate records be maintained by the manufacturers and distributors of dangerous drugs. Our association has maintained for some time that this should be done. There is pending legislation in Congress which will accomplish this. Support of this legislation should be made.

"Regarding recommendation No 3, it is apparent that barbiturates, other hypnotics, amphetamines and other stimulant derivatives of amphetamine are the primary problems. In California we have an excellent hypnotic law which provides for proper maintenance of records by licensees. State enforcement agencies have adequate tools for enforcement and are doing a good job. Adequate records of dispensing by pharmacists are now being kept in the form of prescription files which are available to the inspectors of the Board of Pharmacy. We object to the pre-empting of this authority by any federal agency. Again, I would like to reiterate that the primary function of the FDA is the control of drugs in interstate commerce. Dispensing of drugs by authorized practitioners is an intrastate function and rightfully is controlled by our state agencies.

"Regarding recommendation No 4, the remarks above regarding recommendation No 3 apply in that federal pre-empting of State authority is objected to as adequate controls and records are being maintained in this State.

"Regarding recommendation No 5, the pending federal legislation will accomplish the desired results without requiring duplicate purchase orders to be sent to a federal agency. We have a purchase order form for hypnotic drugs in this state which is adequate.

"We are completely opposed to the extension of federal law to control intrastate commerce in dangerous drugs. If adequate enforcement by federal agencies in interstate commerce were being accomplished under laws, the enforcement problem by state agencies would be eased."

Committee Comments

This committee supports federal legislation to ensure that only duly licensed persons receive shipments of barbiturates and amphetamines. We also urge passage of federal legislation requiring manufacturers of barbiturates and amphetamines to maintain adequate records of quantities manufactured and sales made, such records to be available to appropriate federal officials.

California Laws

"1 A requirement that complete records be kept of all stocks of dangerous drugs on hand, subject to the inspection of the appropriate state agencies" ³⁰

California State Board of Pharmacy

"1 The term dangerous drugs will be considered to include only hypnotics and stimulant drugs

"We do have provisions for purchase and sale records for hypnotic drugs and existing laws, with changes to be subsequently suggested, should provide for adequate control and enforcement

"Drugs coming within the hypnotic-stimulant groups, may be sold by pharmacies only on prescription in California and prescription files must be maintained by all pharmacies These are considered as adequate records of dispensing

"Hypnotic drugs can be legally purchased by pharmacies from wholesalers and manufacturers only by use of the triplicate hypnotic order form This record of purchases by retailers and the prescription record of sales provides for adequate accountability when the need arises "

California Pharmaceutical Association

"1 Adequate records of purchase and dispensing records are already being maintained by pharmacies in this State Prescription files provide for adequate dispensing records and the duplicate purchase order forms for hypnotic drugs provides adequate purchase records Invoice records are maintained for all dangerous drugs which are adequate for purchase records and prescription files for dispensing records must be maintained We do not recommend the extension of the use of the hypnotic purchase order forms to include amphetamine and its derivatives We would not object to the maintaining of invoices for a required period of time (e g two years) which would provide adequate purchase records

"However, the same records should be required of other practitioners such as dispensing physicians and limited license hospitals

"2 No dangerous drug should be sold, except on a purchase order form similar to the form required for the purchase of a hypnotic drug under Section 4224, California Business and Professions Code Such form should include the date, name of supplier, name and quantity of drugs ordered, and the signature and address of the person making the purchase

"3. All pharmacists or any other person authorized to sell or dispense drugs should be required to keep a record of the kind and quantity of such drugs sold, delivered, or otherwise disposed of, together with the name and address of the person from whom it was received and to whom it was sold, delivered, or otherwise disposed of, and the date of such transaction Any such records should be required to be available to officers of the appropriate state agency" ³¹

California State Board of Pharmacy

"No 2 and No 3—see No 1 "

California Pharmaceutical Association

"No 2 and No 3 Our recommendations in No 1 apply "

³⁰ *Ibid.*, p 74

³¹ *Ibid.*, p 74-75

Committee Comments

We already have provisions for purchase and sale records for hypnotic drugs. Since the barbiturates are already covered under this category the effect of adopting this proposal is not clear. If they were to be extended to all the drugs in the "dangerous drug" category it would impose such a burden of recordkeeping as to require steep price increases for legitimate drugs. Their effect upon black market drug supplies is not likely to be great enough to warrant the use of so much red tape.

The Board of Pharmacy, in considering these recommendations, chose to limit them to hypnotic and stimulant drugs. However, if it had been the intention of the Narcotics Commission to so limit their recommendations, it would have been much simpler for them to specify stimulants (amphetamine) in Recommendation No. 2. Since hypnotics are already covered, they apparently intended to include more than amphetamines on the triplicate purchase order form. The scope of Recommendation No. 1 is not clear and that of No. 3 is even less so.

If the federal government adopts legislation requiring drug manufacturers to maintain records of production and sales it should not be necessary for California to impose such a cumbersome recordkeeping system. A step that could reasonably be taken now would be the one suggested by the California Pharmaceutical Association—a requirement that invoices for all purchases of amphetamines be maintained for a specified period of time.

"4. A new crime should be created prohibiting the illegal possession of dangerous drugs for the purpose of sale. Such a crime should be a felony."²

California State Board of Pharmacy

"No. 4. This suggestion is a good one, if it is intended to apply only to hypnotic and stimulant drugs.

"It does seem, however, that the wording is a bit confusing. In any case, in order to establish the element 'for the purpose of sale,' a buy would be necessary. The recommendation, as worded, would make it a felony for a pharmacist to dispense a drug on a legal prescription, if the drug had not been obtained in strict compliance with the law.

"It appears as if the wording 'for the purpose of illegal sale' would be more proper. If an illegal sale of a dangerous drug was made by a person who obtained the drug by illegal means, then a felony would be proper."

California Pharmaceutical Association

"No. 4. We concur with the recommendation of the Board of Pharmacy to change the wording 'for the purpose of illegal sale.' We should proceed with extreme caution in declaring certain acts as felonies when minor infractions should more properly be misdemeanors. Proper wording should be worked out with legal counsel."

²² *Ibid.*, p. 75

As an example of the type of case intended to be reached by this proposal the Narcotics Commission Report contains this account

"A recent arrest made by the Los Angeles Police Department illustrates the problem of the availability of the drugs to our teenagers and the inadequacies of our present laws to control the illegal traffic in dangerous drugs

"On May 1, 1961, following two anonymous telephone complaints that the owner of a hotdog stand was selling pills to juveniles, police officers went to the hotdog stand to investigate. The suspect was told that a complaint had been made that he was selling pills to juveniles. The suspect stated he had given up peddling because he had found out the police were watching him. He stated he had only a few 'bennies' for his own use. He then handed them a package containing 50 benzedrine units stating that this was all he had. A careful search of his clothing revealed a bottle which contained numerous benzedrine, dexedrine and nembutal units. A search was conducted of defendant's residence which produced a paper sack containing two bottles of dexedrine, three bottles of benzedrine, and one bottle of nembutal. A second paper bag was found containing numerous cellophane packages, each containing a small number of pills (nembutal, seconal or benzedrine). The suspect was then asked if he had any more pills. He then pulled up the pants leg of his left leg and removed a leather pouch which was strapped below his knee. This pouch contained numerous packets of pills and capsules. He then pulled his pants leg above his knee and removed a second leather pouch which also contained numerous packets of pills and capsules. Approximately 3,000 units of benzedrine, dexamy, seconal, tumal, and nembutal were seized.

"It should be noted that this suspect can only be charged with a misdemeanor—possession of dangerous drugs." 33

Some of the considerations to be made in drafting such legislation were brought out in the testimony of Dr. Haley:

"Q Well, it is my understanding, I may be wrong on this, that the possession of these dangerous drugs in effect is a misdemeanor . . . Would you suggest that we have a stronger penalty for a person who illegally has 10,000 seconal tablets in his possession, for example, make it a more serious crime in terms of a felony?

"Dr. Haley: I'm a little at a loss to answer that because I can remember during the years that I practiced pharmacy where a physician wrote for one man for 500 benzedrine tablets and you see, I don't consider that a normal amount of the material to be on hand. I have seen the time when a couple hundred of the barbiturates were prescribed and I don't consider that a normal amount to be on hand. I'm more inclined to see smaller amounts of it on hand, but the man might be able to prove that he had this legally. I just don't know how to give you an answer on that because of my past experience with the large amounts that I have seen prescribed. I do believe that it is a little bit peculiar to have 10,000 of those on hand.

³³ *Ibid.*, pp. 71-72

"Q Well, I think, doctor, that what Mr. Wolfrum is driving at is the possession by an individual who is not a pharmacist, not a doctor, simply a man on the street who is found with 10,000 seconal tablets in his possession without a prescription therefor and the point I think that Mr. Wolfrum is making is that there is something more culpable about one having 10,000 in his pocket than one in his pocket and under the present law the penalty for the possession of 10,000 would still be a misdemeanor. Isn't that it? And he is asking whether you think that the possession of the larger amount should be punished more severely.

"Dr. Haley It should but I am kind of afraid of that felony bit.

"Q Well, that's the problem of—

"Dr. Haley I mean that's a legal problem.

"Q Well, this is the problem that's plagued many legislatures for hundreds of years I imagine. How do you draw the line on amounts, how do you distinguish between one crime and another crime?

"Dr. Haley Well, here with 10,000 of them there would be very little doubt that the man is engaged in something that isn't quite legal.

"Q Well, I think if the commission has recommended that we create a new offense, namely, possession for sale and as I understand it, there would be a presumption that if a person had 10,000 in his possession that he possessed them for sale, purpose of sale in which case the greater penalty would be applied than straight possession."

Committee Comments

We would recommend the Board of Pharmacy suggestion that this proposed crime be limited to habituates and stimulants and that the language should be changed to "for the purpose of illegal sale."

In addition, we recommend that the penalty imposed be flexible to allow varying terms depending upon such factors as amount of drugs involved and previous related activities.

"5 The illegal sale or furnishing of a dangerous drug to an adult should be a felony." ²⁴

California State Board of Pharmacy

"No. 5—This is the same as in No. 4."

California Pharmaceutical Association

"No. 5 Our same recommendation as in No. 4 applies."

Committee Comments

We cannot accept this recommendation because of the possibility of widespread misapplication. Some problems in this area were described by Dr. Haley.

"Dr. Haley Another thing that I think is likely to be a mistake if it is enacted into law, is to make this a felony conviction

²⁴ *Ibid.*, p. 75

You must remember that you see only a small proportion of the cases in which barbiturates, tranquilizers, psychic-energizers, the amphetamines and like drugs are used. I don't believe any of you, if you had a weight problem and were placed upon one of these mixtures which is used to reduce weight, would feel that it was justifiable for someone to pick you up and lock you up because you had them in your possession. You must remember that the department stores sell little containers that the women just love to put their variety of pills in, so that when they go out they don't have to pull out a whole bottle with a prescription label on it. They know they take a red one now and a pink one later and they could be picked up and be charged with a felony if the proposal here goes through.

"Q That would not be true if the drugs had been obtained on a prescription, would it?"

"Dr. Haley: Well, at the time you pick them up, you don't have a prescription usually, sir. Usually, you have the patient that has this little fancy jeweled box and you will find a variety of pills in it. They, of course, when the time came to go to court, might be able to produce their prescription number or evidence that it has been filed. There might be a case where a prescription had not been issued, but a patient had obtained a sample from their physician. Now you would have to go back—

"Q How about a member of the family?"

"Dr. Haley: Oh yes, there's this peculiar situation where, 'It was awful good for me and I had such and such a condition, yours sounds likewise—here you try my prescription.' Yes, that occurs quite frequently. It is an unfortunate situation because in many cases, one member of the family is damaging another inadvertently.

"Q Making a criminal out of him also—

"Doctor Haley: In this case, they would make a criminal out of him.

"Q Even under the present law

"Dr. Haley: Yes, but not as stringent—a misdemeanor is a different thing than a felony and a felony can haunt you for the rest of your life.

"I do believe in rules and regulations. I do believe we have some pretty good laws at the present time that may need some strengthening. But I don't want us to, theoretically, go overboard and get something that maybe a little bit later on we will regret. There is a law at the present time which says that if you are taking a medication and become involved in an auto accident, that you can be guilty under those circumstances. I have not agreed with that law one iota. I think the people that drew it up were perfectly straightforward. They were trying to correct a situation. But they ended up penalizing an awful lot of people without realizing it."

Committee Comments

However misguided the person who gives some medication prescribed for himself to another, it should not be made a felony. The possibility of innocent or well meaning persons being charged with a crime already exists but is overbalanced by the necessity of convicting persons who are not innocent or well meaning.

"6 The commission make no specific recommendation as to the exact punishment for crimes involving dangerous drugs. While the commission believes that all of these offenses should be treated as serious felonies because of the great harm which can result from the illegal use of dangerous drugs (some of these drugs are as harmful to the body as heroin) ¹² [12] "Abrupt withdrawal of barbiturates from addicted persons is followed by severe and dangerous signs of abstinence. Initially, the symptoms of intoxication abate and the patients appear to be improved. They then become nervous, restless, apprehensive, feel weak and may vomit. Finally, tonic-clonic convulsions occur resembling those of grand mal epilepsy. The number of convulsions varies greatly. Some patients escape seizures entirely, others have one or two convulsions, and a few may have repeated convulsions. After convulsions have ceased, patients may recover without further incident or they may develop a psychosis which resembles alcoholic delirium tremens. The delirium usually begins and is worse at night, it is characterized by disorientation in time and place but usually not in person. Vivid hallucinations, usually visual but sometimes auditory, are present. Untreated delirium may persist from 2 to 60 days. During the delirium, fever, elevation of the NPN and transient albuminuria may occur. Blood pressure is elevated and pulse and respiratory rates are increased. Like abstinence from morphine, abstinence from these hypnotic drugs is a self-limited condition and patients recover completely, provided they are sufficiently protected and not allowed to become dangerously exhausted." Isbell Harris, M.D. (Chief, Addiction Research Center, National Institute of Mental Health, Public Health Service Hospital, Lexington, Ky.) *What to Know About Drug Addiction*, p. 6 [15] "the exact terms and nature of the penalties which should be imposed should be determined by legislative study after consultation with law enforcement officials and other qualified experts. Such punishment should be fair, just, and reasonable, but stern and severe enough to act as a deterrent against the commission of crimes involving dangerous drugs." ³⁶

California Pharmaceutical Association

"6 We concur with the final sentence of this paragraph as to punishment but we do not wholeheartedly agree that all offenses should be considered felonies. Extreme caution should be taken in making a flat statement that all offenses should be felonies. Perhaps consideration should be given to the establishment of certain acts as misdemeanors with certain penalties and increased penalties with subsequent violations, it would be considered a felony."

¹² See also testimony of Dr. Gordon Alles, *supra*.
³⁶ Narcotics Commission Report, *op. cit.*, p. 75.

Committee Comments

We believe that our comments upon Recommendation No 5 are equally applicable here

"7 The commission was advised that, under the present California law, some persons are obtaining large quantities of drugs by filling in prescriptions for such drugs where the prescriber has neglected to indicate that the prescription should not be refilled. The commission believes that all practitioners should be vigilant to insure that their patients are not given the opportunity to alter a prescription."

California Pharmaceutical Association

"7 Due consideration should be given to making it a crime for the alteration, in any form, of a prescription for the purpose of obtaining a larger amount of a dangerous drug than the prescriber intended. Also, a person, posing as a physician, who telephones a prescription or authorization for refilling a prescription should be declared guilty of a crime."

Committee Comments

The Board of Pharmacy approved this recommendation. They made the further suggestions that the board be given the power to designate drugs on which no refill would be allowed and to set time limitations within which refills would be allowed on other prescription drugs. However, the Senate Public Health Committee has already held hearings upon these suggestions and we shall therefore not consider them in this report.

In specifying the number of times a prescription may be refilled a doctor should write out the number and follow it with figures, as ten (10), in order to discourage possible alterations.

We approve the suggestion made by the California Pharmaceutical Association and a number of witnesses at our hearing that it should be a misdemeanor for a person to misrepresent himself as a doctor on the telephone or in person, in order to obtain any dangerous drug.

It should be a misdemeanor to alter a prescription for the purpose of obtaining a larger amount of a dangerous drug than the prescriber intended.

In addition to commenting upon the preceding recommendations in response to our request, the Board of Pharmacy made its own recommendations for specific changes in 13 sections of the Business and Professions Code. Some of them were discussed in their general comments upon the commission's recommendations. Some are being studied by other legislative committees. Still others embody rather far-reaching proposals that were not considered at our hearing. They should be carefully weighed by the Legislature but we are unable to make informed recommendations on them at the present time.

²² *Ibid.*, p. 75

STATE NARCOTIC REHABILITATION PROGRAMS

Another factor that must be taken into account is the Supreme Court's decision in *Robinson v State of California*, 82 S Ct 1417. In that case the court prohibited criminal prosecution for addiction, holding that addiction was a sickness for which a person could be required to undergo treatment but for which he could not be criminally prosecuted.

The 1961 Legislature had before it two bills providing treatment facilities for addicts. One, S B 81, created the California Rehabilitation Center under the direction of the Department of Corrections. Under the bill addicts could be committed to the center as a result of a felony conviction, a misdemeanor conviction, or without criminal charge. In the latter case the application could be made by the addict himself, or by "a sheriff, chief of police, minister, physician, probation officer, a relative, friend or any other person."

The *Robinson* case appears to have the most substantial effect upon the second category.

The Attorney General has stated that more than 39 percent of the commitments to the California Rehabilitation Center were made under this statute which is now unconstitutional.³⁸

The third category poses similar problems perhaps to a more extreme degree.

The Attorney General has advanced the following suggestion to correct this problem:

"The statute that I am proposing would require addicts to report their addiction to law enforcement authorities. Their failure to do so would constitute a misdemeanor.

"Such a statute would, in effect, provide for compulsory commitment and would satisfy the constitutional requirements defined by the Supreme Court."³⁹

In addition, the Attorney General recommended the expansion of our narcotics rehabilitation program to include dangerous drug addicts and those in danger of becoming addicts.⁴⁰

The proposal that an addict be required, under criminal sanction, to report his addiction to law enforcement authorities would raise serious questions as to the Fifth Amendment guarantees. Assuming however, that Fifth Amendment protection would not reach the defendant by way of the due process clause, this procedure would simply rename the present practice of imprisoning addicts for addiction only.

While the *Robinson* opinion expressed approval of compulsory treatment it did so in terms of civil commitment as under the procedures of the Welfare and Institutions Code Sections 5350-5361.

It is doubtful whether the same approval could be obtained for procedures which require an addict to report himself to law enforcement

³⁸ See statement of Attorney General, Stanley Mosk, before Senate Committee on Judiciary, October 24, 1962.

³⁹ *Ibid*.

⁴⁰ The State Director of Alcoholic Rehabilitation recently suggested that alcoholics be kept in protective custody for life. See *Los Angeles Times*, September 23, 1962.

officials who then initiate his involuntary commitment to a prison. The nature of the Department of Correction's Rehabilitation Center has been described by its associate superintendent:

" . . . One thing I should make clear as well, the California Rehabilitation Center is not a hospital. We have already received many commitments who are under the unfortunate delusion that they are coming to a hospital. Believe me, when the gate shuts behind them, the message gets through that this is not a hospital. We are, first of all, a custodial institution. We have to meet the minimum objectives of control. In terms of control of a large number of narcotic addicts custodial restraint is of the essence. We have some real difficulties with people coming to us who thought this was going to be a hospital, a 'real George go' as they saw it. The fact is, we are part of the Department of Corrections, your State Prison System. Anyone delivered to us should be aware of this factor before they arrive because we have to 'wise them up' pretty quickly if they are not aware of it. It is essential we establish control." ⁴¹

In no way do we imply that the narcotic addict should be allowed to remain at large. For his own protection, and the protection of society, we must keep him off of drugs and attempt to reorient his thinking so that he can refrain from the use of drugs of his own volition.

We do propose that California accept the spirit of the Robinson decision instead of adopting stratagems to evade it. By committing noncriminal narcotic addicts to the custody of the Department of Mental Hygiene and addicts who have been convicted of a crime to the Department of Corrections we can accomplish this objective without sacrificing any important advantages. At the same time we can avoid giving the addict a prison record and can thereby make it easier for him to adjust to life outside the institution after he is released.

The present civil commitment procedure outlined in Welfare and Institutions Code Sections 5350-5361 were specifically mentioned with approval by the Supreme Court in discussing permissible narcotics legislation:

"The broad power of a State to regulate the narcotic drugs traffic within its borders is not here in issue. More than forty years ago, in *Whipple v. Martinson*, 256 U.S. 41, 41 S.Ct. 425, 65 L.Ed. 819, this Court explicitly recognized the validity of that power. 'There can be no question of the authority of the state in the exercise of its police power to regulate the administration, sale, prescription and use of dangerous drugs . . .'. The right to exercise this power is so manifest in the interest of the public health and welfare, that it is unnecessary to enter upon a discussion of it beyond saying that it is too firmly established to be successfully called in question." 256 U.S. at 45. 41 S.Ct. at 426.

"Such regulation, it can be assumed, could take a variety of valid forms. A State might impose criminal sanctions, for example, against the unauthorized manufacture, prescription, sale, purchase,

⁴¹ Cited from *Narcotics, Problems, Programs, Proposals, A California Summary*, Department of Justice, 1962, pp. 25-26. For an indication that addicts committed to this institution also consider it a penal institution see Appendix No. 1-11.

or possession of narcotics within its borders. In the interest of discouraging the violation of such laws, or in the interest of the general health or welfare of its inhabitants, a State might establish a program of compulsory treatment for those addicted to narcotics. (California appears to have established just such a program in Sections 5350-5361 of its Welfare and Institutions Code. The record contains no explanation of why the civil procedures authorized by this legislation were not utilized in the present case.) Such a program of treatment might require periods of involuntary confinement. And penal sanctions might be imposed for failure to comply with established compulsory treatment procedures. Cf. *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643. Or a State might choose to attack the evils of narcotics traffic on broader fronts also—through public health education, for example, or by efforts to ameliorate the economic and social conditions under which those evils might be thought to flourish. In short, the range of valid choice which a State might make in this area is undoubtedly a wide one and the wisdom of any particular choice within the allowable spectrum is not for us to decide. Upon that premise we turn to the California law in issue here.

"This statute, therefore is not one which punishes a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration. It is not a law which even purports to provide or require medical treatment. Rather, we deal with a statute which makes the 'status' of narcotic addiction a criminal offense, for which the offender may be prosecuted 'at any time before he reforms.' California has said that a person can be continuously guilty of this offense, whether or not he has ever used or possessed any narcotics within the State and whether or not he has been guilty of any antisocial behavior there.

"It is unlikely that any state at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. A State might determine that the general health and welfare required that the victims of these and other human afflictions be dealt with by compulsory treatment, involving quarantine, confinement, or sequestration. But, in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. See *State of Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 67 S.Ct. 374, 91 L.Ed. 422.

"(2) We cannot but consider the statute before us as of the same category. In this Court counsel for the State recognized that narcotic addiction is an illness." (Footnote eight. In its brief the appellee stated: 'Of course it is generally conceded that a narcotic addict, particularly one addicted to the use of heroin, is in a state of mental and physical illness. So is an alcoholic.' Thirty-seven years ago this Court recognized that persons addicted to narcotics 'are diseased and proper subjects for [medical] treatment.' *Linder v. United States*, 268 U.S. 5, 18, 45 S.Ct. 446,

449, 69 L Ed 819) Indeed, it is apparently an illness which may be contracted innocently or involuntarily" (Footnote nine: Not only may addiction innocently result from the use of medically prescribed narcotics, but a person may even be a narcotics addict from the moment of his birth. See Schneek, 'Narcotic Withdrawal Symptoms in the Newborn Infant Resulting from Maternal Addiction' The Journal of Pediatrics, 52 584, 1958, Roman and Middlekamp, 'Narcotic Addiction in a Newborn Infant,' The Journal of Pediatrics 53 231, 1958, Kunstadter, Klem, Lundeen, Witz, and Morrison, 'Narcotic Withdrawal Symptoms in Newborn Infants,' The Journal of the American Medical Association, 168-1008, 1958, Slobody and Cohrnick, 'Neonatal Narcotic Addiction,' Quarterly Review of Pediatrics, 14 169, 1959 Vincow and Hackel, 'Neonatal Narcotic Addiction,' General Practitioner, 22 90, 1960; Dikshit, 'Narcotic Withdrawal Syndrome in Newborns,' Indian Journal of Pediatrics, 28 11, 1961) We hold that a state law which imprisons a person thus afflicted as a criminal, even though he has never touched any narcotic drug within the State or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment To be sure, imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual But the question cannot be considered in the abstract Even one day in prison would be cruel and unusual punishment for the 'crime' of having a common cold

"We are not unmindful that the vicious evils of the narcotics traffic have occasioned the grave concern of government There are, as we have said, countless fronts on which those evils may be legitimately attacked We deal in this case only with an individual provision of a particularized local law as it has so far been interpreted by the California courts" ⁴²

The *Robinson* decision makes clear that penal sanctions may be invoked to enforce co-operation with the treatment program There appears to be no reason why repeated failure to profit from the civilly imposed treatment program might not result in a commitment to the Department of Corrections

The addict who wishes to seek help in withdrawing from drugs might well volunteer to enter a hospital for treatment when he would not consider committing himself to the Department of Corrections We recommend that A B 173, as introduced during the 1961 session, be passed to provide facilities and postrelease supervision for such persons The program envisioned under this bill would make it impossible for an addict to use a state hospital simply to cut down his requirement for narcotics to an amount that he could afford With parole-type supervision he would be returned to the hospital upon reuse of narcotics After a specified number of relapses penal sanctions could be invoked

Had A B 173 been enacted concurrently with S B 81, California would now have a narcotic rehabilitation program that would meet the Constitutional requirements of *Robinson v California* A B 173

⁴² *Robinson v State of California*, 32 S Ct 1417 (1962)

would utilize already existing sections applying to addicts who volunteer for treatment and those who are committed under Section 5350 of the Welfare and Institutions Code. We recommend that a bill embodying the same provisions be passed by the 1963 Legislature.

In August 1962, this committee directed certain questions regarding their respective rehabilitation programs to the Department of Corrections and the Department of Mental Hygiene. Because we believe their replies will be of wide interest we are including them as Appendices 1-C, 1-D, 1-E, and 1-F.

Any bill making addicts subject to involuntary commitment should contain a section exempting addicts who are residents of "places of aid" as defined in Health and Safety Code Section 11391.

APPENDIX 1-A

MEDICAL PERSPECTIVES ON HABITUATION AND ADDICTION *

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Since physicians are rarely semanticists, many common terms have been endowed with specific medical or scientific connotations through the process of unfortunate selection, extensive use, and periodic redefinition. Such is the case with the terms "habitation" and "addiction" as used by physicians and scientists to denote the excessive use and the abuse of drugs which affect the central nervous system.

Unfortunately, no qualitative distinction between the terms is implied in their common use. These terms are usually employed as if they were synonymous. By association, both terms have an almost generic connotation of evil and are used to indicate illicit ecstasy, guilt, and sin. If any distinction is made between the terms by the layman, the term "addiction" usually carries the greater stigma. Thus, great confusion exists in attempting to harmonize medical with common meanings, since the public image of a drug is conditioned by its implications in sociological rather than medical aspects.

In spite of these differences, the issue might have remained academic were it not for the fact that these terms have also been interpreted into law and, therefore, have become instruments of national and international control. Lawmakers, in accepting the "common and usual" meaning, chose to legalize the term "habit-forming" rather than "addiction-producing" [Section 502(d) of the Federal Food, Drug, and Cosmetic Act of 1938] on the theory that "habit-forming" was more easily understood. Thus, today, labels bear the designation, "Warning, may be habit-forming."

When this law was enacted, the number of families of drugs which affected the central nervous system was comparatively small. However, the recent development of entirely new families of drugs capable of inducing psychotoxic effects has paralleled the enormous advances in science, industry, and communications. The pressures associated with these developments have left the people of the world, even those with the

* Reprinted from *The Journal of The American Medical Association* July 14, 1962, Vol. 181, pp. 92-98. Copyright 1962, by American Medical Association.

more stable personalities, in discord and fear, they now need more than placebos to assist them in maintaining mental equilibrium. Therefore, there has been no dearth of clinical material upon which to test the many new euphorizants and tranquilizing agents.

During this period, legislation has been enacted in an effort to control the abuse of the old as well as of the new agents, however, this legislation has not always been in accord with scientific fact or definition, or even with public acceptance. Thus, the problem of definitions becomes important if we are to avoid stigmatizing a good drug which possesses limited potentiality for abuse or classifying dangerous drugs with those of minimal hazard.

Definitions

Experts in the field of drug abuse have attempted to preserve the so-called scientific meaning of the terms "habituation" and "addiction" by redefining them and enlarging their scope in the hope that they could serve the needs not only of science and medicine but also of law and sociology. As a long-time student of this problem who must assume his share of responsibility for contributing to the present confusion, it becomes increasingly apparent to me that these terms are beyond salvage for the scientific description of drug effects and should be abandoned.

According to the most widely accepted definitions, the terms "habit-forming" and "addiction-producing" are equally applicable to *all* drugs capable of inducing psychotoxic effects, since the only distinction between the 2 terms is a qualitative difference in the pharmacological and behavioral effects of any drug at different points on its dose-response curve. The same distinction may be made between 2 martinis taken before dinner and a pint of whiskey taken before breakfast. The major weakness in such definitions is due to the inherent difficulty in establishing a uniform cut-off point where "habituation" becomes "addiction." As in all biological responses, there is a wide range of inter-individual and intraindividual variation, so that no sharp line of distinction is actually possible. The cliché, "One man's meat is another man's poison," was never more apt.

The present confusion is not new, but only worse than in the past. It existed in 1931 when A. L. Tatum and I, in introducing a review¹ of the subject, stated, "In the literature, as well as in common parlance, considerable confusion exists as to the significance of various terms employed in considerations of drug addiction in the broad sense of the word." We then proceeded to define the terms habituation and addiction as follows:

Habituation is a condition in which the habitué desires a drug but suffers no ill effects on its discontinuance.

Addiction is a condition developed through the effects of repeated actions of a drug such that its use becomes necessary and cessation of its action causes mental or physical disturbances.

Unfortunately, during the last 30 years, neither my scientific colleagues nor I have been content with these simple factual statements expressed in nonscientific terms which even a layman can understand.

Adams² elaborated the definitions to bring in other factors, including the nature of the user

Addiction is a state of bondage to a masterful drug, usually but not always of the narcotic class, and is manifested by craving, tolerance, intense discomfort of a specialized character on withdrawal of the drug, and a tendency to relapse. Its origin lies in the defect of the personality which may be of varied kind but is most commonly of the nature of the inability to stand up to reality.

Himmelsbach,³ in 1937, redefined these terms as follows

By habituation is meant the psychical phenomenon of adaptation and mental conditioning to the repetition of an effect. Habituation to opiates is probably more intense than habituation to other substances. In a sense habituation represents psychical dependence.

Addiction to opiates embraces three intimately related but distinct phenomena, namely tolerance, habituation, and dependence. These phenomena which make up the psychosomatic complex known as addiction are intricately interwoven and interdependent.

Many other definitions might be quoted to emphasize the fact that they have become more elaborate with time. The ones most often quoted today are those of the Expert Committee on Addiction-Producing Drugs of the World Health Organization. The last revision (1957)⁴ gave the following definitions:

Drug Addiction

Drug addiction is a state of periodic or chronic intoxication produced by the repeated consumption of a drug (natural or synthetic). Its characteristics include

- (1) an overpowering desire or need (compulsion) to continue taking the drug and to obtain it by any means;
- (2) a tendency to increase the dose;
- (3) a psychic (psychological) and generally a physical dependence on the effects of the drug;
- (4) detrimental effect on the individual and on society.

Drug Habituation

Drug habituation (habit) is a condition resulting from the repeated consumption of a drug. Its characteristics include

- (1) a desire (but not a compulsion) to continue taking the drug for the sense of improved well-being which it engenders;
- (2) little or no tendency to increase the dose;
- (3) some degree of psychic dependence on the effect of the drug, but absence of physical dependence and hence of an abstinence syndrome;
- (4) detrimental effects, if any, primarily on the individual.

Perusal of this elaborate attempt to incorporate all of the varied aspects of drug abuse into meaningful scientific definitions which can be characterized by single words should at least convince the reader of the complexity of the problem. This will be even more apparent when an attempt is made to place specific drugs in the proper pigeonholes.

Only recently the Interdepartmental Committee on Drug Addiction of the Ministry of Health of the United Kingdom (also known as the Bram Committee, for its chairman, Sir Russell Bram) published its deliberations⁵ in which the members accepted the definitions of drug habituation of the Expert Committee, but made a significant change in the definition of drug addiction relating to the phenomenon of physical dependence.

In the Expert Committee's definition, addiction includes "(3) a psychic (psychological) and generally a physical dependence on the effects of the drug", whereas in the Bram Committee Report we find,

(3) a psychological and physical dependence on the effects of the drug, and (4) the appearance of a characteristic abstinence syndrome in a subject from whom the drug is withdrawn."

If one reads further in the report of the Brain Committee, one finds that stimulants such as the amphetamines and phenmetrazine are classified as drugs of addiction. This is an obvious inconsistency with the Committee's own definition, since, as has been well established in man and animals, no physical dependence on these compounds develops, nor is there a characteristic abstinence syndrome on withdrawal. In fact, a consistent application of the Brain Committee's definition would exclude all stimulants, including cocaine which is recognized universally as a drug of addiction.

The Expert Committee's definition, on the other hand, provided a loophole for classifying these drugs as addiction-producing, since the definition states that there is "*generally* (author's italics) a physical dependence on the effects of the drug," and it does not mention an abstinence syndrome; thus, physical dependence is not a mandatory requirement.

Elsewhere in the report of the Brain Committee one finds another statement equally inconsistent with definition: "In view of the heavy and direct responsibility carried by every anaesthetist we were convinced that anyone *addicted to the inhalation of gases* (author's italics) and vapours should never be entrusted with their administration." Unless there is some evidence unknown to me, physical dependence leading to an abstinence syndrome has never been demonstrated for the anesthetic gases.

These comparisons are not designed to discredit the Brain Committee or its report. This is an excellent document which approaches the general problem with common sense and good medical perspective. These comments are offered only to indicate how easy it is for even the finest scientists and physicians to resort unwittingly to common parlance in the non-scientific use of these terms.

Characteristics of Drug Abuse

It seems timely to reexamine the interrelationships which exist between all commonly used drugs which affect the central nervous system to determine if a satisfactory description of the general problem can be accomplished without use of the terms "habituation" and "addiction." Most of scientific terms for the criteria of "addiction" (tolerance, psychogenetic dependence, physical dependence, etc.) already have specific and meaningful definitions. One term, however, has been used which, in my opinion, carries a wrong connotation, namely, "psychotic behavior." In searching for a substitute the term "psychotaxie" has suggested itself and has been used in this discussion to denote *drug-induced psychic manifestations which induce abnormal behavior* and will be used here to point out effects rather than to classify drugs.

With the main objective, therefore, of avoiding current terminology, an attempt has been made to present in one table the scientific facts concerning this general class of substances and to indicate the relation of these facts to their legal and regulatory status. Only descriptive terms with unequivocal meanings have been used in this table.

**Comparison of Medical Characteristics of Common Habit-Forming and
Addiction-producing Drugs, With Their Legal and Regulatory Status**

Drugs	Psychogenic Dependence	Uncontrolled Consumption to Continued Abuse	Physical Dependence	Tolerance	Psychophar- maceutical Administration	Psychiatric Effects During Withdrawal	Regulatory Effects on Specific Laws	Regulatory Control Prescription Only	Available "Over the Counter"
Opiates and morphine-like analgesics -----	x	x	x	x		x	x	x	
Barbiturates and other hypnotics -----	x	x	x	x	x	x		x	
Alcohol -----	x	x	x	x	x	x			x
Bromides -----	x				x				x
Cocaine -----	x	x			x		x	x	
Amphetamines and related stimulants -----	x	x		x	x			x	
Marihuana -----	x	x		x	x		x		
Nicotine -----	x			x					x
Caffeine -----	x			x					x

Psychogenetic Dependence—As a basis for including specific groups of drugs in the table, I have used only one criterion. Do these drugs possess the pharmacological properties which lead to psychogenetic dependence? Without this elementary characteristic a drug cannot really be called capable of producing either "habituation" or "addiction." However, it should be stated that the habitual use of a substance, per se, does not necessarily imply psychogenetic dependence. For example, the habitual use of acetylsalicylic acid or digitalis does not imply psychogenetic dependence. Occasionally, however, a drug, otherwise harmless in this regard, is abused because it is purported to have desirable properties. Such a situation occurred in several Swiss and Scandinavian communities with the use of certain analgesic tablets. Rumor had it that certain tablets containing among other things, acetophenetidin, antipyrin, and caffeine induced sexual vigor if taken in large quantity. The resulting abuse led not merely to some psychotoxic effects but also to serious and sometimes fatal interstitial nephritis.

There are numerous examples in which virtually a whole population is psychogenetically dependent on natural products of plant origin. Many of these, like the betel morsel, are used by hundreds of millions of people and produce no detectable euphoria or other effects on the central nervous system, the only subjective sensations are those of mildly pleasant oral stimulation. Psychogenetic dependence is well established, since the multitude spend much of their income to acquire the ingredients, and even the more intelligent and erudite users suffer a considerable mental letdown in its absence.

In our culture the best example of psychogenetic dependence is the habitual use of alcohol. Statistics demonstrate, and the history of the Volstead Act attests to the fact, that the American public considers alcohol to be a useful and pleasant form of tranquilization, and yet its abuse far overshadows that of all other substances combined.

Compulsive Abuse—Psychogenetic dependence on drugs is perhaps not harmful per se. When it leads to compulsive abuse, however, a new

situation is created. Psychiatrists appear to agree that the growth of compulsive abuse rests more in the nature of the soil than in the characteristics of the seed. The individual user is thus the pivotal point in the problem. Compulsive abuse of drugs, at excessive levels of usage which may induce serious psychotoxic reactions, is to be found mostly in emotionally unstable and frustrated persons who seek a means of better facing reality. This abuse may be either chronic, periodic, or temporary.

In order to keep the whole problem in perspective, it is most important to reemphasize that a critical turning point in individual behavior is reached when psychogenetic dependence develops into compulsive abuse, since, *without the latter, no serious problems will be created*.

Physical Dependence—Among depressant drugs, the order of magnitude of abuse is (1) alcohol, (2) the morphine-like analgesics, and (3) the barbiturate-like sedatives. With these drugs, abuse is enhanced by the development of physical dependence, and the compulsion to continue taking the drug is reinforced by fear of the mental and physical agonies of withdrawal. However, although physical dependence is only rarely a primary factor leading to compulsive abuse, *in those drugs that induce it, it is a potent factor favoring continuance of abusive use*.

The most powerful physical dependence occurs in those who abuse opiates and other morphine-like narcotic analgesics. This relates to the fact that the intensity of physical dependence is directly proportional to the total daily intake of the drug. Thus, even comparatively small amounts (50 mg per day of morphine) produce a detectable grade of dependence after a few weeks of administration.

With alcohol and the barbiturate-type sedatives and hypnotics, the development of physical dependence requires a long period of poisoning with large doses. Thus, with a smaller daily intake of drugs below the critical level, physical dependence plays a comparatively insignificant role and no role at all in the periodic type of abuse, since drug-free periods between even high doses prevent development of physical dependence.

When the stimulants cocaine, marijuana, and the amphetamines and related compounds are used, no physical dependence develops, in fact, no stimulant is known which is capable of evoking the changes in the nervous system that produce physical dependence. In spite of this, the compulsive abuse of these substances does occur, but the total incidence is much lower than with the depressants, largely because continued use of increasing amounts of the stimulants beyond the stage of pleasant mental and physical exhilaration leads inevitably to unpleasant and unbearable hyperexcitability and true psychotic manifestations. Sedation is usually required for relief, and this often leads to the abuse of 2 or more antagonistic pharmacological agents simultaneously, such as cocaine-morphine, amphetamine-barbiturate, or other similar combinations.

An example of large-scale compulsive abuse of an agent which is incapable of developing physical dependence occurred in postwar Japan. Thousands of persons, especially juveniles, swept into the turmoil of national defeatism, turned to drugs for surcease, especially metham-

phetamine (Wake-Amine) Enormous problems in social reconstruction were created; the establishment of special psychiatric hospitals and drastic regulatory measures were necessary. An increase in violent crime during this period, in a nation ordinarily comparatively law-abiding, appears to have been related directly to this abuse.

Tolerance—Tolerance to most depressant drugs characteristically occurs—the opiates and the morphine-like narcotic analgesics are the classic examples. After repeated administration of ever-increasing quantities, a point is reached where minimal pharmacological effects are produced with otherwise lethal doses. The intensity of physical dependence parallels this increase in dosage as tolerance develops. Tolerance enables the central nervous system to bear exposure to larger and larger concentrations of the drug, and it permits the optimal development of those adaptive processes, probably of a biochemical nature, which lead to physical dependence. Therefore, like physical dependence, *tolerance is only of secondary importance to the main problem*.

Tolerance, of a lesser grade, develops to alcohol and the barbiturate-like sedatives, but it may contribute, as in the case of the opiates, to the development of physical dependence. Tolerance of a fairly high grade develops to the amphetamines and related amines. However, no tolerance develops to cocaine or marijuana. In fact, the converse is true with cocaine, to the point where the quantity which was originally well-tolerated finally produces exaggerated and unpleasant effects.

On the other hand, the presence of tolerance does not ensure that physical dependence will develop. No physical dependence occurs with the amphetamines, in spite of the fact that a rather high-grade tolerance occurs.

Thus, tolerance plays the same role with respect to physical dependence that physical dependence plays to compulsive abuse, neither being required for development of the other but, if present, serving as a means of reinforcement.

Psychotonic Effects During Drug Administration and During Withdrawal—One of the major shortcomings of the terms "habituation" and "addiction" is the failure of these terms to distinguish clearly the behavioral effects which occur during the course of drug action from those which occur when the drug is suddenly discontinued. Examination of the table will indicate wide differences in this respect among the several drug classes.

It is of major significance that the only group of substances in which significant psychotonic effects are absent during drug administration is the group of opiates and morphine-like narcotic analgesics. In short, the inherent pharmacological properties of these drugs fail to create significant psychotonic effects even though compulsive abuse is the outstanding characteristic result of their use. This is borne out by the common knowledge that, in attempts to subjugate individuals or nations, these agents have been the drugs of choice, because they abolish aggressive drives. Many a numbing social experiment has been referred to metaphorically as the "opiate of the people."

It should not be inferred that absence of the psychotonic effects of opiates during administration is a recommendation for encouraging chronic abuse. However, it should be understood that the chronic abuse

of opiates, as such, although almost invariably associated with slothfulness and inadequate performance, does not in itself invoke anti-social or criminal behavior. Furthermore, no social problem arises from the administration of a single dose. The multitude of problems created by drug withdrawal, on the other hand, are too well known to require extensive comment.

In the use of the other depressants, serious psychotoxic effects may occur during administration or withdrawal, either with large single doses or after chronic abuse. In contrast to the opiates, alcohol especially and barbiturates occasionally possess the pharmacological characteristics, which result in aggression.

Stimulants induce psychotoxic effects only during administration. This is due to the fact that no characteristic abstinence syndrome develops in the absence of physical dependence. As would be expected, however, an individual who has been subjected to continual psychic stimulation and physical activity from drug action cannot return suddenly to a normal state without passing through a period of mental and somatic reaction. General depression and weakness are noted, although characteristic or specific symptoms or signs are absent.

Legal Control of Drug Abuse

The facts presented make it clear that the only logical concern in distinguishing habituation from addiction relates to the sociological rather than the scientific or medical aspects of the problem. Both terms have a common basis in psychogenetic dependence, but "addiction" also involves compulsive abuse and psychotoxic effects.

Since the ultimate concern of society is to protect itself, any complete consideration of the meaning and use of these terms must include those measures which have been used to afford this protection.

At the outset let it be affirmed that legal controls have always been necessary to deter the spread of many types of illness, including mental illness. Since the best evidence supports the view that compulsive abuse of drugs is commonly, if not always, a manifestation of such illness, society is justified in insisting on some type of regulation of drug supply or distribution as an application of preventive medicine in the area of mental health.

Controversy, however, has always centered on the question, "How shall regulation be effected?" The answer to this question cannot be simple in view of the fact that, *in many instances, the drug in proper dosage is used to treat the very condition which it creates if subjected to abuse.* Not even the medical profession has found it easy to keep the many facets of this complex problem in good perspective, especially the difficulty of establishing methods of control which ensure the proper balance between the benefits and the hazards of abuse of any single drug or group of drugs. Examination of the table will demonstrate the poor correlation between the scientific and medical aspects of this problem and the legal control.

Currently, pressure is being exerted from many sources to bring these drugs into new alignment. Most of the individuals or groups strive either to bring all drugs of this type under strict regulatory control similar to that now being exerted under the existing narcotic laws,

or to make more freely available even those drugs now under strict control

Unfortunately, extreme positions are often taken through ignorance of some of the relevant facts or are taken deliberately to favor a minority segment of society. If the desire for strong control leads to unwise legislation, extreme rebound reactions may occur, possibly to the point at which the hazards of attempted enforcement may exceed those which the control is designed to obviate. On the other hand, abolition of all control would result in the spread of abuse.

The arguments of extremists are often difficult to rebut, since extreme positions distort perspective to enhance hazard over benefit or vice versa. The more advantageous position is usually that of emphasis on hazards, since they are more easily defined than benefits, and fear is a compelling argument. Human nature being what it is, dysphoria creates a more significant sociological impression than euphoria. The euphoria of 150 million consumers of alcohol, which most people consider to be more beneficial than any other known euphoriant or tranquilizing agent, is obscured when compared with the dysphoria of the 5 million who are reported to be alcoholics.

Nor is society infallible in its decisions. In some instances, extreme measures have been required to correct errors in collective judgment. In other situations extreme measures will have little likelihood of success. Possibly the best example relates to the American problem of narcotic control. When careful consideration is given to the abuse potentiality of the opiates and related drugs, the strict regulatory control imposed upon this class of compounds seems to be hardly justified, especially when a comparison is made with alcohol. This type of logic has inspired unrest and controversy between those who view narcotic control strictly as a medical problem and those who are legally responsible for enforcing the narcotic laws.

It is not proposed to enter into this controversy here. It should be recalled that we live in 1962. If errors have been made in the past, it is too late to turn the clock back to 1914 when the legislation was enacted, or the 1920's when the medical profession turned its back on the problem. Today, it is impossible to decondition a public which for nearly 50 years has viewed the narcotic addict as something more than a sick man, nor, under existing conditions, can this problem be transferred to the medical profession for its exclusive handling.

It must, however, be pointed out again that extreme regulations evoke extreme reactions. Shortages increase demand and price, and difficulties inspire the ingenuity by which these shortages may be overcome. These are elementary laws of economics and human behavior.

One of the great errors of extremists is that they fail to associate the problem of extreme legislation with these simple fundamentals or to face the fact that the motivation for the compulsive abuse of drugs is often more intense than the elementary drive for food, sex, or even survival.

Furthermore, the history of drug abuse suggests that the drive to alter the status quo is an elemental one for which satisfaction has been sought throughout the centuries by even the most primitive

peoples. For instance, no race has ever been without alcohol for any length of time, and in its absence the urge has been satisfied by the most extreme types of poisoning.

The obvious lesson of history is that a certain segment of the population, probably a much larger one than we would like to believe, must find release or relief in drugs or in some other form of psychogenetic conversion. It is up to society, therefore, to find the means by which this may be accomplished with minimal hazard to the individual and to itself.

Further examination of the table reveals that only 3 classes of substances are considered by the American social order to require regulatory control by specific legislation, the so-called narcotic laws; these are opiates and morphine-like narcotic analgesics, cocaine, and marihuana. Other drugs are limited by law to prescription by physicians—barbiturates and other hypnotics and the amphetamines and related amines. Only alcohol and bromides are considered to be sufficiently safe to justify self-medication without control. These latter substances justify some comment—alcohol only because the final judgment of the public was at the polls, a fact which appears to be the best basis for evaluation of the extent of the public's need for tranquilization.

One of the strange quirks of drug history, ending in a loss of perspective by the medical profession, concerns the bromides. In the early part of this century, with the ascendancy of the barbiturates, especially of phenobarbital, for the treatment of convulsive disorders, bromides fell not only into disuse but also into ill-repute because of the psychotoxic effects produced by their excessive use in some instances. Whether these instances were situations in which a drug converted a latent psychosis into an active psychosis, or whether bromides are capable of inducing psychotoxic effects in otherwise normal persons, is not relevant in this discussion.

The important facts are that the bromides, although capable of inducing psychogenetic dependence, are rarely subject to compulsive abuse, and neither tolerance nor physical dependence is induced at any dosage level, furthermore, no cross-tolerance is developed to other depressants, and cross-substitution for other depressants is ineffective.

In comparison with the psychotoxic potentialities of the barbiturates and the so-called lesser hypnotics, and even the nonspecific tranquilizing agents like meprobamate, the bromide ion hardly seems to deserve its current fate as a much-maligned medical discard.

For purposes of comparison, the 2 most universally and habitually used stimulants, nicotine and caffeine, are included in the table to point out that by no stretch of the imagination can either of these conform to any accepted definition of addiction.

In the case of caffeine, little attention is paid to the problem. Rarely is the term "addict" applied to individuals who drink excessive quantities of caffeine-containing beverages, and when the term is so used it occurs in lay rather than in medical literature, in spite of the fact that the "caffeine-withdrawal headache," which occurs in heavy users during abstinence, could be considered a form of physical dependence.

The situation in regard to the use of tobacco contributes further to the confusion. The term "cigarette addict" is common among laymen, and the term "addiction" is applied to the abuses of tobacco, alcohol, and narcotics, without discrimination, by many in the medical profession, especially since cigarette smoking has become a *cause célèbre* in certain medical groups. Unfortunately, the selection of applicable terms seems to be based more on emotional than on semantic considerations, and comparisons more on motives of propaganda than on scientific facts.

The recent report of the Royal College of Physicians of London, "Smoking and Health,"⁶ is in sharp contrast to the broad and common-sense viewpoint expressed in the Bram Committee Report on narcotics referred to previously.⁷ For example, the statement, "The discomforts that ensue when smoking is stopped may be genuine withdrawal symptoms due to addiction to nicotine," has absolutely no basis in scientific fact, and, if it had, the use of injected nicotine or oral lobeline to "provide some substitute relief and assist smokers to give up the habit" is analogous to administering heroin to addicts to stop its abuse.

If a major search of the literature were to be conducted, it would be difficult to find a more striking example of abuse of the term "habit-forming" than is to be found in this report.

In another American study, it was found that the proportion of smokers who gave up the habit varied in different social and economic groups, the rate was highest for professional workers and farmers, lowest for unskilled manual laborers. In the same study an inverse relationship was found between the discontinuance rate and the proportion of regular smokers in the population as a whole, which suggests that "when social forces tend to militate against adoption of the smoking habit by members of the group, these same forces persist to motivate discontinuance by some, after the habit has been formed." This conclusion, if warranted, is important since it emphasizes social factors, such as approval, rather than internal drives and needs that are usually assumed to lead people to smoke. No doubt both operate and can either reinforce or nullify each other. *The parallel with alcoholism is close. While many if not the majority of people enjoy alcoholic drinks on relatively infrequent occasions, however, there are very few occasional smokers. Most smokers consume a regular daily amount of tobacco. It appears that smoking is generally much more habit-forming than drinking.* (Author's italics)

The analogy to alcohol in this quotation is so lacking in perception and perspective as to be unworthy of such an august body of physicians.

If and when adequate evidence has been adduced that declares the hazards of cigarette smoking to be so great as to require legislative control as a public health measure, as currently demanded by many in the United Kingdom and some in this country, it is to be hoped that the medical profession will retain the perspective to base control on medical and scientific facts rather than on guilt due to associating nicotine with alcohol or other drugs capable of inducing psychotoxic effects.

Since some type of legislation involving drugs with abuse potentiality is always being considered, a pattern for judging the ultimate effects on society may be worthy of consideration. If perspective is to be retained, three principal elements must be evaluated carefully:

(1) The nature and incidence of compulsive abuse, the nature of the psychotoxic effects and the effects on individuals and society

(2) The nature of the benefits to society (medical, psychological, sociological) balanced against the effects created by the loss of these benefits

(3) If (1) overrides (2), is the proposed legislation socially acceptable; can it be enforced, will its enforcement create serious social problems; and if so, will they be greater or less than the benefits?

These are not academic questions. The following example is cited only to indicate the difficulties of decision. On July 1, 1959, Thailand outlawed opium, including the government monopoly of its sale, closed the opium dens and publicly burned the opium pipes. Thailand felt compelled by inexorable logic to remove itself from the "over-the-counter" opium business in order to attain respectability in the world community of nations. The result was the establishment of an enormous underground traffic in heroin smuggled in from Communist China, a much more serious hazard than the one which it replaced, and the outcome could have been predicted from a similar pattern of history in Hong Kong.

Contrary to the popular view that a middle-of-the-road position is a sign of indecision and weakness, I point out the tremendous cost in human energy, in respect for law, and in more tangible assets which results from an attempt to live with a difficult social situation created by extreme legislation, or to try to correct it. Two examples are the great American fiasco with alcohol and our narcotic laws.

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APPENDIX 1-B

CALIFORNIA LEGISLATURE, 1961 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 173

Introduced by Mr. O'Connell

January 9, 1961

REFERRED TO COMMITTEE ON CRIMINAL PROCEDURE

An act to add Section 6500.3 to the Welfare and Institutions Code, relating to institutions for narcotic addicts

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

- 1 SECTION 1 Section 6500.3 is added to the Welfare and
- 2 Institutions Code, to read
- 3 6500.3 The Director of Mental Hygiene shall establish in
- 4 one or more institutions enumerated in Section 6500 one or
- 5 more wings or wards, or separate hospitals, which shall be
- 6 reserved and devoted exclusively for the study, care, treat-
- 7 ment, cure and rehabilitation of persons addicted to the use
- 8 of narcotics who voluntarily apply for admission thereto pur-
- 9 suant to Section 6602 or who are committed thereto, pursuant
- 10 to Article 1 (commencing with Section 5350) of Chapter 3 of
- 11 Division 6

LEGISLATIVE COUNSEL'S DIGEST

A B 173, as introduced, O'Connell (Crim Pro) Institutions for narcotic addicts
Adds Sec 6500.3, W & I C

Provides that the Director of Mental Hygiene shall establish in one or more institutions enumerated in Sec 6500, W & I C, one or more wings or wards, or separate hospitals, which shall be reserved and devoted exclusively for the study, care, treatment, cure and rehabilitation of persons addicted to the use of narcotics who voluntarily apply for admission thereto pursuant to Sec 6602, W & I C, or who are committed thereto, pursuant to Art 1 (commencing with Sec. 5350) of Ch 3 of Div 6, W & I C

APPENDIX 1-C

August 6, 1962

WALTER DUNBAR, Director
Department of Corrections
Office Building No. 1, Room 502
Sacramento, California

DEAR MR. DUNBAR: It would be helpful to this committee in studying proposed narcotics legislation if you would supply us with the following information:

1 Does the Department of Corrections ever receive prisoners who are suffering the physical distress of withdrawal?

2 If so, what medical treatment is given them?

3 Do you know whether any of the addicts received by the Department of Corrections were given medical treatment for withdrawal in a city or county jail?

4 If so, of what nature?

5 How many drug addicts are presently in the custody of the Department of Corrections?

6 Does the Rehabilitation Center at Norco have adequate facilities to care for all the addicts in the custody of your department?

7 After the completion of physical withdrawal, what treatment is given at Norco?

8 Could you give us an idea of the scope of the research program at Norco?

9 New York State recently established a central narcotics office in the Department of Mental Hygiene.

a Do you believe that such an office should be created in California?

b If so, should it be in the Department of Corrections? Why?

10 To your knowledge, has any addict not charged with a crime voluntarily applied for admission to Norco under Penal Code Section 6500?

We would very much appreciate your help in providing this information. Any other information or suggestions that you might wish to volunteer will be more than welcome.

Sincerely,

JOHN A. O'CONNELL

APPENDIX 1-D

YOUTH AND ADULT CORRECTIONS AGENCY
 DEPARTMENT OF CORRECTIONS
 SACRAMENTO 14, August 28, 1962

THE HONORABLE JOHN A. O'CONNELL
Assembly Interim Committee on Criminal Procedure
Room 2123, State Capitol, Sacramento 14, California

DEAR MR. O'CONNELL: Please find below the answers to your questions in the letter of August 6, 1962. If you need further details on any of these matters, please let me know.

- 1 *Does the Department of Corrections ever receive prisoners who are suffering the physical distress of withdrawal?*

This occurs rarely and when it does the withdrawal symptoms are mild. The chief medical officer at the California Institution for Men, can recall only one mild withdrawal case within the last two years. This time period covers our experience with the Narcotic Treatment-Control Project and the first several hundred addicts committed to the California Rehabilitation Center. The chief medical officer at the California Institution for Women can recall a few cases, maybe six, which experienced mild withdrawals. He characterized mild withdrawal as "anxiety and restlessness." If withdrawal symptoms occur, they would show soon after the person is incarcerated in the county jail pending case disposition through the courts.

- 2 *If so, what medical treatment is given them?*

Both chief medical officers indicated that the only medical treatment prescribed for withdrawal is tranquilizers. The chief medical officer at the California Institution for Men stated that use of tranquilizers "is accepted management" of the addict in withdrawal.

- 3 *Do you know whether any of the addicts received by the Department of Corrections were given medical treatment for withdrawal in a city or county jail?*

- 4 *If so, of what nature?*

This information would have to be obtained from city and county administrators.

- 5 *How many drug addicts are presently in the custody of the Department of Corrections?*

We have a total of about 34,000 men and women in prison and on parole. We have information about drug use on approximately 93 percent of this population. Approximately 7,600 of the men and women under the jurisdiction of the California Department of Corrections are known addicts. Narcotic addiction is defined as "a person who, in the opinion of our reception-guidance center clinicians, had used opium or its derivatives, such as heroin, to such a degree that withdrawal symptoms occurred upon discontinuing administration of the drug. Thus marijuana users are not included in the data as addicts."

The tables on the following page break down these figures for men and women in prison and on parole. The last table shows the latest figures on commitments to the California Rehabilitation Center under the 1961 legislation.

- 6 *Does the Rehabilitation Center at Norco have adequate facilities to care for all the addicts in the custody of your department?*

The ultimate capacity at the California Rehabilitation Center, Corona, is 1,800 male addicts and 400 female addicts. It is not planned to provide for all known addicts in the Department of Corrections at this facility.

Present plans are that addicts committed only under the 1961 legislation will be placed in the California Rehabilitation Center.

Persons committed as felons with a history of narcotic addiction are placed in other institutions of the department based upon individual control and treatment needs. The department has developed a proposed demonstration treatment program for 600 of these felon addicts for 1963-64 budget consideration. This program would be similar to the CRC program and conducted at the Tehachapi facility. In the future plans and program for control and treatment of the narcotic addict will be adjusted as experience and research dictate.

ADULT FELON COMMITMENTS IN PRISON JUNE 30, 1962

	Male			Female		
	Number	Percent	Percent info avail	Number	Percent	Percent info avail
Total number in prison-----	19,083	100.0	--	736	100.0	--
Information available-----	17,775	93.1	100.0	720	97.8	100.0
No use indicated-----	13,354	70.0	75.1	485	65.9	67.4
Addict-----	4,421	23.1	24.0	235	31.9	32.6
Unknown-----	1,308	6.9	--	16	2.2	--

ADULT FELON COMMITMENTS ON PAROLE JUNE 30, 1962

	Male			Female		
	Number	Percent	Percent info avail	Number	Percent	Percent info avail
Total parole-----	10,685	100.0	--	1,066	100.0	--
Information available-----	10,164	95.1	100.0	991	95.0	100.0
No use indicated-----	8,366	78.3	82.3	662	62.1	66.8
Addict-----	1,798	16.8	17.7	329	30.9	33.2
Unknown-----	521	4.9	--	75	7.0	--

CALIFORNIA REHABILITATION CENTER COMMITMENTS JULY 31, 1962

Total	Male	Female
906-----	744	162

7 After the completion of physical withdrawal, what treatment is given at Norco?

The basic ingredient of the California Rehabilitation Center treatment program will be living unit (community living) group meetings and group interactions. All inmates will be involved in living unit meetings and small group meetings on a daily or biweekly basis. Through group interactions of a constructive nature, narcotic involved inmates can find better ways of adaptation and socialization in peer groups and some measure of emotional and social growth.

In addition, there will be adequate provision for individual treatment by trained counselors. A psychiatric and psychological staff will provide consultation for the community living group and other group meetings and carry on a limited group psychotherapy program for approximately 10 percent of the inmate population.

There will be an academic program for approximately 200 men and 50 women. This program will provide for literacy training through high school. Primary emphasis will be to upgrade all in-

mates to the eighth grade level supplementing this with whatever high school work can be accomplished within the time factors involved.

In addition to the academic training, there will be vocational training, in five to seven trades, that can be adequately taught within a year's time and wherein reasonable prospects exist for employment following release.

The nature of drug addiction takes its toll physically and a planned program of physical fitness is proposed for the California Rehabilitation Center. In addition to improving the physical condition of the addict inmates, this program can help to teach these traditionally socially isolated inmates to participate in acceptable group recreational pursuits.

The religious program for the California Rehabilitation Center will follow the format used at other California Department of Corrections institutions. Full-time Catholic and Protestant chaplains and a part-time Jewish chaplain will be provided for the 2,200 addicts.

In an effort to teach drug addicts good work habits, the majority of addicts at the California Rehabilitation Center will have a half-day job assignment. This will also serve to keep every addict inmate constructively occupied during the hours he is not involved in other treatment programs.

- 8 *Could you give us an idea of the scope of the research program at Norco?*

An important consideration in planning for the California Rehabilitation Center is to provide the means for an intensified, unified, specialized and centralized effort to combat the growing problem in the State of California of narcotic addiction. To date, little has been uncovered, worldwide, which will give us successful tools with which we can control readdiction. A large segment of this objective must, of necessity therefore, be directed into a constant and continuing investigation and research program in order to determine cause and effect. Additionally, developmental efforts and service evaluations and refinements must be instituted if we are to utilize those tools which suggest a positive value.

Five major areas of research are planned.

- a *Narcotic Addiction Epidemiology*

The general aim is to determine the personal attributes and experiences and environmental exposures which distinguish narcotic addicts from comparable groups in the population who are nonaddicts. This differentiation, it is hoped will serve to illuminate etiological factors in addiction.

- b *Physiological Etiology of Addiction*

Little is known of possible physiological causes of addiction. This opens the way for real objective basic research in

- 1 Endocrinology
- 2 Biochemistry
- 3 Enzymology

- 4 Genetics
5. Neurophysiology
- 6 Immunology

c *Psychological Research*

Information is still vitally needed concerning the psychodynamics (as contrasted with the physical dynamics) of addiction. Why, after three years of drying out with no physiological residue, are the strong tendencies for drug taking behavior still present? Psychological learning, sociological and psychoanalytic approaches to this problem need systematic investigation.

d *Social Research*

There are many indications that the social structure or therapeutic milieu of an institution are highly related to the effectiveness of specific treatment techniques. The sociological-anthropological development of this new treatment institution needs to be studied and related to its treatment effects.

e *Foundation Grants and University Participation*

Foundation grants, and university participation in specific research questions are anticipated in the future.

9 *New York State recently established a central narcotics office in the Department of Mental Hygiene*

- a Do you believe that such an office should be created in California?
- b If so, should it be in the Department of Corrections? Why?

The latest information we have about the New York State program was in a letter from the Department of Correction (May 19, 1961). Mr. Joseph David, Information Officer, wrote that the legislation creating a bureau of drug addiction in the department of mental hygiene passed in the senate but died in the assembly.*

Section 201 of this bill called for the establishment of a bureau of drug addiction, "the sole responsibility of which shall be at the direction of the commissioner [Department of Mental Hygiene] to carry out his powers and duties under this article." Section 202 defined the powers of the commissioner in nine categories, summarized as follows:

- 1 Survey the State's needs, plan a comprehensive program for the prevention and control of drug addiction, and the diagnosis, treatment and rehabilitation of drug addicts.
- 2 Develop and conduct programs for education, prevention, diagnosis, treatment, and control in field of drug addiction with other public and private agencies.
- 3 Direct and carry on basic, clinical, epidemiological, social science, and statistical research in drug addiction.
- 4 Provide education and training in prevention, diagnosis, control and treatment of drug addiction for medical students, physicians, nurses, social workers, etc.
- 5 Provide public education on the nature and results of drug addiction.
- 6 Disseminate information relating to services available for the assistance of drug addicts.

* A bill creating a council on drug addiction was signed by Governor Rockefeller in March 1962. The bill also established a central narcotics office in the state department of mental hygiene.

7. Maintain records relating to drug addiction in the State.
8. Establish facilities for the rehabilitation of the under-25 drug addict
9. Employ such personnel qualified by education, training, and experience to carry out purposes and objectives of this article.

The Department of Corrections, through its implementation of California's 1961 narcotics legislation, is already involved in the research, record keeping, rehabilitation, and program planning portions of California program. The educational provisions of the New York legislation we consider most important and feel that a well-co-ordinated, properly conducted program of educating the public to the general problem of drug addiction represents the best long-range solution of this problem.

How best these important programs can be integrated to serve California's interests would require study. You are no doubt aware of the Interdepartmental Committee on Narcotics whose mission is "to co-ordinate all of the work being done on this vital subject by the various state departments and agencies." Attorney General Stanley Mosk is chairman of this committee, and its membership consists of nine representatives of state agencies whose functions bear on the narcotics problem and two of the Governor's staff secretaries. This committee could be helpful in determining how best California should organize its resources to combat the problem of drug addiction.

- 10 *To your knowledge, has any addict not charged with a crime voluntarily applied for admission to Norco under Penal Code Section 6500?*

As of August 10, 1962, we have received 101 commitments under Penal Code Section 6500. A review of 99 of these cases, both male and female, indicated that 25 were true voluntary commitments in that 20 men and 5 women took the initiative of submitting themselves for commitment. An additional seven men and nine women were commitments with no criminal involvement in their background but the initiative was taken by another person, family, friend, et cetera.

The remaining Penal Code Section 6500 commitments, comprised of 65 men and 11 women, were in followup for some kind of arrest with criminal involvement.

It is hoped the above answers will yield the information you wanted. We have enclosed a chronological review of California's progress in narcotics control over the past few years. Attached to this review are reports, bills, and statistics that explain in greater detail the steps California has taken toward effective management of the drug problem. If we can be of help in any further respect, please let us know.

WALTER DUNBAR
Director of Corrections

APPENDIX 1-E

August 3, 1962

DANIEL BLAIN, M.D., *Director*
Department of Mental Hygiene
1320 K Street, Room 300
Sacramento, California

DEAR DOCTOR BLAIN: It would be helpful to this committee in studying proposed narcotics legislation if you would supply us with the following information:

1 Do the state hospitals ever receive as patients, narcotic addicts who are suffering the physical distress of withdrawal?

2 If so, what medical treatment is given them?

3 After physical withdrawal is completed, what treatment is given addicts?

4 How many narcotic addicts were accepted for treatment in the state hospitals in 1961?

5 What number of addicts is the Department of Mental Hygiene presently equipped to handle?

6 New York State recently established a central narcotics office in the Department of Mental Hygiene

a Do you believe that such an office should be created in California?

b If so, should it be in the Department of Mental Hygiene? Why?

We would very much appreciate your help in providing this information. Any other information or suggestions that you might wish to volunteer will be more than welcome.

Sincerely,

JOHN A. O'CONNELL

APPENDIX 1-F

STATE OF CALIFORNIA
 DEPARTMENT OF MENTAL HYGIENE
 SACRAMENTO 14, August 15, 1962

MR. JOHN A. O'CONNELL, *Chairman*
Assembly Interim Committee on Criminal Procedure
Room 2128, State Capitol
Sacramento 14, California

DEAR MR. O'CONNELL: This is in response to your request for information concerning the problem of narcotic addiction. We will attempt to answer your questions as you have put them to us.

1 Do the state hospitals ever receive as patients, narcotic addicts who are suffering the physical distress of withdrawal?

Most narcotic addicts committed to our state mental hospitals have already gone through withdrawal symptoms in a county hospital or a jail. In a few instances, especially in those counties

where the state hospital serves as the psychiatric observation unit for the county, narcotic patients are admitted who are undergoing withdrawal symptoms

2 *If so, what medical treatment is given them?*

These individuals require varying types of psychological supportive treatment. Usually the drug "methadone" is used in diminishing amounts to control the withdrawal symptoms

3 *After physical withdrawal is completed, what treatment is given addicts?*

The psychiatric approach to the treatment of narcotic addiction is based on the assumption that the addiction is symptomatic of a mental or personality disorder, and therefore treatment can only be successful if the mental processes or personality disorder can be modified through therapy. As you know, there is no specific treatment for narcotic addiction.

Therapy takes several forms, and is individualized to as great extent as possible. Treatment of a physiological nature is often required to correct the serious physical and nutritional deficiencies often seen in these individuals. Treatment of withdrawal symptoms is usually necessary, although in our experience most of the narcotic addicts sent to us for treatment have already passed through their period of withdrawal symptoms. The kinds of therapy that are stressed include group psychotherapy, individual therapy, vocational rehabilitation, and individual counseling with various members of the professional staff, depending upon the needs of the individual patient. Such professional counselors might include psychiatrists, psychologists, psychiatric social workers, chaplains, vocational rehab counselors, or nursing personnel. Meeting regularly with other individuals having problems of narcotic addiction is often helpful in assisting the patient to a better understanding of his own problems. At the hospital he is given an opportunity for introspection, sound professional guidance, and the development of regular habits of living and socialization.

The second and most important phase of the treatment is the posthospital treatment. Here the patient has opportunity to continue the treatment processes in a manner that can really test his progress. While receiving treatment as an outpatient he can again become a productive member of society and thus, in itself, is helpful. Regular interviews with his therapist are essential and occasionally it may be necessary for him to return to the hospital when the demands of his environment become too stressful. The therapist must be in a position to work with the patient's environment as well as with the patient himself, and it may even be further necessary to change the patient's residence. It is usually necessary to work with the patient's family and sometimes with his employers and friends so that they may be in a position to assist in the rehabilitation processes as well as to understand their role in the patient's pathology.

4. How many narcotic addicts were accepted for treatment in the state hospitals in 1961?

The admissions for narcotic addicts have been decreasing steadily over the past several years. We believe this is due primarily to the program developed in the Department of Corrections. For the year ending June 30, 1960, there were 245 narcotic addicts admitted, for the year ending June 30, 1961, there were 202 narcotic addicts admitted, and for the year ending June 30, 1962, there were 97 narcotic addicts admitted.

5. What number of addicts is the Department of Mental Hygiene presently equipped to handle?

Utilizing the psychiatric approach, general psychiatric beds could be utilized for the inpatient treatment of narcotic addicts and the convalescent leave psychiatric program could administer the posthospital treatment for narcotic addicts. With adequate numbers of professional personnel in both inpatient and outpatient settings, the Department of Mental Hygiene could treat as many as 5,000 narcotic addicts a year.

6. (a) Do you believe that such an office should be created in California?

Narcotic addiction is a psychiatric, medical, social and legal problem and is of widespread community concern. However, it is a less serious problem than such things as the use of non-narcotic habit-forming drugs, the excessive use of alcohol, emotional problems of children, various health and social problems of the aged, and the problem of mental retardation. An office for the administration of the narcotic program would be desirable if it were within the broad context of the other social health problems with which we are faced and viewed in its proper perspective. If the Department of Mental Hygiene were to administer a substantial program for the treatment of narcotic addicts, it would be desirable to have a small section in the Sacramento office established for this particular purpose.

(b) If so, should it be in the Department of Mental Hygiene? Why?

As previously indicated, narcotic addiction is a behavioral abnormality usually associated with a mental or personality disorder and therefore we believe this is essentially a medical and psychiatric problem even though it has its strong sociological and legal components. Therefore, it would be appropriately administered by the Department of Mental Hygiene although such a program could also be established in the Department of Public Health. By virtue of its experience the Department of Mental Hygiene is better prepared to administer direct service programs and is uniquely psychiatric oriented.

We are enclosing a recent report concerning previously hospitalized narcotic addicts and other material which may be of interest to you.

Sincerely,

DANIEL BLAIN, M.D.
Director of Mental Hygiene

APPENDIX 1-G**CALIFORNIA BUSINESS AND PROFESSIONS CODE—ANNOTATED**

§ 4211 "Dangerous drug". "Hypnotic drug" "Dangerous drug" means any drug unsafe for self-medication, except preparations of drugs defined in subdivisions (e), (f), (h), and (i) hereof, designed for the purpose of feeding or treating animals (other than man) or poultry, and so labeled, and includes the following

- (a) Any hypnotic drug "Hypnotic drug" includes acetyluric derivatives, barbituric acid derivatives, chloral, paraldehyde, sulfomethane derivatives, or any compounds or mixtures or preparations that may be used for producing hypnotic effects
- (b) Annonopyrine, or compounds or mixtures thereof
- (c) Amphetamine, desoxephedrine, or compounds or mixtures thereof except preparations for use in the nose and unfit for internal use
- (d) Cinchophen, neocinchophen, or compounds or mixtures thereof
- (e) Diethyl-stilbestrol, or compounds or mixtures thereof
- (f) Ergot, cotton root, or their contained or derived active compounds or mixtures thereof
- (g) Oils of croton, rue, sassa or tansy or their contained or derived compounds or mixtures thereof
- (h) Sulfanilamide or substituted sulfanilamides, or compounds or mixtures thereof, except preparations for topical application only containing not more than five percent (5%) strength
- (i) Thyroid and its contained or derived active compounds or mixtures thereof
- (j) Phenylhydantoin derivatives
- (k) Any drug which bears the legend "Caution federal law prohibits dispensing without prescription"
- (l) Hypnotic drugs when combined and compounded with nonhypnotic drugs

APPENDIX 1-H**80 ADDICTS STAGE ALL-DAY SIT-DOWN STRIKE FRIDAY AT CRC**

Twenty narcotic addicts have been transferred to other institutions at their own request following an all-day "sit-down" strike Friday at the California Rehabilitation Center in Cummings Valley

A total of 80 of 510 addicts staged the strike following breakfast at the institution

The strike was apparently triggered by a Supreme Court ruling of a few days prior that ruled that one section of the state's narcotic bill was unconstitutional, stating that "addiction should be treated as an illness rather than a crime"

The strikers first congregated at one of the institution's ball diamonds and then adjourned to the recreation hall at the request of prison officials

Roland Wood, director of the rehabilitation center, was notified of the strike at his Corona offices and drove immediately to Tehachapi

The inmates asked for press coverage of their complaints and this was supplied by the Tehachapi News, who promised that they would transmit their grievances to the two major wire services

The grievances were:

1 General dissatisfaction with the medical treatment, both psychological and medical, meted to addicts in the Superior Courts prior to incarceration

2 Courts told them (addicts) they were going to a hospital for treatment when actually they were being sent to a penal institution

3 They were forced to work under penalty of isolation, and were not receiving vocational training

4 Group counseling was conducted in the main by *correctional officers* rather than trained group counselors

5 Addicts object to having release dates set by the Adult Authority rather than a medical board, believing the authority can not make the transition from felony crimes to misdemeanors when setting terms

6 Feel felony commitments received better treatment at the center than narcotic commitments

7 Misdemeanor commitments object to having to go out on parole with the same classification as a paroled felon

Director Wood stated that for the most part the inmates complaints were unjustified, explaining that by law the center's addicts come under the jurisdiction of the Department of Corrections and that due to the huge load of addicts awaiting commitment in the state, doctors spend as much time as necessary to determine whether a man is "an addict or might become one."

The one portion of the narcotic bill the men were basing their complaint on does not appear to be enough to free most of them on. The sections dealing with the use and influence of drugs is still in effect and that the state is expected to appeal the Supreme Court ruling on the addiction phase of the law.

In commenting on the "work" portion of the complaint, Director Wood said work is an integral part of the rehabilitation program. Generally, he said, when an addict is admitted to the institution he is physically run down and work is a main part in the rebuilding process.

The CRC program, he added, is one of education, vocational training, physical fitness and group counseling in a drug-free environment.

At 5:30 p.m., after giving their list of grievances to the News, the men voluntarily returned to their quarters.—The Tehachapi News, July 5, 1962

APPENDIX 1-1 LIST OF WITNESSES

Dr. Thomas N. Buhbridge, Department of Pharmacology, University of California, San Francisco

Dr. Gordon Allen, Professor in Residence at the University of California, Los Angeles Medical School, Department of Pharmacology

Dr. Louis T. Bullock, a specialist in internal medicine, Los Angeles

Dr. Joel Fort, Director of the Center for Treatment and Education on Alcoholism, in Alameda County and Chairman of the Subcommittee on Alcoholism and Dangerous Drugs of the Alameda, Contra Costa Medical Association

Dr. William Quinn, member of the State Board of Medical Examiners

Dr. Joseph de los Reyes, Board of Medical Examiners, Southern California office

Dr. Thomas Haley, Research Pharmacologist, UCLA Medical Center

Dr. Keith S. Dittman, M.D., Assistant Professor in the Department of Psychiatry at UCLA and Director of the Alcoholism Research Clinic at UCLA

Dr. Horace Mooney, Research Scientist at UCLA

Inspector Arthur Holzman, California State Board of Pharmacy

PART 2
SYNANON

FINDINGS

The existence of Synanon serves several useful purposes

1 It is keeping approximately 100 former addicts off of narcotics. This feat in itself benefits not only the persons directly involved but also the community at large by preventing crimes committed to finance addiction.

2 It saves the taxpayers a sizeable amount of money which they would otherwise have to spend to keep these people in jails or state hospitals.

3 It provides a valuable educational service by sending speakers to any requesting school, church, club or other facility

4 It provides an unparalleled opportunity for research on every aspect of narcotics addiction. These possibilities are not being adequately exploited at the present time.

5 There is no known "cure" for narcotics addiction. An essential part of addiction is the tendency to relapse and return to the use of narcotics. Judged in comparison to other narcotic treatment programs Synanon appears to be a most promising effort to rehabilitate narcotic addicts.

RECOMMENDATIONS

1 Recognizing that there are many approaches but no proven formulae for addict rehabilitation, we recommend that the State of California take a friendly but nondirective interest in Synanon and any other private attempts to rehabilitate narcotic addicts

2 We recommend that one of the publicly supported universities in Southern California co-ordinate a research program to study the causes of addiction and to appraise the various rehabilitation efforts, both public and private, being made throughout the United States

It is hoped that such a study might enable California to develop effective methods to prevent addiction

PREFACE

The 1961 California Legislature passed 10 bills relating to various aspects of the narcotics problem. One of them (A.B. 2626 Petris, 1961) * drew the attention of the Legislature to a unique privately operated narcotic rehabilitation house called Synanon.

During the legislative session hearings we learned that, although no drugs of any kind were used by the residents of the house, three of its directors had been convicted of two crimes: (1) violating the Health and Safety Code regulations governing the operation of hospitals; and (2) operating a hospital out of zone. A.B. 2626 was an attempt to clarify the state law so that Synanon, or any institution like it, could not be classified as a hospital because its methods and facilities were obviously not planned as a hospital and could not meet California requirements for hospital operation. Whatever the nature of Synanon, impressive testimony was offered during the hearings on the bill as to the effectiveness of its rehabilitation program.

In addition to legalizing a "place of aid," the bill required that every such place register with and be approved by the Board of Medical Examiners and that each resident thereof register with the local police department or sheriff's office.

During the interim, in keeping with our continuing interest in the narcotics problem and in response to requests from two members of the committee, we scheduled a one-day hearing and personal inspection of Synanon to evaluate its program. We invited as witnesses all the persons who, to our knowledge, had made a public statement either favoring or opposing Synanon. Although we were not directly notified, we learned from the *Santa Monica Outlook*, the local newspaper, that the critics of Synanon had arrived at a policy of boycotting the hearing on the grounds that it should have been held in the city hall. We continued with our scheduled hearing and heard the witnesses who chose to appear at Synanon voluntarily. At the hearing the chairman announced that another hearing would be held to suit the convenience of any witnesses who wished to testify at another location. Accordingly, the following letter was mailed to Mayor McCarthy four days after the Synanon hearing:

"October 23, 1961

"HONORABLE THOMAS M. MCCARTHY, Mayor

"City of Santa Monica

"City Hall, Santa Monica, California

"DEAR MAYOR MCCARTHY: I regret that the City Council of Santa Monica did not approve our choice of Synanon as the site for a hearing. However, it is the responsibility of the Assembly Interim Committee on Criminal Procedure to select the site it considers most desirable with respect to the subject to be considered. It was our decision that an appraisal of the Synanon program could best be made at the Synanon headquarters. This committee

* See Appendix 2-C

is authorized to hold its meetings at any location in the State of California. Our meeting at Synanon, like all meetings of this committee, was open to the public.

"In the interest of collecting all relevant information on Synanon we would be happy to hold another hearing at a time and place to be selected by the Santa Monica City Council. The only suggestion that I would like to offer is that the date be a fairly early one. If you will notify me of the time and date chosen, I will make every effort to arrange the hearing accordingly.

"Most sincerely,

JOHN A. O'CONNELL"

Copies of the letter were mailed to all persons who had been invited to testify. No response has ever been received from the mayor or any other addressee. We have, therefore, very little criticism of Synanon in our hearing records. However, not long before our hearing Mr. Art Wadsworth, of KPFK radio station in Los Angeles, produced two programs on Synanon which totaled more than 3½ hours.¹ They contained interviews with residents, friends, and opponents of Synanon. Every charge which had been made public against Synanon was considered. Tapes of these programs have been provided the committee and we have made full use of them in preparing this report. In addition, we have in our files many letters, newspaper and magazine articles, and other materials that bear upon this subject. We believe that this organization has been in existence long enough for some useful conclusions to be drawn from its experience. We have made a conscientious effort to draw only such conclusions as are warranted by an impartial study of the facts.

Our procedure will be to divide this report into two sections. The first section will outline the original development of Synanon. The second and larger section will consist of direct quotations touching upon different aspects of Synanon's operation.

¹ KPFK, Los Angeles, June 15, 1961, 9 p.m. Synanon—Part I—House of Hope, and June 16, 8 p.m., Synanon—Part II—Miracle or Menace.

PART I

ORIGIN AND DEVELOPMENT OF SYNANON

We asked the founder of Synanon, Charles Dederich, how he became interested in such an organization as Synanon

A " I wanted to do something about the alcohol problem I wanted to provide some kind of a place where people who don't drink any more could have some fun and maybe learn something about themselves and organized a small group as part of this effort to dig a little bit more deeply into the psychological problems in an almost untouched, untabbed field and an addict happened to show up in this small group And for some reason he didn't use drugs for about four months I knew enough about the problem to know that this was unusual to say the least and this interested me And so it grew like topsy from there, and not knowing any other way to do business except to organize a corporation because that is my training, I, of course, organized a corporation. I feel that this is a business."²

The corporation mentioned by Dederich was formed on September 18, 1958 The group rented an old store near Pacific Ocean Park and held meetings there until they outgrew the building. In August 1959 they moved into their present quarters—an aged brick building on the beach front at Santa Monica

Addicts come to Synanon from all areas of the United States. They hear about it in many ways—but mostly by word of mouth from other addicts Some come after hearing a speaker sent from Synanon to various jails and prisons

One such recruit emphasized the importance of the *self-help* principle utilized at Synanon He described his return to narcotics following numerous stays in jails and prisons and at least one period of treatment in a federal narcotics hospital He summed up his statement by saying

"None of these cures that are forced on you, or any cure that involves being locked up has ever worked to my knowledge."³

There is no fee charged for admission to Synanon. Any applicant who agrees to abide by the regulations is admitted to residence His treatment during withdrawal consists of encouragement, sympathy, and rubdowns to relax muscle cramps No drugs of any kind are used either during withdrawal or at any later time Medical treatment, when needed, is provided by doctors in the community who have volunteered their services

The newly admitted resident, having completed withdrawal, is assigned to some work detail in the building. He is not allowed to leave

² Hearing of the Assembly Interim Committee on Criminal Procedure, Synanon Foundation, Santa Monica, October 19, 1961 (hereinafter cited as Synanon Hearing)

³ KFFK Program No. 1, *op cit*

the building unless accompanied by a resident who has demonstrated his ability to leave the premises without reverting to drugs. *Every* resident who leaves the building must sign a register indicating the time of his departure, time of his return, and purpose of his trip. Any person may visit Synanon but must sign a register, indicate his address, the purpose of his visit, time of arrival and departure. Entries in all registers are checked at the time they are made by the resident stationed at a desk in the entry hall. At our hearing on October 19, 1961, Mr. Dederich testified that they had, since January 1, of that year 11,000 separate visits representing probably 3,000 different individuals. These included friends and neighbors who attended their Saturday night open house parties. They also included interested professionals from many areas of the United States and several foreign countries.

Residents of Synanon are divided into two stages. In the first stage, described above, the addict is not required (or perhaps allowed) to make many decisions for himself. Although he is given a work assignment on the premises, it does not take many hours of the day and he is given a lot of time for quiet relaxation, not many demands are made upon him. This phase has been described as something like a reversion to childhood which allows him to recuperate from the stresses that drove him to addiction.

The second stage is reached when it is agreed, by the addict and his coreidents, that he has developed enough resistance to narcotics to allow him to leave the building alone and to hold a job outside of Synanon. In this stage he continues to live at Synanon and take part in the program.

The third stage is reached when it is felt that he is strong enough to live on his own outside of Synanon without reverting to drugs. Third stages usually return from time to time to participate in the synanons.⁴ (This word "synanon," when capitalized refers to the Synanon Foundation; when not capitalized it refers to the group discussion meetings which constitute an important part of the Synanon program. Several descriptions of a synanon will be found in Section 2 of this report.)

Mr. Dederich testified that Synanon is supported entirely by contributions, approximately one-third in the form of cash and the balance in goods and services donated by private individuals. Every resident works; no resident receives remuneration except for a weekly \$2 allowance. Cash received during the fiscal year ending August 31, 1961, amounted to approximately \$35,000. The average number of residents for the year was 70—including 10 children.⁵

Synanon No. 2 is located in a large private home near the primary facility. It was set up to provide a place where resident mothers could be with their children in a home atmosphere. The mothers take turns babysitting during the daytime seminars and the evening synanons so that each can continue active participation in the program.

⁴ As of September 27, 1962, Synanon reports a total of 20 in the third stage and 35 in the second. (Telephone conversation with Jack Hurst, member of Synanon Board of Directors.)

⁵ We are informed that the number of residents has increased in the year that has elapsed since our hearing from 70 to 110 and applicants are now being turned away for lack of space.

Synanon No 1 is housed in an old three-story building which was formerly used as an armory. The first floor contains sleeping quarters for women residents plus a homemade beauty shop, showers, art shop, darkroom, and workshop. The center of activity is on the second floor which contains the living room, dining room, kitchen, and offices. The third floor provides dormitory type sleeping quarters for men.

Residents of Synanon represent many races. Their ability to accept each other as individuals is cited as an important factor in the success of the program—particularly as it applies to members of minority races. The only problem they have encountered as a result of complete racial integration arose outside of Synanon. They ascribe much of the opposition they have met to their multiracial family. The following question and answer outlines Mr. Dederich's opinion on this issue:

Q "Sir, could you tell us what the nature of the criticism has been against Synanon?"

A "The nature of the criticisms has been that we are operating a hospital out of zone. That is what is published and that is said. However, I know as a fact from personal interviews in my office that the sub rosa issue is the fact that we have an integrated family here in a segregated neighborhood. We have Negroes, we have white, and we have Mexicans and Jewish and Anglo-Saxons and we have everything tall and short, black and white, and young and old. This seems to offend some people. This is my opinion. In fact it is my knowledge. This has been brought up in the quiet of my office. The original issue now appears to have been so clouded that nobody really knows what it is."⁶

No doubt racial attitudes played a part in the organized opposition to Synanon. There were, however, several other aspects of the organization's structure that created anxiety in the neighborhood. The public image of "dope fiends" is not one that is calculated to make their prospective neighbors joyous. The usual press treatment portrays all addicts as being dangerously violent. Actually, the typical heroin addict is a fearful, timid person who turns to heroin as a means of escape from his own shortcomings. Heroin does not stimulate the central nervous system as do alcohol, cocaine, and numerous other substances.

The fact that several members of the board of directors (and many of the residents) had criminal records served to heighten the opposition to Synanon. This was particularly true in view of the self-direction principle of the organization. People who might not have objected if the organization had been under the direction of a public official felt threatened by a building full of addicts who made their own decisions. It may well be that the reaction would have been the same in any case. Many proposed jail farms and minimum security prison facilities have been blocked in California by local residents who say in effect, "It's a fine idea. We're all for it—but put it somewhere else."

None of these objections were directly reflected in the five charges filed against the directors of Synanon on August 28, 1959. Counts one

⁶ Synanon hearing

and two were for operating a hospital or sanitarium without a license; three was treating addicts at an unauthorized location; four was violating a fire law and count five was operating a hospital in a residential zone.

Dr. Jerome M. Kummer, a Santa Monica psychiatrist, testified as an expert witness for the prosecution. He stated that in his opinion, based upon the testimony of witnesses at the trial, the type of treatment rendered at Synanon came under the heading of medical practice.⁷

Dr. Bernard Casselman testified as an expert witness for the defense. A statement that he gave to KPFK will be found in Section 2 of this report.

On April 4, 1960, Judge Hector P. Baida of the Santa Monica Municipal Court found three Synanon directors guilty on counts three and five—treating addicts in an unauthorized location and operating a hospital in violation of Health and Safety Code provisions.

At the time of its indictment on the above-mentioned grounds Synanon had, among its other residents, seven parolees of the Department of Corrections. After the conviction of three directors of Synanon, the department withdrew its parolees. Its policy since that time has been to return to prison any parolee who goes to Synanon. (See Section 2 for Department of Corrections policy statement.)

At the time of our hearing all seven of the parolees who had been ordered to leave Synanon had reverted to the use of narcotics. Four of them were back in the physical custody of the Department of Corrections. Two whose parole had expired were serving six months in the county jail after burglarizing a pharmacy.

Two of these seven parolees have since completed their prison sentences and returned to Synanon.

The Los Angeles County Probation Department follows much the same policy. A statement of the chief deputy probation officer said, "There seems to be neither sufficient professional nor community acceptance of the program to commend it as a proper treatment source." Despite this policy, several Los Angeles judges have refused to revoke probation on this ground alone and a number of probationers are presently living at Synanon.

The Federal Bureau of Prisons has been more flexible in its reaction. Six Synanon residents who have been "clean" (free of narcotics) for two years have been operating a weekly group discussion with addicts in the Federal Prison at Terminal Island for the last 10 months. The reception of this program has been such that Synanon has been allowed to establish a counterpart in the women's section of the prison. Three prisoners on conditional release from Terminal Island are now living at Synanon.

A.B. 2626 indicated that the State Legislature had no intention to prohibit private efforts at narcotics rehabilitation. To insure that no unauthorized medical practice was used by such "places of aid," they were required by the bill to secure the approval of the Board of Medical Examiners. At the same time, specifically recognizing the legality of "places of aid," the Legislature attempted to disassociate the State from local efforts to close Synanon.

⁷ For conflicting opinions on this question see Section 2.

On June 18, 1962, the Board of Medical Examiners filed with the Secretary of State a copy of the regulations it had adopted for such "places of aid." Section 1329.29 of these regulations states

1329.29 *Safety, Zoning, Building, and Fire Clearances* (a) Approval will not be given to any place of aid which does not conform to the local fire safety, zoning, and building ordinances, evidence of such conformance shall be presented in writing to the board

(b) A fire clearance from the State Fire Marshal's office is required before approval will be given

It appears to us that the effect of this section is to place Synanon in a more complicated legal morass than that in which it found itself before the passage of A B 2626. At this point the only thing that appears certain about the future of Synanon is that it will, as in the past, need the attorneys who have volunteered their services.

In spite of its legal problems Synanon has flourished in the past year. It has been operating a counseling program for addicts in the Terminal Island Federal Prison for some time and has just recently begun a similar program in the Nevada prison system. It has drawn plans for a new foundation headquarters in Malibu for which it has 22 acres of land in escrow. It has received nationwide attention in the press. The director, Charles Dederich, has sold motion picture rights to his life story which will be filmed by a major studio. In August Senator Thomas J. Dodd visited Synanon on behalf of the U.S. Senate Subcommittee to Investigate Juvenile Delinquency, he termed it "a miracle that I feel can benefit thousands of drug addicts." In October representatives of Synanon attended the White House Conference on Narcotics at the invitation of the President.

At our hearing Mr. Dederich described Synanon as an experiment.

"I would like to say first that it has always been the position of Synanon, and my personal position, that what we are doing here is an experiment in its earliest stages. We are not in a position at this time to make any claims. We have people who have remained free from drugs and have behaved well within the boundaries of good taste and the law for periods ranging up to three years. We have a considerable number that have achieved this thing for more than two years. However, we still feel that this is an experiment and we feel that maybe after the fact—in 5 years or 10 years, we will be able to make a proper evaluation."

Now, in October 1962, this corporation has been in existence more than four years. Most of that time it has been the subject of bitter controversy. The opposition originally expressed by some of its neighbors has lessened as the expected calamities have failed to materialize. Equally serious, and more adamant, has been the bureaucratic resistance to recognizing Synanon as a program worthy of respect—if not support. On October 8, 1961, the *Los Angeles Times* carried a story on

Synanon In discussing the issue of official recognition Harry Nelson, the *Times* medical editor said

"In spite of official policy, some parole officers think highly of Synanon. One officer said that state and federal parole agencies have a tendency to consider as a bootlegging operation any place which is not sponsored by a public agency

" 'But the individual parole officer working in the field knows this is not necessarily true,' he said "

Recognizing the failure of standard treatment approaches to the narcotics addict, and the magnitude of California's narcotics problem, we urge that every possible approach to rehabilitation be explored. Government does not, and should not, have a monopoly in the field of narcotics rehabilitation. We welcome any effort that offers promise of some success in rehabilitating narcotic addicts. We believe that Synanon's program is one of the most promising yet developed in the United States. It deserves the helpful, nondirective interest of the people of California.

PART II

This part of our report will consist almost entirely of quotations from statements, letters, and other sources that reflect upon some aspect of Synanon's operation. We have attempted to arrange these materials in a coherent pattern by placing them under various sub-headings. In several instances the quotation or document would fit under a number of headings, in these cases we have tried to select the one most closely related to the major point of the question.

FINANCIAL DATA

"Q Just two more brief questions. How is Synanon supported? By contributions primarily, isn't it?

"A **Mr. Dederich:** All contributions. About between one-fourth and one-third of everything that goes through Synanon is in the form of contributions of cash, more than two-thirds is in goods and services from the community, the surrounding area."

"Q What is the annual cost of the operation of the house?

"A **Mr. Dederich:** Our fiscal year ended August 31st, and the first rough check was all I had an opportunity to run, came up to \$35,000 and change. We have not made up our income tax return which we have to do because we are a tax-deductible charity with the federal government. But, it is \$35,000 roughly."

"Q Does that include the evaluation of donations in kind, such as services?

"A **Mr. Dederich:** No, oh no, indeed, that amounts to, with an average of 70 residents including 10 children, that is only \$500 a year. And owing to the good offices of the people of Santa Monica we do live very well down here."

SYNANON WORK PROGRAM

"**KPFK Narrator:** The necessary daily work at Synanon House is itself part of the cure. A great deal has to be done by and for the 50 residents to keep themselves clothed and fed and comfortably housed. Chuck Dederich says that the cash outlay is \$26,000 a year which is only one-third of the total cost of the operation. About \$50,000 a year is furnished in the form of donations of goods and services. These former drug addicts have a variety of vocational skills which are used to smooth and improve the operation of Synanon House and some of the people are training themselves for responsible work, perhaps later to expand the Synanon idea to other troubled areas."

"**Synanon Resident No. 1:** I have nine people under my personal direction, consisting of three cooks, a morning buffet and an evening cook and two dishwashers, two counter people. Their function is to keep food on the table at all times and whatever pastries we might have and the coffee pot continuously goes for 24 hours a day. This is

* Synanon hearing

their function and to help set up for the meals, especially morning and evening meals

"KPFK Narrator: How are your meals set up here?"

"Synanon Resident No. 1: The morning meal and the evening meal are served cafeteria style. We announce dinner or breakfast and they line up and come through and they're served behind the counter. At noon or buffet, we serve an open table-type lunch where everyone helps himself

"Synanon Resident No. 2: Our donations are made by relatively small businesses. We have a regular schedule, Monday through Saturday that we go out and do our hustling. Each day we know how long our regular pickups are going to take and we know we have so much free time to take care of what we term "pure hustling." In other words, actually going out and calling on people we have never called on before and soliciting a donation from them. This is not an indiscriminate thing. We don't just call on people for donations without any rhyme or reason. We call on people for donations as things are needed by the club. We also do a great deal toward building goodwill for the club. We are representatives, of course, of the club. Many times we are the first walking drug addict this man has ever seen. Whatever he donates to us, we ask him to come down and visit us.

We're very anxious that people who donate things to us, that they come down and see what they're donating to and quite often we've made an awful lot of friends this way, people that have become friends and helped us out in a lot of ways besides just the donations of goods and things that are given us. They come down to our Saturday night open house meeting. They get acquainted with us, get to see what the operation is and just exactly what they're doing and they become good, steady, solid friends of ours, which, of course, means a great deal to us.

"Synanon Resident No. 3: I run the service crew here.

"KPFK Narrator: And what do they do?"

"Synanon Resident No. 3: Well we are in charge of keeping the building clean. Make sure that the building is kept clean at all times. It is about a six-hour-a-day job.

"KPFK Narrator: What chores do you do daily here?"

"Synanon Resident No. 3: Well daily, our daily chores are from getting up in the morning, assigning guys to the different jobs of cleaning the building, attending the noon seminars. If any furniture comes in or if the girls want their beds rearranged or if the guys want theirs rearranged or any moving, painting, sweeping, washing, anything that you would name that would come under maintenance or if it doesn't come under maintenance, we do it.

"KPFK Narrator: How long have you been taking care of the office?"

"Synanon Resident No. 4: Approximately 10 months.

"KPFK Narrator: And you have help?"

"Synanon Resident No. 4: Yes, there are two other girls beside myself. That is, three of us. Plus when we are very busy, we have some of the other girls in the club help. There are many girls that can type and do office work. They help us when we are overloaded. There are requests for information and there are requests for literature from

private parties, from parents of addicts, from institutions, from penologists, from schools of higher learning. Correspondence from an awful lot of people and of course the bills come in, the utility bills, the electric bills, the gas and the water. We also have requests for speakers. We send our people out to speak to various places. I guess we spoke to nearly a hundred altogether. They consist of service clubs, high schools, colleges, junior colleges, churches of all denominations, groups within the churches of young people. Also, we get donations in the mail and checks, these are all recorded along with the speaking engagements, records are kept on them. Acknowledgments, thank you letters are sent out.

"KPFK Narrator: What are some of the other duties that you take care of here?

"Synanon Resident No. 4: In our filing system, we keep what we call our custodial watch logs and guest registers. Every one of the residents that leaves the building, the time he leaves, his destination and means of transportation and who goes with him is all recorded, everytime anyone leaves the building. Also, the guest register consists of visitors and guests. Everyone that comes into the building, their name is put down, their business and time and the time they leave. We keep all these logs."

On the question of who decides when an addict is ready to work outside the building, one resident had this to say:

"Synanon Resident No. 3: Well, I would say that I'm the one to decide but then it's taken before the board of directors then they decide. Because you see, it might be something that I'm overlooking, you know. So here's five opinions whom I respect. . . If theirs go with mine I'll go to work. If it doesn't then I have to give it some thought.

"KPFK Narrator: Do you think you are ready for such a stage? Have you tried it yet?

"Synanon Resident No. 3: Well, I'm going out once a week now. I work for a place who the man is a donator; he donates us meat and I go over there every Saturday and clean his place."

"KPFK Narrator: How long were you on the first stage?

"Synanon Resident No. 5: I was on the first stage about 16 months, I believe.

"KPFK Narrator: What did you do during that time?

"Synanon Resident No. 5: Oh, I went through the regular program starting with washing dishes and various housekeeping chores and taking care of the cars. The last 10 months of my first stage I served as kind of an administrative assistant to the founder, Chuck Dederich.

"KPFK Narrator: What did you do on the second stage?

"Synanon Resident No. 5: The second stage I went to work for a local firm.

"KPFK Narrator: How did you get the job?

"Synanon Resident No. 5: One of the fellows here had already started working for him and they were pleased with what he was doing.

* KPFK program

and they had an ad in the paper so I went down and told them all about myself and they hired me

"KPFK Narrator: How long were you in the second stage?

"Synanon Resident No. 5: About four months. Then after four months I got a little apartment in a town close by

"KPFK Narrator: Then you went into the third stage?

"Synanon Resident No. 5: That's when I went into the third stage, yes.

"KPFK Narrator: That was about 10 months ago?

"Synanon Resident No. 5: About 10 months ago. About six months ago I moved out and I have been living where I am for the past year

"KPFK Narrator: What happened to your original job? Is this the one you have now?

"Synanon Resident No. 5: Well, I still work for the same place but I don't have the original job. I started out as a clerk in the office, in fact, handling the money. I started right in handling all the money. Then I went into the purchasing department and I have been in purchasing ever since." ¹⁰

RESIDENTS' PRIVATE AND COMMUNITY EDUCATIONAL ACTIVITIES

"Q: What can the ordinary parent do with respect to his own children to lessen the chances that they might ever be addicted?

"A. Mr. Dederich: My suggestion is that parents take advantage of the opportunities of getting their children affiliated with youth groups connected with churches and schools, and, if this is done, they will hear Synanon members suggest to them on the subject of how difficult dope can make life. That is the only suggestion we have. I think that possibly some of the other speakers will go into our educational program. We feel that a service that we can perform for the community is transmitting something about the narcotic problem. Some of its more horrible aspects to the naive youngster who might get some." ¹¹

"Synanon Resident No. 6: Well, we have several residents who are going to the local college here in Santa Monica. I know of one fellow who came from New York, who finished getting a degree at UCLA and who is currently working out and living out. I think the number is around eight that are attending various schools in the vicinity, and many other social activities. For instance, this coming Saturday, I am a member of the International Wise Men at the YMCA, we have breakfast together every other Saturday and we are active in civic problems of different natures. It would be impossible to describe them, but we have—I, myself, am active and so are many others in talking before youth groups, church groups, civic clubs and trying to say what we can to tell the truth as we know it about drug addiction and perhaps straighten some of this up." ¹²

NATURE OF A SYNANON

"KPFK Narrator: What happens there?

"Synanon Resident: We try to find out what the man is saying

¹⁰ KPFK program

¹¹ Synanon hearing.

¹² Ibid

first find out if we agree or disagree with it . . . Of course, we reach no conclusion . . . it's just hung up in the air I guess it's an excuse to express yourself

"KPFK Narrator: What do you do?

"Synanon Resident: Oh many, many things I can't count through all of them. I know I've heard that people are talking now who have never talked before, never thought anybody would listen to them. They are not afraid to argue, express their feelings, exchange their feelings to rejection, to inadequacies, to all the ugly little words."¹³

"Synanon Resident: They're a form of catharsis. It's a common day when you can get together and they vary and become as different as the people in the synanons differ. I mean there are six or seven or eight different people three nights a week. Everybody in the house gets a chance to talk to everybody else.

"KPFK Narrator: You form small groups?

"Synanon Resident: Yes. We hash out our differences, feelings of hostilities—get the garbage out, verbalize it and you've got something tangible to work with, seeing whether it is valid or not. Once you've got a clue, once it's out of your mouth . . . you've got a chance to do something about it. You've got a choice. That, I think, is the primary reason for synanons.

"Synanon Resident No. 7: We certainly are a part of society and in order to be a part we have to learn to communicate with other kinds of people, as sociologists put it, out-groups and in-groups. Now it so happens that the people that we have this meeting with do belong all to the same church. We from Synanon belong to the same organization or similar organizations. We found upon meeting that we have some communication blocks, we'll call them. And there was a desire on our part to get over and it certainly was on the out-groups' part too. Now the past three or four months we have done this. Let's say the image of what a drug addict is in people's mind that haven't met one or certainly haven't come down here to see—it's not a realistic image at all. Of course, the image in a drug addict's mind of what a square is is certainly unrealistic. Now my being here two years has helped me to see this picture a little bit more clearly. I can meet now with people of all walks of life and can find something to talk about. I never could before. This synanon has helped me do this. I find that many of the feelings I had in life other people have had the same. My problems aren't too unique after all. I felt that my problem was that nobody understood me, well that's not true. I am an adult. I'm 29 years and my problem really is understanding other people and we would love to have a synanon type of meeting with anyone who would so desire. It's a great ice-breaker between two groups of people who don't seem to get along, to have to sit down in a room and start talking as honestly as you possibly can about whatever is bothering you—whatever bothers you about other people. And by doing this, by exposing into the light the truth an hour from day to day, the problem just disappears.

"We sit down and we talk. There's certainly no authoritative figure that says this is what we should talk about or you shouldn't feel

¹³ KPFK program

that way. There is none of this. It's a nondirectional expression of the way we feel for an hour and a half and then of course we sit around and have coffee and cake and see what it looks like in the light of day, 'well now, you feel such and such and how does this fit up against reality really?'

"KPFK Narrator: But you always part on a friendly basis generated in the meeting itself, isn't that—

"Synanon Resident No. 7: Oh, sometimes I know I've gotten extremely mad and have said so and have given an expression of anger but there's nothing wrong with anger really. Anger is just a part of life, I suppose.

"KPFK Narrator: . . . doesn't lead to violence?

"Synanon Resident No. 7: They never lead to violence. Never have. That is one thing we wouldn't tolerate is violence."

USE OF DRUGS BY SYNANON RESIDENTS

"Q: How can you be sure that the residents here aren't coming you into thinking that they are staying clean, as you put it, when perhaps they may be chipping around or reverting to more liberal use of narcotics?

"Dr. Yablonsky: I rely in part on Dr. Casselman, whom I expect you will hear from, who is the physician in here, and my own clinical observational judgment. I am in here practically every day in communication with the people here. I think I can detect—there are certain physiological symptoms of addiction which I do not see, but more than that, there is what might be termed a truth principle here. Let me perhaps expand on that just briefly. The average person who is mentally stable, is functioning fairly adequately, and so forth, can get by with a lot of self delusion, fooling one another as I think we all do from time to time in our families, our work, and so forth and so on. Here, there is an almost vicious approach of each person upon each other person seeking truth. Now this takes place in the synanon, the group therapy session. It takes place in the general work community of Synanon."

"Q: Have you been aware of people who have used narcotics here at Synanon since you have been a member?

"Synanon Resident No. 8: I have known of two or three occasions where people have confessed to the use of narcotics.

"Q: Would you report or did you report this information to your Board of Directors?

"Synanon Resident No. 8: Yes, it became general knowledge as soon as I knew about it. In fact, two months after I came here, I used narcotics once myself and I came home and confessed to it and since that time I have abstained totally from the use of narcotics.

"Q: Are you saying that while you were in prison you did not feel a responsibility to tell the authorities that there were narcotics being used but while a resident here, you would feel a responsibility to tell the people in charge that narcotics were being used?

"Synanon Resident No. 8: In prison I certainly never felt any responsibility to the authorities and in here, the change—the changed

¹⁴ KPFK program

point of view came about, I would say, in a few weeks or months after coming here. The addict, speaking of myself as an addict, coming in here, I came in with the viewpoints and the attitudes that I had on the streets which is "never copping out." You don't cop out and you don't reveal the identity of using addicts or the use of narcotics yourself. The change that takes place in here, with me within a few weeks, was that something almost approaching status is acquired in keeping this house clean and keeping ourselves clean. Do I make myself clear?

"Q. If you knew that there was a member of the house using narcotics, what would you do about it?

"Synanon Resident No. 8: Well, my first impulse would be to throw him out. If I couldn't do that, I would report him and he would probably be either thrown out or very severely chastised.

"Q. Is your opinion shared by the other members of Synanon?

"Synanon Resident No. 8: I would say 99 percent of them."

"Dr. Walter Bailey: . . . Now, I think I have had a great deal of experience in being able to identify or detect a person who is loaded. One of the experimental proofs in the study we did involved my physical examination of addicts, we didn't have naline then, pupil reflexes, arms, and so on. And, as a matter of fact, I pitted myself against the naline test once and we ran about neck and neck in terms of spotting addicts, and whenever I come here, I may disturb some of the group here, but I keep looking at their eyes, kind of staring at their eyes, and I am convinced, I haven't seen a person on drugs at Synanon." ¹⁵

"Dr. Casselman: One of the basic things, we use no drugs down there, that is, no tranquilizers of any sort. The strongest pain pills we use are aspirins or there is another compound which is similar to that. No narcotic or paraneurotic—not even codeine. I will testify to the fact that I've seen unnumerable kids come back from having, oh three, four or five teeth extracted. The dentist insisted, regardless of their previous history . . . and those kids have walked into the club with those codeine tablets in their hands—they've washed them down the drain. We've rechecked, called to find out how many tablets were given to them and they accounted for each and every one. So there is no question whatsoever as to the degree of honesty of the people in Synanon, including the directors, of course, and everybody else there. It's quite remarkable, something you won't even find in normal society or normal organization under any circumstances, much less so in any bureaucratic organization run by the state, county or federal government. Therefore, the only tranquilizers we use there are words." ¹⁶

MEDICAL PRACTICE WITHOUT LICENSE AT SYNANON

This committee asked the Department of Public Health what role, if any, it had played in the prosecution of Synanon on charges of vio-

¹⁵ Synanon hearing
¹⁶ KFFK program

lating the State Health and Safety Code and we received the following letter in reply:

"State of California

"MEMORANDUM

"To: *Assembly Committee on Criminal Procedure*

"*State Capitol*

"*Sacramento, California*

Date: September 28, 1962

From: Department of Public Health

"In response to your telephone request of September 28, 1962, we are enclosing a portion of the transcript¹⁷ of the case of *The People of the State of California vs. Synanon Foundation, Inc.*

"Mr Charles Feldman, whose testimony is in the portion being forwarded, was and still is a sanitarian employed by the Los Angeles County Health Department, Division of Institutions. He is only employed by the State Department of Public Health in the sense that our department has delegated inspection of our licensed institutions in Los Angeles County to the Los Angeles County Health Department and in the city to the Los Angeles City Health Department. Both Health Departments are charged with the responsibility of enforcing the Hospital Licensing Act and Requirements.

"GORDON R. CUMMING, Chief

Bureau of Hospitals

"/s/ RALPH A BURNS, Chief
of Licensing"

The testimony referred to follows:

"Charles Feldman was called and sworn and testified for the defense that he is employed by the Department of Public Health and as such, represents the State Bureau of Hospitals; that he has been so employed for the past four years, that his work consists of inspecting hospitals as defined in Section 1400 of the Health and Safety Code, that he is qualified as an expert witness to inspect and decide what are hospitals, that a few weeks after Synanon Foundation, Inc. moved to 1351 Ocean Front, Santa Monica, in September 1959 he had occasion to inspect said building, that in his opinion, the building was not a hospital within the meaning of the Health and Safety Code of the State of California.

"Feldman testified on cross-examination that when he inspected appellant's place of business in September 1959 he was taken on a tour of the building by defendants Dederich, Ainlay and Pratt, and that said defendants described Synanon's mode of operation to him, that he, Feldman, formed his opinion that Synanon was not operating a hospital largely from what said defendants told him; that said defendants told him that the residents therein do not come to Synanon while under the influence of narcotics; that said residents are all ex-addicts

¹⁷ The excerpt is actually from the engrossed statement on appeal as there was no transcript made at the trial.

who only come to Synanon for room and board; that no one ever told him the Synanon Building is used by persons as a place to come to undergo withdrawal from narcotics; that said defendants told him the building is only used by ex-addicts as a place to have discussion groups; that his inspection lasted only about one to one and one-half hours; that said inspection was during the day; that he never made any further investigations, particularly no evening inspections.

"Feldman testified on cross-examination that he uses Section 1401 of the Health and Safety Code to decide if an institution is a hospital, that he was aware that Section 1401 of the Health and Safety Code defines a hospital as a 'place which maintains and operates . . . organized facilities for one or more persons for the care and treatment of human illness to which persons may be admitted for overnight stay or longer', that in his opinion, Synanon did have (a) organized facilities, (b) for one or more persons, (c) for the care and treatment, (d) of human illness, (e) to which persons may be admitted for overnight stay or longer

"Feldman testified on cross-examination that Section 1415 (e) of the Health and Safety Code specifically excludes from the jurisdiction of his department—the Department of Public Health—places for the reception and care of the 'insane, alleged insane, mentally ill, mentally deficient, or other incompetent persons' that in his opinion, Synanon was operating a place for the mentally ill and was therefore outside the jurisdiction of his department, that although his department could not regulate such a place, he felt Synanon should be regulated and licensed by someone "

This committee asked the same question of the Department of Mental Hygiene, Division of Private Institutions and received a copy of the following letter

"To: Mr. Leigh Deming
Administrative Adviser

"Date: September 1, 1959

"Subject: Synanon Foundation, Inc
1351 Ocean Front Drive
Santa Monica, California

"Attached is a newspaper clipping related to Synanon, Inc. This we discussed in our telephone conversation of August 31st. The paragraph that is of interest is the statement that the charge alleges operation of the institution without having first secured a license from this division

"Based on the preliminary information provided by Mr. Baida, Office of City Attorney, Santa Monica, in my conference with him on August 25th, it did not appear that time that a license would be required. Mr. Baida had agreed to send a request accompanied by information so that further action might have been planned by this division. With the filing of this complaint, this course of action was abandoned.

"The clipping is being sent to you for your files so that in the event of any inquiries, you will have this further information

"M J BARR, Assistant Chief
Division of Private Institutions"

The following is an excerpt from a series of articles on Synanon—*Los Angeles Times*, October 9, 1961

"A typical attitude is the one expressed by Dr Stuart C. Knox, a psychiatrist and chairman of the Los Angeles County Medical Association's Committee on Narcotics

"I know Synanon has done a good job with some patients, and I think it could play a useful part in an overall program of rehabilitation

"Cold Turkey

"But I'm not enthusiastic about their "cold turkey" handling of withdrawal from narcotics and I am categorically opposed to laymen treating illness. The Synanon people presume to know enough about the human mind to treat it as well as trained persons

"But the worst mistakes they have made have been in public relations. Had they been patient they could have built their program without antagonizing the many persons who are now their greatest critics"

"Rev. C. M. Harvey: In fact, I began to talk to Mr Dederich about what the church might be able to do in this connection to bring the addict back into some kind of meaningful relationship with the community. And so we established what is known as the Christian synanon. We don't call it Christian. They call it Christian. It was from this particular experience where we had six members of my church, plus my wife and myself and Mr Dederich and between six and seven addicts, and a school teacher who had lived down here for a year, who had written a thesis on Synanon. We all gathered together once a week for over a year and in this way we began to discover the so-called method of the synanon because we actually participated, I understand from Mr Dederich, in something that is going on down here three times a week, every week of the year. If this is therapy then I suggest that what we are doing at the church is therapy and that if this is a hospital, then I really believe that under the same kind of definition we are a hospital. I began to become more and more concerned about the resistance. I have found very few people who will talk to me about it. The usual things come up. You try to communicate, or I try to communicate my understandings as being involved over a year. I find that very few people really want to hear me or listen to me. I have gotten committees from the church down here and without exception they have been convinced that this is a fine thing that is going on here.

"And now because I feel that it isn't often that a minister gets to put his life where his mouth is, my wife and I and my family—I have a boy nine, a boy six, and a daughter 17 months, we have moved into

Synanon which is known as Synanon No 2—an address out here on Ashland Avenue. I feel that in this way perhaps we might be able to reduce the fears that many people have that addicts are different, that they are strange people, and we have found them to be the most meaningful community, in some sense, that we have been associated with.”¹⁸

“**Dr. Jerome M. Kummer:** I was asked by the City Attorney’s office in their prosecution of Synanon, whether I would be willing to appear as an expert witness for the prosecution. After hearing the facts about the case I agreed to appear as an expert. I sat through the entire examination and cross-examination of the witnesses for the prosecution. These represented former members and former leaders of the Synanon group. On the basis of their answers, assuming that these answers were true, I was asked certain hypothetical questions. Primarily, did what Synanon do constitute the practice of medicine, and I had to say that, in my opinion, the type of treatment that they were rendering certainly did come under the heading of medical practice.”¹⁹

“**Dr. Casselman:** I was their witness, their expert witness for the defense in their original trial. I must apologize, at that time I was not an experienced expert witness, and I was very promptly slaughtered by terrible insinuations by the City of Santa Monica, by the prosecutor. It was in his engrossed statement—they turned by statements around, my words to the degree that it was completely unrecognizable. They put things in there which I never said. For example, oh, I think it was in ’58, I hurt my back while delivering a baby and I was hospitalized for 10 days and I believe they gave me a shot of narcotic because of the excruciating pain. I went into shock, evidently I can’t take narcotics. They asked me if I had ever used narcotics, and of course, I use narcotics. I’ve got a license right up here on the wall that says I can use it. They asked if I’ve ever had it administered to myself and ‘Oh, yes, I’ve had it administered. My physicians, who are some of the best known orthopedics in this country, gave it to me.’ And later on in the engrossed statement they said, ‘Doctor Casselman admits to having been addicted to narcotics on one occasion when recuperating from an operation.’ So you can imagine, this will set the scene as to what it means to get involved with Synanon. I am not now, by the way, I think we ought to get this straight. I am not now, nor have I ever been addicted to any drug. I’m a square, complete square.”²⁰

“**Dr. Bailey:** . . . I have been associated in an almost indirect way with Synanon for about two years. Deliberately, I have not become actively involved in terms of any kind of guidance or whatnot, because I think one of the worst things that could happen to Synanon would be for them to become involved with professionals. Because it is a self-generative, indigenous, kind of a movement. I think that is one of the worst things that could happen. So I am an enthusiastic supporter and I know many of the people who are there, as a matter of fact, some of them I had on parole, and some of these were what are

¹⁸ Synanon hearing

¹⁹ KEFK program

²⁰ *Ibid.*

known in the lingo, were known as hogs. Big drug users. Very few days of remission you might say. And some of these I see here at Synanon who have been clean up to two years and this impresses me.

"Now I would like to maybe comment on three points. One, why I support Synanon. It is an organization, as I see it, of addicts or former addicts, and incidentally, this is a semantic difficulty, semantic problem, in which you are labeling a person, like you say, 'He is a criminal or he is an addict,' and the very act of labeling carries with it a lot of attitudes and values. So once you know that a person is an addict, then you will react to him in a certain way. But this organization has as its major goal, a drug-free life. And here we have a group of people, somewhat similar to Alcoholics Anonymous, but with some special differences, namely, they eat, live, work and sleep together—that's a figure of speech—in what the sociologists call the primary situation, characterized by a high degree of intimacy. I think it is generally accepted that the most significant and effective kinds of controls over a person's behavior are those exerted by one's peers, by one's peers with whom he is in intimate contact.

"It seems to me another aspect of this outfit is that it is set up—it is organized, so as to handle and really institutionalize or support a sort of acting-out of a regression. I can explain what I mean by that. As I understand it, it may be operated differently now. I haven't been here for a couple of months or so, but the basic approach, a person comes in, let us say he is addicted, he is aided—he is helped through his withdrawal distress, comforted—mothered, as a matter of fact, quote, 'like an infant.' And this is a kind of a role, infant role and this is supported by the group. When he is clean, he then has the opportunity of advancing to another stage of a kind of childlike role, while he's convalescing, let us say, in which he is pretty much told what to do, has certain little chores to do, but he still does not have to be responsible for himself, other people are. He then can advance to another stage of well, almost, let us say, an uncle role. Whence, he goes out and gets a job and brings a part of his earnings in and helps to support the rest of the family. He then has the opportunity of advancing to the let's say, big brother role in which he may actually leave the environs of the organization, get a job and still participate, and then at the top you have the father figure, symbolically. So that you have this opportunity to act out this kind of regression and recapitulate—live back through these sorts of things. This is, as I see it, part of the first therapeutic process.

"As Dr. Yablonsky mentioned, the main goal is a drug-free life. So you have a focus on antidrug values. Whatever else you might have, this is the major focus. In doing this, in having this focus, it is obviously necessary that the people here take the point of view of the general public regarding drugs—that it is bad. So that, in a sense, it is the people who are doing the treating who get treated. All of this, in terms of my impressions and observations, is supported by this terrifically vital group spirit which has an almost religious kind of tone to it, and I have been here and I have seen it and I felt it, as a matter of fact—this religious zeal, dedication to a cause, providing meaning to a life that probably had no real meaning before."²¹

²¹ Synanon hearing

"Q Dr. Forman, in October 1960, there were 20,773 inmates under the direction of the Board of Corrections in California I asked at that time that the department give me some information about the psychiatrists and correctional counselors and people of the professional type who are treating these people At that time the department had authorized 10 full-time psychiatrists of which three positions were filled. Six one-quarter-time psychiatrists of which all positions were filled. Three psychiatrists, chief correctional facility, two of which were filled Under clinical psychologists, No 1, there were six positions authorized, of which none were filled In that category a person must have completed a Ph D requirement, except for foreign languages, and an internship of at least one semester In another category, correctional counselor, No 1, there were 86 positions listed of which 78 were filled In this category, the correctional counselor, grade No 1, the minimum requirement for employment is the equivalent of college graduation plus one year as a paid trainee in the Department of Corrections. Now under the Department of Personnel, job classification description of that personnel is included this phrase. 'He does technical therapeutic work involving examination, classification, diagnosis, group, and individual therapy' This is one year of college, excuse me, equivalent of college education and one year as a trainee Is this still the situation? Apparently at that time these were the people who were doing most of the group therapy work with the inmates of the whole State

"Dr. Forman: We would have to differentiate I think to some extent between our group counseling program and group therapy. Now the department launched a rather ambitious group counseling program some years ago I guess seven or eight years ago And about half of all the inmates in the institutions there are . . . in this group counseling program But this is not the—this is different from our group type of therapy program, which has as leaders, a clinical psychologist and psychiatrist, professionally trained and skilled people. But the counseling program would be on a somewhat different level, perhaps it might be equivalent to what the groups here at Synanon would be doing.

"Q That is the impression I got

"Dr. Forman: Yes, I believe so." 22

The following statement was taken from the *Los Angeles Times*, October 8, 1961

"For example, Dr William F Quinn, a former member of the State Board of Medical Examiners and president of the Los Angeles County Medical Association in 1959, told the *Times*:

"I think they have the right approach Their approach to rehabilitation is an intelligent one and they are not, as charged by some, engaging in the unlawful practice of medicine

"Everybody agrees that there should be places for addicts to become reoriented The rub is that nobody seems to want such a place in his neighborhood.

"The fears of the medical profession that Synanon therapy sessions are tantamount to the practice of medicine without a license are unfounded, says Dr. Bernard Brandchaft, a UCLA psychiatrist who is also a board member of the Sponsors of Synanon, a group which helps support the center.

"Exchange of Ideas

"Getting together, exchanging ideas around which to structure recovery, absolving themselves of guilts by having others punish them verbally, knowing they can punish others later in the same way—all these are good things for the addict and not really organized psychotherapy," the psychiatrist says "

"Q Do you have any professional guidance? I mean through some of the experts on narcotics and treatment?"

"Mr. Dederich: Lots of it. We have . . . We feel that we have actually had our own informal board of medical examiners. We have about five doctors now who give us their services, not in connection with the narcotic withdrawal, but things that happen in a big family. Everything from heart attacks and removal of spleens down to psychosomatic hangnails. Our doctors are on call all the time. We have one of the most distinguished psychoanalysts in the country, who is on the Board of Directors of the Sponsors of Synanon, Dr. Brandchaft. I think you will hear from him. We have sociologists, psychologists, who are good friends. Now, once again, the quintessence of Synanon is that there is not a real official connection. These are friends of the family. We pick their brains, I assure you, as we do our lawyers, our writers and our chairman." 23

"COLD TURKEY"—WITHDRAWAL WITHOUT THE AID OF DRUGS

"Q One complaint I have heard about Synanon, Mr. —, is about the fact that people who come here as addicts have to go through this period of withdrawal without any medical aid. Can you tell me, were you an addict when you were arrested and you went to jail the previous times that you were talking about?"

"Synanon Resident No. 8: Yes, I have been arrested four times while addicted.

"Q Were you given any medical treatment at that time—.

"Synanon Resident No. 8: No.

"Q —as to aid in withdrawal in jail?"

"Synanon Resident No. 8: No. Addicts in jail do not get treatment.

"Q Pursuing that same line of question, in your own mind, is there, I understand that it is a severe experience, whether it is in jail or at the Synanon House, pursuing that same criticism that I have read about at least, do you feel that there is any compensating factor of not having medication when you come into Synanon?"

"Synanon Resident No. 8: Very definitely.

²³ Synanon hearing.

"Q. What is that?"

"**Synanon Resident No. 8:** Well, you have done it yourself. You—going through, let's say, a test of fire if you will use that expression, coming out the other side, unscathed and unhurt, you have something to look back on, an accomplishment to look back on, and let me add this, that kicking the habit in Synanon is completely different than kicking the habit in jail. In Synanon I came here to kick a habit. When I went to jail, I was picked up by the scruff of my neck unexpectedly and dropped in a cage, and the hostility and coldness of the whole situation, on top of the withdrawal symptoms, made it sometimes a nearly unbearable situation. I have never seen anyone kick a habit in Synanon with any degree of pain. Relatively easy.

"Q. In other words, even if you did have medical assistance available you believe that this part of the —"

"**Synanon Resident No. 8:** I think it is a very definite part, not having medical assistance is a definite aid in helping an addict stay off drugs, especially in the first few months.

"Q. Mr. (Synanon Resident No. 8), I have heard there have been at least a few cases of fatalities involved in withdrawal without medical aid. You don't have any fear of such a thing happening here?"

"**Synanon Resident No. 8:** No.

The following is a letter received by the committee from Joel Fort, MD, Director of the Center for Treatment and Education of Alcoholism

"August 13, 1962

"*Assembly Committee on Criminal Procedure
State Capitol, Sacramento, California*

"In response to your request for information on medical treatment for addicts in city and county jails in California, it is my impression that almost no treatment occurs. With a few exceptions the addict **would be withdrawn 'cold turkey'** following his arrest. Although the medical treatment for withdrawal is quite simple and inexpensive, consisting of an average of two doses daily of Methadon, this is probably not done in any jail in California or other states. A few jails administer a small quantity of sedatives such as the barbiturates to help relieve some of the withdrawal symptoms.

"It is also my impression that general hospitals and psychiatric **hospitals usually do not provide adequate withdrawal treatment**, either because of lack of understanding of the physiological process involved **or because of attitudes of rejection toward the addict.**

"It is also important and noteworthy that no treatment is generally available for the long-term or chronic illness of addiction except in the specialized projects of the State Department of Corrections. Much more needs to be done to encourage voluntary civil commitment of users or addicts to narcotics and to provide rehabilitation programs consisting of Narcotics Anonymous chapters, Nalline testing, vocational

and social work counseling, medical and psychiatric services, and half-way houses

"Please feel free to contact me if you have further questions

"Sincerely,

"JOEL FORT, M.D., Director,
Center for Treatment and
Education on Alcoholism"

The following was taken from an article appearing in the Los Angeles Times

"STATE BOARD WOULD BAN 'FAST' ADDICT TREATMENT

"By Harry Nelson, Times Medical Editor

"A ban on the 'cold turkey' or sudden withdrawal treatment of narcotic addiction is contained in a proposed set of regulations released Monday by the State Board of Medical Examiners

"While applying to any 'place of aid' for persons recovering from narcotics addiction, the regulations are aimed specifically at the Synanon Foundation, a Santa Monica beachfront addiction rehabilitation center

"The state board was charged by the Legislature with drawing up regulations for places which are neither hospitals nor sanitariums but which care for persons recovering from addiction. At present Synanon is the only such facility

"Therapy Used

"In contrast with hospitals, which treat by gradual withdrawal from drugs, Synanon has practiced the sudden 'cold turkey' method in conjunction with a program of group therapy

"Dr. Joseph de los Reyes, Chairman of the Los Angeles office of the board, said that the purpose of the regulation is to prevent the possible serious physical effects of sudden withdrawal

"'We have no prejudices (sic) against Synanon but we want to make sure that people going there are not endangered by sudden withdrawal,' he said

"The proposed regulation provides that no resident may be admitted unless he presents a statement from a physician saying that a physical examination performed during the 24-hour period prior to admission reveals that the addict is not suffering from withdrawal nor is he 'currently addicted to the use of narcotics.' "

"Examination Required

"This means, Dr. Reyes said, that hard addicts would have to be treated in a hospital for withdrawal symptoms before being eligible to go to places like Synanon. He added that the board made no attempt to regulate the facility's psychological program " 24

The following statement by Dr. Kummer was given on the KPFFK program in reply to the narrator's inquiry as to whether or not the

²⁴ Los Angeles Times, February 6, 1962

doctor felt Synanon's treatment could be dangerous from a medical point of view

"Dr. Kummer: . . . I thought that the attempts at giving 'cold turkey' treatments indiscriminately without proper medical supervision was not only inhumane but it could be dangerous to individuals who were not in the best of physical health. At times it's conceivable that the 'cold turkey' on certain individuals might even cause death. They were utilizing various group techniques which for the most part I thought were rather good but I felt that they had misapplied certain psychiatric principles and that these were cruel and possibly harmful to the individual involved. Their haircut sessions were particularly noteworthy. They utilized these sessions to subject the individual in Synanon who had committed some misdeed to a very, very severe calling down, name calling, belittling, humiliation. To my opinion I would say it would be quite traumatic to the sensitive type of individuals we find the narcotic addicts to be."

VOLUNTARY PARTICIPATION

"Dr. Yablonsky: Well, a prominent feature of this operation is that any addict sitting right here in this room can go out right now and I suspect they all have a connection tucked in the back of their minds somewhere. But they don't, because they have here a way of life which is kind of new to most of the people here. They—many of the people here, in residence here, have never had a relatively harmonious family situation. They have it here. They have lots of brothers and sisters and some father figures and some mother figures and they have the security of knowing that they are in the hands, not of outside professionals who have them incarcerated and—I administered detention facilities and so forth. I frankly would not be scared to death but I think I would do very poorly trying to run this operation because I am essentially an outsider here but this is a co-operative effort, where these people of their own volition, and I guess perhaps democracy works in some fashion, in some strange fashion here at Synanon, that American citizens want the right to do what they feel is best and most useful for them to solve their problems. That's what you have here. These people have hammered out a way of life which keeps them off of drugs. And in the process of keeping themselves off of drugs, there is a kind of built-in mechanism which trains leaders for Synanon."

"Dr. Bailey: . . . I have been associated in an almost indirect way with Synanon for about two years. Deliberately, I have not become actively involved in terms of any kind of guidance or whatnot, because I think one of the worst things that could happen to Synanon would be for them to become involved with professionals. Because it is a self-generative, indigenous, kind of a movement. I think that is one of the worst things that could happen."

"Synanon Resident No. 5: I think it's the fact of knowing that I could have left whenever I felt like it had a lot to do with staying and trying at least to get over the physical sickness. I had no real intention of staying as long as I have been here now. And like I say, I knew three or four other guys and said to myself, 'If he can make it,

²⁴ Synanon hearing

why can't I make at least the physical sickness and then stick around a few months and put a little weight on and I'll see what happens' I was in the first stage and remained in the house all the time, 11 months I had a job in the house, of course, I was on the crew that was called the 'begging crew' We go out in the street and ask people for what we need I like to talk and I like people and people were surprisingly understanding I didn't believe that anyone really was concerned about the drug addict but I found out that by going out and talking to people who had never seen a drug addict that they were giving us wonderful response and as much help as they could possibly give us''²⁵

CAN THE STATE USE SYNANON APPROACH?

"Q I have a question about the overall state program Making the same assumptions that Assemblyman Winton made in putting the questions to you, for the purposes of discussions—that the program here is beneficial and helpful, is there any way that part of this technique can be used by the State even though they don't have volunteers to work on? I am thinking of it in this context I will preface it this way There are thousands of persons who have the problem, many of them are in the state prisons I think, with all due respect to Synanon, and no one is a stronger supporter than I, who isn't actually here, it is a little unfair to compare whatever statistics we feel show Synanon in a favorable light in these number of drug-free days with a state institution that has so many persons in it who have not reached the point of orientation which the volunteer has reached at the moment he walks into Synanon He has realized that he has a problem and there are so many of them in prison who keep believing that they don't have a problem—the world has a problem Everything is okay with them but the world is out of step Now, having that handicap, what in the world can the state people do to try to adopt a program of this kind? Do they screen the best and most likely to respond to this type of thing and channel them into a volunteer program? Isn't there any way they can start out on it before the term is ended, perhaps, in this new rehabilitation program?"

"Dr. Bailey: I'll probably be shirking your question a little bit, but, I would like to respond I think this is a very important point to keep in mind when we talk about, and I am here testifying that I believe that Synanon is an effective therapeutic and an effective device for addicts I want to emphasize, though, that that's faith Let us face it, that is based on faith I have done no studies and I know of no studies that prove it, that demonstrate it, but that is not of much import because I know of no consistent reliable studies that have proven that any kind of correctional treatment is effective in a reliable way or even a psychoanalysis or psychotherapy

"It is very difficult to demonstrate The other point is, that you brought up, is that here you have a highly selective process working I have no way of knowing how many people knock on this door or who express intention to come here and so on, who never get even the first step of being integrated in the program Now from one point of view these could be called failures But, the same situation exists with

²⁵ KFFK program

Alcoholics Anonymous and other similar groups. It is set up so you can only count the successes. They are the only ones that are around. Now, as far as the state program is concerned, I think I'd go far afield if I preassociated about some of the things that I would see there, except I would like to emphasize this, that I see no reason why the State and other officials could not simply take an accepting, tolerant attitude of this organization and leave them alone. Leave them alone. It, to my mind, it is a unique kind of approach, but we need all kinds of approaches in this problem. And the Department of Corrections, for example, faces its own unique problems, but I doubt very much if attempting to transfer part of these processes to that . . . would be effective because the problem is different." 24

APPRAISALS OF SYNANON PROGRAM

"Dr. Yablonsky: Perhaps we ought to start examining social problems along these lines, and when I say along these lines, I am not precisely sure of what I mean, but, what I do mean is that we are preventing drug addiction here at Synanon. We attempt to prevent crime with law enforcement in a somewhat similar way each day out there trying to stop it. Maybe this is the way we ought to begin to approach mental illness, crime, and various other problems.

"I am reminded of a group therapy session which I ran with a group of parolees in New York and one of the fellows in the group, who was what they call a lush diver, in other words, he hit a guy on the side of the head and had his wallet before he hit the ground, and he was in the group and he came back to the session the following week and said, 'You know, Dr. Yablonsky, you prevented a crime last night.' I said 'Really, what happened?' He said, 'Well,' I won't use his jargon, on the record, but he said he was out with some gal and she had a diamond ring and he had her walking down a dark street past the right alley and so forth and so on, and then he said, 'I was thinking, gee what will I say to the group if I am going to really be honest in this group?' and then something happened here. Now this is what happens here at Synanon but with much greater intensity. Every action of every individual in this social system, including myself I might add, is brought under honest, intensive scrutiny by the group on what I would call a first and level. In other words, when the scratch comes before the thing festers and the person is out shooting drugs or curing it with drugs or trying to, the group leaps on it because if any one person here falls on alcohol or drugs, it detracts from the entire system. In other words, with the people here it is life or death. If Synanon lives, they do. I was talking to a girl here the other night and I said 'Well, what if Synanon had not occurred,' and she said very flatly, 'I would be dead today.'"

"Dr. Brandchaft: My observations upon the operations of Synanon over the past 8 months have convinced me that there is something new, worthwhile and important in this experiment. I think that this is irrefutable from the evidence at hand. More than 70 confirmed and in most cases, chronic addicts have been enabled for the first time to

²⁴ Synanon hearing

remain narcotic free voluntarily, for periods of time ranging from a few weeks to more than 2 years. Many of them no longer have to be supervised in any way and some are able to tolerate all of the stresses of ordinary community living without resorting to narcotics. Since the vast majority of these people have tried numerous ways of attaining these goals in the past without success, it is obvious that there must be something new to which they are able to respond.

"That the experiment is worthwhile is also, I believe, evident from the facts. Here is a large group of addicts who are being reclaimed to useful citizenship and, in the process, are keeping themselves out of jail or hospitals, out of any anti-social or criminal activities, many for the first time in as much as 10 or 15 years. For similar purposes the government expends very large sums of money. For Synanon and its members, there is no government or public expenditure of any kind. I do not believe that it is necessary to contend that Synanon works for all addicts or that it permanently cures any addict to establish its value and to argue for its survival. We know that addiction is a symptom of a serious and thorough-going mental illness and that unless the underlying illness itself is treated, there can be no reliable or permanent cure. Nevertheless, in this stage, the symptom itself is so destructive to the patient and to society as to make any definitive treatment impossible. It is therefore indispensable to any treatment program that the addiction be given up and given up voluntarily. Thus, I, as a practicing psychiatrist, regard the role of Synanon as a vital link in the process of cure, performing a function which is essential to, but not synonymous with, that cure and which function in these cases has never been adequately performed by any other agency or organization.

"The operation of Synanon is based upon sound psychiatric principles in their essentials. Time does not permit me to elaborate this, but it is the subject of a paper which I shall present to the next convention of the American Psychiatric Association in Toronto and which I shall be pleased to forward to the committee for its records."

"Dr. Bailey: So I am an enthusiastic supporter and I know many of the people who are there, as a matter of fact, some of them I had on parole, and some of these, were what are known in the lingo, were known as hogs. Big drug users. Very few days of remission you might say. And some of these I see here at Synanon who have been clean up to two years and this impresses me."

"Rev. C. M. Harvey: When I came here two years ago I hadn't been here six months when I began to find that there were some young people, kids, I call them, who were experimenting with dope. And something else that bothered me was the thing that they called 'sniffing the sock' that is, they dip a sock in this airplane glue and inhale it and this gives them their kicks.

"I don't know and never have known very much about the dope problem and I became quite concerned within a few weeks after I was informed about this 'sniffing the sock.' There were two young people, one boy and one girl, both in their teens who told me that they were taking pills and that the girl had actually done some shooting. She

had some heroin and she was very frightened and I asked her where she got it, and she got in the car and we drove up right across the street from—High. This shocked me and she pointed out several other kids that she knew that were experimenting with this.

"In my counseling I began to ask some of the young people who were more responsible and very active in my youth group if they knew anything about it. And I would suggest that at least one-fourth of them said they knew one person who was playing around with this. I had my ninth graders—at this particular time about now I had been here about a year. I had a group of ninth graders that numbered between 65 and 75 and I asked one night at a meeting how many of them knew anybody that was snuffing the sock and over half of them raised their hands. Then I heard about Synanon and I decided that I had better if I was, one, going to be responsible and, two, if I was going to have anything to say to these kids I should know something about the problem. I heard about Synanon and I came down here, and I must confess I came down with many fears. I am pretty naive as far as dope addiction is concerned and my image of a dope addict, I suspect, is what the television and motion picture people imagine a dope addict to be.

"I came down here not knowing what to expect but I certainly didn't expect to find what I found. This was over a year ago. Since that time I have had the people from Synanon come and speak with the junior high church school classes, if you want to call them that, in the evening meetings. I think I could safely say that when these addicts came and spoke to my young people, the response was electric. I don't believe in all my experience with kids, I have ever seen the kind of response that these kids gave. The thing that was so effective, I think, was what one young kid said to me. He said, 'Well Dede, you know when you get up and you make the noises like a minister, we say, "Sure, he's got to say this." But to hear someone who's been there, and who knows what they are talking about and who can make us realize how dangerous it is to become involved, this really got to me,' this one kid said. And immediately they requested that they come and talk to other classes that we had.

"I received some criticisms for this, particularly in bringing the addicts to the junior high level. I did this because, from what I understand talking to the addict, that the teens are the most sensitive and perhaps one of the most dangerous ages. I have talked to quite a few of the addicts here and one man here even started shooting dope when he was in the John Adams School ground and I know the school and I have talked to some of the kids over there and they said it doesn't seem to be much different."²⁸

This excerpt was taken from an article appearing in the October 8, 1961, issue of the *Los Angeles Times*.

"For example, Dr. William F. Quinn, a former member of the State Board of Medical Examiners and President of the Los Angeles County Medical Association in 1959, told the *Times*:

"I think they have the right approach. Their approach to rehabilitation is an intelligent one and they are not, as charged by some, engaging in the unlawful practice of medicine.

²⁸ *Ibid.*

"'Everybody agrees that there should be places for addicts to become reoriented. The rub is that nobody seems to want such a place in his neighborhood.'"

The following is a report of a special citizens' committee headed by former Mayor Russell Hart, appointed by the City Council of Santa Monica to investigate Synanon.

"This has been a most difficult task for the members of the committee. They realize that the narcotic problem is one of the most vicious and complex facing the American people today. They have great sympathy for the narcotic addict and the families of those afflicted. The committee members also recognize their own limitations in knowledge, training and experience to judge the efficacy of any course of treatment for those attempting to rid themselves of the narcotic habit. This is a task for the experts in that field. The committee acknowledges that some good may be being done by Synanon. The patients interviewed claimed that living at Synanon has helped them and that while there they have been off narcotics.

"In spite of the fact that some good may be accomplished, it is the consensus of the committee that Synanon is not an asset to the City of Santa Monica. While it is recognized that a community has an obligation to help those of its members who have serious health or social problems, there is evidence that Synanon is attracting an unduly large number of drug addicts to Santa Monica. Over 200 have passed through its doors. They have come from many parts of the United States, some of them as far away as New York City and Portland, Maine. Narcotics addicts are not desirable citizens. Their very affliction forces them into a life of crime in order to secure the drugs that are needed to satisfy their cravings.

"Since Synanon has been established some significant things have been happening. The police records of the City of Santa Monica show that narcotic arrests in 1959 increased 98 percent over either 1957 or 1958. In the first 10 months of 1960 the increase has been 173 percent." At the same time, the increase in Los Angeles County as a whole has been only 18 percent. Forty-five persons, residents of Synanon, have registered at the Santa Monica Police Department as ex-convicts. Twenty others are known to have a record of arrest in Santa Monica and other cities. Many of these have done time in state prisons. Since Synanon moved to the 1300 block on the Coast Highway, 17 arrests have been made in that block alone. These have been for vagrancy, lewd conduct, drunk, drunk in auto, etc. The committee believes this to be an abnormal number of arrests for one block in our community. There has been an increase in the number of thefts of doctor's bags from autos, involving narcotics. In 1959 there was one. So far in 1960 there have been 13. In 1959, five drug stores reported burglaries involving narcotics. So far in 1960 there have been eight.

²⁰ See section on Arrest Statistics and Appendix 2-A.

"The committee considered the attitude of the neighbors. A statement has been made that their opposition has died down. The committee did not find this to be true. As late as October 25, the petition signed by 31 neighbors very earnestly protesting the location of the foundation in their midst was received. Several additional letters and telephone calls have been received by the chairman. It is the opinion of the committee that any residential area would vociferously protest any such institution in its midst. The Synanon Foundation has been convicted of violating the zoning ordinances of the City of Santa Monica and the Health and Safety Code of the State of California. This case is now on appeal to the Supreme Court of the United States.

"The committee has carefully studied the records of the recent trial of Synanon before the Municipal Court. Sworn testimony of witnesses declared that there were certain practices indulged in as part of the treatment that we believe offend the moral standards of Santa Monica and society as a whole. Therefore, it is the considered opinion of the committee that as now conducted it is not an asset to the City of Santa Monica. It should never be permitted in a residential area. If it is determined by competent judges that there is merit in the course of treatment being pursued, its affairs should be administered by qualified professional people conversant with the particular problem and in accordance with the law of the city and state."

The following is an editorial appearing in the Santa Monica *Evening Outlook*, December 17, 1960.

"A special citizens' committee headed by former Mayor Russell Hart, appointed by the City Council to investigate Synanon, has rendered an adverse report.

"It finds that this so-called foundation, whatever its value in helping narcotic addicts, is objectionable because of its attraction of undesirables to this city and its emphasis on sex.

"Synanon's promoters won the sympathy of many good people by comparing Synanon with Alcoholics Anonymous and picturing themselves as reformed addicts dedicated to the rehabilitation of others. The citizens' committee, after thorough investigation doubts the validity of this picture.

"Beyond doubt or question are these facts. (1) Approximately 20 persons connected with Synanon, as present or former inmates of the Old Athletic Club building on the beach, are registered ex-convicts, who have done time for possessing or peddling narcotics, and (2) the number of police arrests of undesirables in this city has increased substantially since Synanon gained a foothold here and became widely publicized as the result of local complaints and a trial conducted last spring in the Municipal Court of Judge Hector Baida.

"After hearing a great deal of testimony, Judge Baida ruled against Synanon as being in violation of the city's zoning laws, and also of laws governing institutions for narcotics. Supported with the funds of well meaning sympathizers, the foundation appealed this decision which is now going up to the higher courts.

"To this adverse judgment of Judge Baida others have lately been added. Santa Monica Police Chief Otto Faulkner is emphatic in saying that his department does not approve of Synanon or its methods, and that it has greatly increased the police problem here by attracting addicts to Santa Monica, whether they are helped by it or not.

"Another adverse opinion was given last month by Richard A. McGee, State Director of Corrections in Sacramento. Citing an order issued July 29 by his department, to bar parolees from Synanon, McGee said this order will stand so long as the organization is in violation of the law and continues practices which the department believes to be objectionable.

"Attending the hearings in Judge Baida's court last spring, the late Joseph M. Pollard, a former law professor and assistant editorialist for the *Evening Outlook*, was favorably impressed by the testimony given on behalf of Synanon. So were many other people, who felt that while this institution should not be located on the beach, it deserved a chance to show whether it could help confirmed drug addicts. Mr. Pollard expressed these views at the time in the *Evening Outlook*.

"The evidence is now conclusive that Synanon should not be allowed to operate in any respectable community.

"The sooner Synanon is compelled to move out of Santa Monica, the fewer undesirables we shall have in this area."

The following series of quotes are taken from an article appearing in the October 8, 1961, issue of the *Los Angeles Times*:

"Andrew Marrin, Chief of Vocational Rehabilitation Service, State Department of Education, in a letter to this writer:

"A visit with the staff and some of the patients left me greatly impressed with the spirit of hopefulness and the high morale which seems to prevail at the institute.

"I have not recommended approval of Synanon as an agency to be used in the course of our official program, but as an individual I have been greatly sympathetic to their efforts and have given them what support and encouragement I can."

"Dr. Charles Hurley, medical consultant for the Narcotic Treatment Control Project of the State Division of Parole:

"I feel it is a very good program. We realize that anything done in this field will not be a blazing success. The real test is whether a facility gets anyone to stop using narcotics. Applying this test to Synanon places it in a favorable light."

"In spite of official policy, some parole officers think highly of Synanon. One officer said that state and federal parole agencies have a tendency to consider as a bootlegging operation any place which is not sponsored by a public agency.

"PAROLE OFFICER'S VIEW

"But the individual parole officer working in the field knows this is not necessarily true," he said."

"Mrs. Lillian Finan: These people are living useful and decent lives and breaking no laws. They are not the people to be worried

about. And I might point out that the taxpayers are not being charged one nickel for any of this. I think part of the trouble is that when one thinks of a drug addict, one thinks of a Frankie Darrow type—anybody old enough to remember Frankie Darrow—they think of this type of individual and I think it isn't until something happens to someone close to you, either a friend or a relative, someone you love, someone you like, that you realize that this can happen to anybody. But, these people are doing a thing that is unheard of. The federal facilities will admit that there has been dismal failure and there are billions of dollars being poured into these places, like Fort Worth and Lexington.³⁰

"Mrs. Frank Maddocks: Number one, I am very nervous and I have never spoken in public before like this. My name is Mrs. Frank Maddocks and I am here as a member of the Sponsors of Synanon and I am president of the Women's Activity Committee and I am also the mother of four children. I have been here at Synanon, coming here regularly for over a year, and I have been coming here probably because I feel that there is an awful lot to be done for these people that they can't do for themselves. Our Sponsors of Synanon organization has now been incorporated and we have a 13-man board of directors, or 12-man board of directors. I am the only woman—I think they needed a secretary or something.

"The duties of our organization were mainly to get the public interested in what is going on at Synanon here and we sort of adopted as our motto, 'An ounce of prevention is worth a pound of cure.' The reason we did this and have tried to get it across to the public is, we organized ourselves out of a sense of duty and very earnest desire to share all the information that we have accumulated in coming here. We want to help educate the public, especially the children. I think another thing we want to do is to help stop all this misrepresentation and misinformation that has been going around. We have a pretty big job ahead of us, especially here in Santa Monica. Although I doubt if the harassments stopped right now, maybe we wouldn't be able to do as good a job as we have done. It has been sort of stimulating. But, we feel that by injecting information and education into the minds of the public, especially our children, we hope to start a mass inoculation to immunize many from coming to this terrible addiction problem."³¹

"UNITED STATES SENATE PRESS RELEASE

"Senate Subcommittee to Investigate Juvenile Delinquency
"Senator Thomas J. Dodd, Chairman—Carl L. Perian, Staff Director

"FOR RELEASE Thursday P.M., September 6, 1962

"WASHINGTON, D.C., September 6—In a statement delivered on the Senate floor today, Senator Thomas J. Dodd (D-Conn.) gave high praise to a narcotic addict hospital called Synanon in California and referred to it as 'a miracle on the beach at Santa Monica, a miracle that I feel can benefit thousands of drug addicts.'

³⁰ Synanon hearing

³¹ *Ibid*

" 'Drug addiction is one of the most baffling social and emotional diseases known to our society,' the Senator stated, 'and so far, in spite of all of the efforts put forth, we have failed to find a cure for this terrible illness. We have failed in psychiatric treatment methods, we have failed in medical treatment methods, and we have failed to eliminate narcotics addiction through punishment and correctional efforts.'

" Senator Dodd, who held hearings on the narcotic problem in Los Angeles in August, stated 'I have found a new social experiment operating on a small scale which, if followed through, studied, and improved by correctional experts, psychiatrists, and other social scientists, may lead the way in the future to an effective treatment for not only drug addicts, but also criminals and juvenile delinquents guilty of other offenses. The program of which I speak, called Synanon, is operated in an abandoned armory where some 100 heroin ex-addicts, young men and women, live and work and counsel one another. They were considered hopeless cases a few years ago. Today they can look forward to a life free from the ravages of drug addiction.'

" In explaining the success of the Synanon project thus far, Dodd stated 'At Synanon these once desperate men and women find a kind of refuge from the life they could not bear, but more than that, they find often for the first time a place where they can rest and heal their wounds. And more important, they find hope for recovery from the disease most had come to regard as incurable.'

" 'At Synanon they find a family, a human group, a society where each individual can live as a member of the community rather than as a patient, and inmate, or a prisoner. It is this kind of a sheltered environment, this kind of family-type atmosphere that is increasingly recognized as necessary for the emotional stability of human beings.'

" In closing, Senator Dodd proposed that the National Institute of Mental Health provide funds for the expansion of this program and the introduction of other Synanons in high addiction areas of the United States.

" 'In bringing this project to the attention of my colleagues here on the floor of the Senate,' Dodd concluded, 'I want to pay tribute to the founding members of this new institution and to give its present and future participants some of the encouragement and recognition which they have often lacked in the past.'

Mr. Charles Champlin: My conclusion which I reported to *Time* was that the Synanon Foundation seemed to me to be doing a remarkably good and perhaps a uniquely good job of helping addicts help themselves stay off narcotics and to reconstitute themselves as useful and law abiding citizens. I must say that the longer I have been in contact with Synanon, the more impressed I have been with its achievements.

" As someone in the communications field, so-called, I am impressed with the job Synanon has done, again whatever its success in treating addicts or letting addicts treat themselves, I have been very much impressed with the job Synanon has done in communicating what seems to be the real facts about addiction to the general public. I think the whole subject of addiction has been exaggerated, misstated, somehow

made more glamorous than it is. As one of the men here said to me, 'Addiction is as glamorous as cancer.' I think they have done a remarkable job in communicating some feeling of the addict's life and the difficulties in correcting drug addiction to the public at large. I have attended some of the meetings, Rotary clubs, service clubs, at which some of the Synanon people have spoken, and it has opened a lot of eyes to the addiction problem. Just to sum up very briefly, it seems to me that the usefulness of Synanon in the rehabilitation of narcotics addicts is beyond question and I, as a layman, now deeply interested in Synanon, would certainly like to see its operation expanded. ^{11 32}

"Synanon Resident No. 6: I arrived here two and one-half years ago at the end of a nine year run on heroin. I came from San Fernando Valley where I had moved to get myself away from Los Angeles which I felt was responsible for my drug addiction. It didn't help. I, of course, used out in San Fernando Valley and set about destroying not only my home, but my wife and children and everything around me. I arrived here flat on my back, you might say. The people at Synanon talked me out of my drugs, just like that (snap of finger), as I look back. They told me that I could come stay with them if I were to give up drugs and do as I was told for a while. I did this. I lived in fulltime residence for a year, worked in the building, lived in the building. At the end of that time, I was given an opportunity to go out and find a job on the outside. I am a carpenter by trade. The second part, for the most part of the second year, 11 months to be exact, I worked in the community here of Santa Monica as a carpenter. Within that time, two of the Synanon residents were working with me for the contractor that had hired me. He was very pleased with my work as had most of the employers, in fact, all of the employers who have hired Synanon members. The first of the year, I came back in. I am a coordinator. I work with and for the foundation and for the foreseeable future that will be my goal, I should think. ^{11 33}

"Dr. Donald Cressy: The most effective mechanism for exerting group pressure on a person that you are trying to change will be one in which a group is so organized that addicts are induced to join with nonaddicts for the purpose of changing other addicts. I made this statement in terms of criminals, but this principle is not anything especially new. It's essentially the same notion that the early Christians had when they told every man to go out and be a missionary. The effect of being a missionary was not necessarily as great on the one that was being converted as it was on the one that was doing the converting. Similarly in Alcoholics Anonymous, in my estimation, the rehabilitative effect comes when Mr. A tries to reform Mr. B. The rehabilitative effect is on Mr. A, not on Mr. B—or not necessarily on Mr. B. Similarly at Synanon, each time a person takes an anti-narcotics stance in order to try to help somebody else, he necessarily reinforces his own anti-narcotics attitudes, values.

¹¹ *Ibid*

³² *Ibid*

"In most institutions, hospitals for addicts and that sort of thing, the person that gets the highest status on the hospital ward is the one that can tell the best stories about where he used to get drugs, where he is going to get his first shot as soon as he gets out of the institution, etc. So that, in effect, it's very common that the person that shows the most evidence that he is going to stay on drugs is the one that has the highest prestige among the patients or prisoners. In Synanon, it's exactly the opposite. They have created a group where the person showing the greatest evidence of staying off the drug is the one that gets the greatest rewards and the highest prestige. And I think this is the reason Synanon seems to be succeeding while other programs have not. It is quite important to me, as a matter of fact, that we judge people, members of minority groups and others by what they do rather than what they are. So the fact that these people were ex-addicts called up all kinds of images among the people in the community despite the fact that the addicts weren't doing anything that was wrong, illegal. As a matter of fact, they certainly are ex-addicts, but nevertheless what they're doing is keeping themselves off drugs, alcohol, crime—living clean, moral lives and so in my estimation, I thought we ought to judge them by what they are doing rather than by the fact that they are ex-cons or ex-prostitutes or ex-addicts or ex a lot of other things.

"I have been quoted widely in the popular press and a number of magazine articles as saying that Synanon is the most significant attempt to keep addicts off drugs that has ever been made. That statement is correct."¹⁴

"Mr. Harold Leader: I have become acquainted with the people at Synanon. I've been associated with it ever since its inception, and from personal experience—people I know who have been addicted to the narcotic habit and have been in various institutions, and so forth, with the lack of degree of success of kicking the habit, I have seen the same people come here to Synanon and stay free for various periods of time, which are longer than they have ever done in their lives and certainly during the time that I have known them to be suffering from narcotics addiction."¹⁵

"Mr. Ephraim Ralph: My name is Ephraim Ralph. I live at 1343 Ocean Front, Santa Monica, next door on the north side of the Synanon Building. I am the owner of the Synanon Building, and I can honestly say that I had some qualms at first about renting to former dope addicts as narcotics users are commonly called. I inquired about them of former neighbors of Synanon when they were located on the Ocean Front in Ocean Park. I was told that they were well behaved and honest in their dealings. I therefore decided to rent to them and my trust to them has not been misplaced. The people at Synanon have proved to be good neighbors in the full meaning of the word. They are well behaved, always willing to be of help and service. They take care of their obligations. It has been stated by the detractors that they constitute a menace to the young people with whom they come in contact. What a ridiculous

¹⁴ L. PEEK program.

¹⁵ Synanon hearing, op. cit.

charge I have an only child, a 13-year-old girl, and I can testify that Synanon has been no menace to her or to any other of the neighborhood children or young people when they come to the beach. In closing, I would like to remind you gentlemen of the ancient wise saying which goes as follows: 'Anyone who comes to purify himself should be given every encouragement and help.' I feel that those at Synanon are there to purify themselves and should be given encouragement and help by all people of good will." ³⁶

"**Mr. Dederich:** Synanon No. 2 is sort of an experiment with us. We set up a place in a large home, a large private home to maintain mothers and children. We feel that these girls, after they have been here 'x' period of months their proper place is with their children. This creates a little bit of environment, a little more privacy where the mothers can be with their children at all times. This building is an old colonial style home with two stories, a big backyard and a nice front lawn and three bedrooms upstairs, a den, which I have made into a small bedroom for myself on the ground floor and two joining apartments which we have also rented. We know just about what it costs to operate Synanon No. 1 with approximately 50 people and we want to find out how much it costs to maintain a small unit, how much it costs to maintain a small residence of 11 people and to prorate that and find out how much it costs to maintain with 20 people or 25, something we haven't found out for sure yet.

"They take turns on this situation, there are seminars in the daytime and synanons at night. In other words, there's always one mother at home with the children. They have, practically, the same atmosphere that the regular residents have here at the club. Operated almost identically as Synanon No. 1." ³⁷

One mother in Synanon No. 2 told about joining the PTA.

"**Synanon Resident:** I enrolled my little girl in school. I guess about a couple of weeks later I had a pamphlet from the school that they were having a PTA birthday party. I went over and I was asked by some of the mothers if I was interested in PTA work and if I would like to join and, of course, I did want to join. This was something I had thought about—just never had time before and they accepted me of course. I didn't tell them about my problem at the time and when we moved over to this new address I went over and talked to the principal of the school and told her that I was out of her district and told her my problem and told her about Synanon. She said that she would be more than glad to keep (daughter's name) there in school, although I was out of her district, until things were kind of straightened out. I went back to another PTA meeting and she told the mothers about the problem and they just kind of laughed it off and accepted me. This was when they asked me if I would like to be on the board of the PTA." ³⁸

³⁶ *Ibid*.

³⁷ KPFK program, *op cit*.

³⁸ *Ibid*.

RACIAL INTEGRATION AS AN ISSUE AFFECTING SYNANON

"Mr. Dederich: However, I know as a fact from personal interviews in my office that the sub rosa issue is the fact that we have an integrated family here in a segregated neighborhood. We have Negroes, we have white, and we have Mexicans and Jewish and Anglo-Saxons and we have everything tall and short, black and white, and young and old. This seems to offend some people. This is my opinion. In fact it is my knowledge. This has been brought up in the quiet of my office. The original issue now appears to have been so clouded that nobody really knows what it is." ³⁹

"Rev. C. M. Harvey: Whenever you begin to bring into a community 60 or 70 people who are called dope addicts, many people have their basic fear of this because we know so little about it, just stirred up. Also, I think because there are Negroes and whites living together in a huge building that this stirred up latent fears and prejudices and also because you have men and women living in the same building, this also stirred up latent prejudices and some prejudices that are not so latent. All of these put together, plus the fact that it endangered, in some people's minds, the direction which our city seemed to be going in becoming more and more of a resort town, that this seemed to at least threaten, in some people's minds, a possible community where we could be a second Miami or something like this. All of these business, racial, sexual fears were stimulated and as a result action was brought to get them out of here." ⁴⁰

"Synanon Resident No. 9: I would say that it is probably one of the most important factors at this time, the fact that they have mixed races and mixed sexes, especially the Negro people that live in the building with the white people and since they are men and women, Negro men and white women and Negro women and white men. I think that this is probably more important than any other single factor as to why they want to get them away from here." ⁴¹

EFFECT UPON ARREST RATE IN NEIGHBORHOOD

"Mr. Dederich: I am not able to establish any connection between the residence of 80 nonusing addicts in Santa Monica with an increase in narcotics arrests. Now, I may have to be checked on this, but, I do believe that Santa Monica began to enforce a vagrancy addict law sometime since we started and any increase would go up into the hundreds of percents. No resident of Synanon, nor do I believe any ex-resident of Synanon, that is, people who have come and tried and could not make it and had to do more research, has been arrested in this town. I think that is a true statement. No, I cannot see any connection between these two facts. I think when narcotic arrests or doctor's bag arrests go up, it reflects rather the fact that heroin is becoming scarce and that addicts are forced to go into doctor's bags. I would like to take credit possibly for the fact that heroin has been a little bit more scarce since the existence of Synanon here in Santa Monica." ⁴²

³⁹ Synanon hearing.

⁴⁰ KFFK program.

⁴¹ *Ibid.*

"Q Mr. Dederich, since you started Synanon, have law enforcement officers made any arrests on the premises for violation of narcotic laws and if so, how frequent has this been?"

"Mr. Dederich: There have been no arrests of anyone on Synanon premises or of any Synanon member for narcotic laws committed at that time. Now, the various police departments have come down looking for people on old charges. They have taken some with them. I would say three, possibly. But, there have been no arrests on any charge—as a matter of fact, I believe we have one traffic ticket, one moving violation."

"Q Would you care to comment upon the increased arrests statistics in the narcotics field in Santa Monica since 1959? You understand, that since 1959 is the only period of time that the State has collected these statistics, so that is the only period of time that we have to judge from, but the chief of police cites this increase as a reason for closing Synanon."

"Mrs. Lilian Finan: I will be delighted to. In the first place, they knew that there were narcotic addicts all over the place and still are, for years and years and years. But if you throw them in jail, nine chances out of ten, the addict is going to be very happy to be in jail, because you take away his problems. He doesn't have to run around to try to find some money so he can find some dope to shoot in his arm, and he says, 'Okay, they tell me what to do and I get a bed that I never had before, and I have meals and I have clean clothes and I have no responsibility. Great. Support me.' So the City of Santa Monica doesn't want to support drug addicts and so they turn the other way. They hope they will go shoot drugs down another section of the beach. But they want to prove a point. If they want to prove a point, they can make arrests, can't they? Sure, they have made arrests, you bet they have made arrests. But this is a very false statistic, very false. These same people have been here all along."

"Q Mr. Chairman, excuse me for the interruption. I would like to make a comment along that line. I had a conference with the chief of police in April or May, I forget, during the session. I came down here and conferred with the chief of police and the editor of the newspaper and the leading members of the opposition at that time and the first thing that was thrown at me was this alleged increase in the arrest rate for narcotic problems in Santa Monica. And I immediately asked the chief in the presence of the other persons, including the editor of the paper, and the city attorney and his deputy who prosecuted the case, if he would give me the exact statistics and the names and tell me exactly what information he had which led him to the conclusion that there was any correlation between any increase in arrests, not only for addiction problems, but, for any problems, and the existence of Synanon. And he backed down. He just could not and would not and admitted that he could not produce the information to support his position, so my limited encounter with the chief coincides with your opinion."

"Mrs. Lillian Finan: There has never been an arrest in here

"Assemblyman: Yes, we know that" ⁴²

"Synanon Resident: Of the 17 arrests made in this block, one of our neighbors came one night to a Saturday night meeting after reading this report over and over about the 17 arrests and said, 'I'm responsible for 35 percent of that statistic I was arrested five times for drunkenness in this block during that period' " ⁴³

" . . . The police records of the City of Santa Monica show that narcotic arrests in 1959 increased 98 percent over either 1957 or 1958. In the first 10 months of 1960 the increase has been 173 percent ⁴⁴. At the same time, the increase in Los Angeles County as a whole has been only 18 percent. Forty-five persons, residents of Synanon, have registered at the Santa Monica Police Department as ex-convicts. Twenty others are known to have a record of arrests in Santa Monica and other cities. Many of these have done time in state prisons. Since Synanon moved to the 1300 block on the Coast Highway, 17 arrests have been made in that block alone. These have been for vagrancy, lewd conduct, drunk, drunk in autos, etc. The committee believes this to be an abnormal number of arrests for one block in our community. There has been an increase in the number of thefts of doctors' bags from autos, involving narcotics. In 1959, there was one. So far in 1960 there have been 13. In 1959, five drugstores reported burglaries involving narcotics. So far in 1960 there have been eight " ⁴⁵

URBAN v. RURAL LOCATION FOR REHABILITATION CENTER

Louise Randal Pierson, columnist of the Santa Monica newspaper, *The Evening Outlook*, explained the feelings of the people of Santa Monica on the KPFFK program:

"Louise Randal Pierson: Well, that they were afraid. That they got abusive telephone calls because it was known that they were against it. That they worried about their children. That they didn't feel safe on the beach, they didn't feel safe leaving them alone at all down there. Because where these drug addicts or ex-addicts could come and go at will they didn't know what would happen. They worried if they got home at night and the lights were not on, they worry—I think that I would worry if it was next to me or within a few houses of where I lived and I think a great many people in Santa Monica would."

The Mayor of Santa Monica, Mr. Tom McCarthy, had this to say to KPFFK about the location of Synanon:

"Synanon Foundation came to Santa Monica and established a place for the treatment of narcotic addiction. They located within the city in a place which is out of zone. Our city ordinance provides no zones within the city for the treatment of narcotics addicts, for the treatment of mental cases and many other things our codes specifically prohibit. They have located and been convicted

⁴² Synanon hearing, op. cit.

⁴³ *Ibid.*

⁴⁴ This figure differs radically from narcotic arrest figures furnished the Bureau of Criminal Statistics by the Santa Monica Police Department. See Appendix 2-A.

⁴⁵ Report of special citizens committee of City Council of Santa Monica, as reported in the Santa Monica *Evening Outlook*, Dec. 17, 1961.

of a violation of our zoning ordinance and our demand is that they get out there—get out of the spot that they are in because it is a direct violation of our city code.

"I'm not arguing about the purpose, the sincerity of some of the people in Synanon, this may be all right, or may not be, I am not qualified to tell from a medical standpoint. However, until Synanon can comply with the laws of the city, the State and the county and every place else, I think I as Mayor, should object to them. It would be no different to me than establishing any other activity in violation of our zoning code. There has been much testimony *pro* and *con*. I have investigated this Synanon myself. I found that some sincere people are really trying to do a job, but it would be no different than having a church out of zone, a bowling alley out of zone or anything else. I think until that occurs, we cannot condone or sanction Synanon within our city."

"Q. Now, I would like to know your observation. From what you have seen in the operation of Synanon in its relationship with the community, do you feel that a program of this type would be more beneficial and more constructive where it had these lines of communication open and active and involving the community, or do you think it is better to send them out to the country somewhere and let them live in a farmhouse or on some island, where they do not have this communication?"

"Mr. Charles Champlin: It seems to me that the communication is extremely valuable. The point of a rehabilitation operation, it seems to me, is that you are attempting to get people in a condition to go back into society and I think that to remove them as far as possible from society becomes self-defeating."

"Dr. Yablonsky: What if Synanon was moved up into the woods here in the Pacific Palisades or out in the country somewhere? Definitely not. I think the community can benefit from having the Synanon right smack in the community in these ways. The other day I had two individuals from Synanon, and I don't think they mind my talking a little bit about their past record, up to my graduate seminar at U C L A in criminology, and as I said at the end of the lecture and seminar session, if I had my choice of some of the top professors in the country in the field of criminology to come to my class, I think the students could learn more in those two hours from these two fellows than from some of our better trained minds in the field of criminology."

⁴⁶ Synanon hearing, op cit

⁴⁷ *Ibid*

SPONSORS OF SYNANON

The following is a list of the Board of Directors of the Sponsors of Synanon

Dr B Brandehaft
345 N Carmelina Ave.,
Los Angeles, Calif

Bernard W Casselman, M D
8679 W Pico Blvd.,
Los Angeles 35, Calif

Charles D Champlin
9570 Wilshire Blvd.,
Beverly Hills, Calif

Charles E Dederich
1351 Ocean Front,
Santa Monica, Calif

C Mason Harvey
131 Arizona Ave.,
Santa Monica, Calif

Reid L Kimball
1351 Ocean Front,
Santa Monica, Calif

Harold Leader
2530 Motor Ave.,
Los Angeles 64, Calif

Peggie Madducks
15638 Tarzana Dr.,
Tarzana, Calif

Frederick M Nicholas
279 S Beverly Dr.,
Beverly Hills, Calif

Jack Roberts
21900 Pacific Coast Hwy.,
Malibu, Calif

Lewis Yablonsky, Ph D
University of California
Los Angeles, Calif

SYNANON AND THE DEPARTMENT OF CORRECTIONS

The following is a letter written to Walter Stone, Chief, Adult Parole Division, California Department of Corrections by Charles Dederich, Director of Synanon House

Charles Dederich
Chairman
Adaline Ainlay
Secretary

Vincent Cavanaugh
Charles Hamer
David Pagel

SYNANON FOUNDATION, INC
A NON-PROFIT ORGANIZATION
1351 Ocean Front, Santa Monica, California
EX brook 4-1269 EX brook 4-0708

August 17, 1960

MR WALTER STONE
Chief, Adult Parole Division

California Department of Corrections
California State Building No 1
Sacramento 14, California

Copies to

Honorable Edmund G Brown, Governor
Honorable Wellman B Mills, Mayor, City of Santa Monica
Honorable Stanley Mosk, Attorney General
Mr Richard McGee, Director of Department of Corrections
Honorable Richard Richards, State Senator
Honorable Harold K Levering, Assemblyman
Honorable Walter I Dahl, Assemblyman
Dr Donald R Cressley, Chairman, Department of Anthropology and Sociology,
UCLA

"DEAR MR STONE This letter is intended to be in further reference and possible clarification of the issues discussed with you in our telephone conversation of August 15 The Synanon Foundation and its directors by failing to go on record in protest

against the position recently adopted by the Adult Authority feel that they would be in dereliction of their public responsibility. It is our thoughtful opinion that the removal of seven parolees now in residence at Synanon is contrary to the public interest.

"It is our understanding that the young men referred to above have been instructed to disassociate themselves from this foundation by reason of a decision of the Adult Authority based on the ruling of the appellate division of the superior court that Synanon is maintaining a hospital facility in a zone not so designated for that purpose, and that the Synanon approach to the problem of narcotic addiction includes overtones of 'treatment'. We understand further that the department feels that it cannot condone further residence in a place designated by the courts as 'illegal'. Another point of reference from which to interpret Synanon's current legal status could start with the stay of execution granted by the same appellate court pending an opinion of the United States Supreme Court. It could be argued that this stay of execution constitutes permission to continue an illegal or criminal activity which can hardly be termed as sensible.

"We at Synanon are aware that both interpretations cited above are defensible and that neither is indefensible from a purely legal standpoint. However, we feel that in light of other considerations, it may be demonstrated that the proposed disassociation ruling jeopardizes enlightenment on the subject of what many feel to be our gravest social problem. We feel the very real possibility of the destruction of these seven people. In contrast to these dangers we are unable to see anything to be gained by the move.

"I will attempt to point up very briefly a few facts about the socio-psychological phenomenon which elicited the following statement from Dr. Donald R. Cressey, Chairman of the Department of Anthropology and Sociology at the University of California at Los Angeles. Dr. Cressey said in reference to Synanon and I quote, 'This is the most significant attempt to keep addicts off drugs that has ever been made.' Dr. Cressey is, in the opinion of many, the leading authority in the field of criminology in our part of the country.

"The Synanon Foundation has in residence at this time 57 former narcotic addicts representing a cross section of the national picture of those so afflicted. Their history of total abstinence from all drugs including alcohol in any form runs from slightly less than two years down to our newest recruit who has been here a month. Our family as we sometimes call it has placed 18 of its members in full-time employment in the community. Thirteen of our people are participating in some form of college level adult education at UCLA or Santa Monica City College.

"Synanon is a California nonprofit corporation organized in September of 1958 which has been able to demonstrate to the Treasury Department after careful examination on their part the fitness and dedication of purpose necessary to qualify for the tax-deductible privilege. Community acceptance on a public level has been gratifying in the extreme. Local businessmen have provided

employment for our people and make available to us goods and services, such as, day old bread, unsalable vegetables, milk returned from stores, etc., in amounts valued at more than \$4,000 per month.

"The seven parolees who have been a part of this effort for periods of time ranging from 16 months down to two months represent a typical cross section of the Synanon group. The two senior going [sic] men of the seven are employed in the community and are leading clean creative lives in their progress toward emotional maturity. The last five are pointing in this direction and *were* moving at a satisfactory rate. The disassociation ruling is a frightening thing which has resulted in a state of emotional and intellectual confusion. It seems feasible that these men could feel that this action on the part of the Adult Authority is unjust and inhumane in view of the all out effort which they have made to avail themselves of the opportunity to solve their problem. The current state of anxiety has already resulted in one of the parolees taking heroin. It is no surprise to us here that he is the one who has the least time at Synanon under his belt. It was necessary of course, for us to ask this young man to leave our premises. An injection of narcotics is a form of Russian roulette for any person with a history of narcotic addiction and we are hoping that it will not be necessary to check this list of seven names one by one.

"It may very well be that the Synanon experiment which we realize is in its earliest infancy will provide at least a partial solution to the grave social malady which is its dedicated purpose to explore. In view of the above very brief rundown of the highlights of this issue we at Synanon and many others are confused at the position being taken by those in the public service whose duty it is to find answers to social problems. We cannot understand the casual interruption of an experiment which might lead to further knowledge on the subject, particularly in view of the fact that it is placing in jeopardy the very lives of seven people.

"We have always welcomed investigation or visits from any individual or organization. This has been the policy of Synanon since the day of its inception and continues to be so. We are asking you to review once again the facts in this issue in the light of justice, the possibilities of expanding knowledge and man's humanity to man.

"Sincerely,

"C E DEDERICH"

The following is the reply to Mr. Dederich's letter (above) to Walter Stone, Chief, Adult Parole Division:

COPY

Richard A. McGee
Director of Corrections

STATE OF CALIFORNIA

Edmund G. Brown
Governor

Walter T. Stone
Chief

DEPARTMENT OF CORRECTIONS
ADULT PAROLE DIVISION
Room 502, State Office Building No. 1
Sacramento 14, California

"August 23, 1960

MR C E DEDERICH, Chairman
Synanon Foundation Inc
1351 Ocean Front
Santa Monica, California

"DEAR MR DEDERICH: Re your letter of August 17, 1960, I think it is significant that the Department of Corrections made no change in its policy of allowing parolees to reside in the Synanon Foundation until after the convictions of those two counts had been upheld by the appellate division of the superior court. Your contention is felt to be somewhat illogical to ask a state agency to continue to approve the operation of an organization which has been found guilty of two counts of violating code sections by the state courts. Your letter did not mention that several hundred persons have been in residence in the Synanon Foundation, of which 57 are presently in residence and including our seven parolees. Likewise, no mention is made in your letter of the fact that the Adult Parole Division has some 1,300 parolees with a history of narcotic addiction in their background under active parole supervision at this time, and that with the Governor's Narcotics Treatment Control Program, which the Department of Corrections is administering, plus a maximum number of Nalline testing for all parolees who indicate a danger of using narcotic drugs, that the division is not unmindful of this important problem.

"I wish to assure you that the division has been, and still is, most interested in your program of helping persons with a narcotics problem, and sincerely hopes that you will be able to readjust your facilities in such a manner as to meet the legal requirements of the State and its political subdivisions. Until this latter has been accomplished, it is not felt that your organization can be approved (sic) as a residence for parolees of the State.

Very truly yours,

WALTER T. STONE, Chief"

Copies to

Honorable Edmund G. Brown, Governor
Honorable Wellman B. Mills, Mayor, City of Santa Monica
Honorable Stanley Mosk, Attorney General
Mr. Richard McGee, Director of Department of Corrections
Honorable Richard Richards, State Senator
Honorable Walter I. Dahl, Assemblyman
Dr. Donald R. Cressey, Chairman, Department of Anthropology and Sociology, UCLA
Dr. Harold K. Levering, Assemblyman

STATEMENT OF RICHARD A. MCGEE, DIRECTOR OF CORRECTIONS IN REGARD TO SYNANON FOR ART BERMAN

Los Angeles Mirror—September 6, 1961

"The Assembly of the State of California has adopted a resolution calling for an interim committee to study treatment and its success at Synanon and like institutions.

"The Legislature has passed a bill which declares that after September 15 such institutions will be required to meet standards

set by the Board of Medical Examiners. The board then must inspect such programs to make sure they are proper. If the State's board gives medical clearance, the department then will re-examine its position which presently is opposed to permitting parolees to reside at Synanon. (The fact is, the department did have parolees in Synanon but they were removed after the State Appellate Court upheld legal action against Synanon.) If further investigation is deemed necessary into the Synanon program, the department will consider the results of the Assembly inquiry.

"This department long has encouraged properly conducted citizen efforts to help inmates and ex-inmates alike.

"If Synanon develops techniques and programs which appear to work, the department certainly will evaluate them from the viewpoint of their application in connection with its addict program. This is both an individual and a mass problem—about 5,700 addicts are in institutions and on parole.

"This department, however, is not standing still on the narcotics program.

"It, too, has experimented with treatment programs. It now is—based on Senate Bill 81, effective September 15—launching an ambitious new program for control and treatment of the addict.

"This involves something never provided before in conjunction with mass specialized institutional programs for addicts—mandatory prolonged treatment and close followup, with retreatment also mandatory as necessary.

"When a state deals with addicts as individuals but also in the thousands, it has as a necessary objective the ultimate return of such addicts to society.

"Merely keeping them in a protective atmosphere is no final objective. They must be able to stand on their own.

"The department can point to results—admittedly both failures and successes. But the department with its new program hopes for even more success.

"There is still another point. Most addicts in custody or under control of the department are actually committed for some other criminal offense, these range from possible possession of narcotics to burglary through robbery and other felonies. Many have a long-standing pattern of crime. They were criminals first and addicts second. Changing this pattern is a serious task, somewhat more difficult than working with the user who is not otherwise criminal.

"I am sure no one expects a state department to turn its thousands of parolees over to an uncontrolled, unresearched private agency. I can assure you, meanwhile, I would be interested in the complete story of all men and women admitted to Synanon or any other such organization working toward what is our objective, too, rehabilitation of the narcotic addict so he or she is able to return to society."

A letter from Walter Dunbar, under date of August 30, 1962, states that the department's position has not changed since the time of Mr McGee's statement (the text of Mr Duubar's letter follows)

"DEAR MR O'CONNELL Per your inquiry, attached is our present policy in regard to Synanon. We have not changed this policy to date pending the action of the Board of Medical Examiners

"We have been advised that Synanon's application for approval is on file with the board, however, approval of Synanon as a place for addicts recovering from addiction has been withheld pending settlement of Synanon's zoning and building code problems

Sincerely,

Enc

WALTER DUNBAR
Director of Corrections

TESTIMONY BY DR. BERNARD FORMAN

Testimony by Dr Bernard Forman, representing the Department of Corrections at this committee's hearing at Synanon

"Dr. Forman: The history of the Department of Corrections is replete with examples of co-ordination with volunteer citizens and groups interested in help for parolees. The department has a long record of satisfactory co-operative effort with Alcoholics Anonymous, with the American Friends Society, with the Salvation Army and other such organizations. One of the department's major long-range goals has been increased citizen participation in the parole program.

"In the field of trade training for prospective parolees, hundreds of business, labor and professional leaders have been enlisted as members of trade advisory committees to guide training programs so parolees are more ready for outside work. Pilot programs have been set up in three communities, Santa Barbara, Watsonville and Santa Rosa, programs involving committees of local citizens who provide guidance for parolees.

"The department itself has greatly expanded its aid to the ex-inmate during his parole—through, in many cases, smaller parole case-loads, through expanded job placement programs, through parolee counseling and establishment of outpatient clinics for the professional treatment of parolees with psychological adjustment problems. An experiment halfway house is scheduled in connection with the Legislature's recently enacted rehabilitation program for narcotics addicts. Another such halfway house is contemplated for nonaddict parolees—also on a scientific experimental basis. The logical trend very definitely is toward help for the parolee, help based on the results of scientific experiments. The department therefore is interested in all forward steps in this area.

"After Synanon was established, departmental parolees were allowed to reside there. A rather basic question arose, however—that of the legality of the operation. The Santa Monica Municipal Court ruled against Synanon. After the appellate court upheld the ruling that Synanon was operating illegally, the department withdrew its parolees. Certainly the department could not participate in an operation that did not meet standards laid down by law. Since that time the Legisla-

ture has adopted, and the Governor signed, a bill permitting operation of such places subject to inspection and approval by the State Board of Medical Examiners. If the state board, on reviewing the Synanon operation, approves it, the department certainly will consider possible use of the program for some parolees. Before any return to department use, however, the Synanon program must be studied to make sure its existing objectives are proper, its techniques are professional and its criteria for admissions are reasonable. There are some basic questions:

"(1) Are the physical facilities adequate?"

"(2) Are qualified personnel administering the program?"

"(3) Are the activities of the residents supervised on a 24-hour-day basis?"

"(4) Does the program encourage residents to return to normal society and employment?"

"(5) Are there satisfactory records by which to measure results?"

"... The department must have an opportunity to fully examine the program and the record before it can adopt any changed policy regarding Synanon. The department is certainly interested in any workable technique or program developed at Synanon or any other such institution.

"The Department of Corrections itself, however, is not standing still in the area of narcotics control. It has conducted an experimental treatment project for addicts in recent years. At present, and based on Senate Bill 81, the department is launching an ambitious new program for control and treatment of the addict. This bill, in fact, was coauthored by a member of this committee, Assemblyman Nicholas Petris. This involves specialized institutional treatment, close followup on parole and retreatment if necessary. I should point out there are 5,700 addicts in institutions and on parole in the State of California. How many more there are in the State is not certain. But estimates range from a total of 10,000 to as high as 20,000. Addiction is both an individual and a mass problem. Any program for the care and control of addicts—and the protection of society—must be developed, recognizing this fact. When a man or woman addict is sent to the Department of Corrections, he or she usually has another problem—a criminal pattern of living. The department must deal with both, the specific weakness, addiction, and the pattern of living, crime.

"Department of Corrections programs must be planned, researched and applied with this understanding. Any program aimed at solution of this complex problem must be fully evaluated before it is adopted—or approved.

"Q I am very much interested in these tests that have been established by the department as conditions for evaluating or approving Synanon or any place like Synanon which may develop as a result of legislation. Are you familiar with the program at Chino? Came out of Senator Beard's bill two years ago? The experimental program at Chino regarding addiction?"

"Dr. Forman: Yes

"Q Have you had anything to do with the program itself?

"Dr. Forman: Yes I have been associated with the parole phase of the program

"Q Does the department have any statistics regarding the success or failure or results that have been attained there at Chino? Either in the light of these tests or any other tests?

"Dr. Forman: Yes, it does. . . . A two-year report is now in the process of being completed and should be available

"Q It hasn't been published yet?

"Dr. Forman: Not as yet

"Q Well, I am interested in—Now this Synanon program has been described by the director, Mr. Dederich, as an experiment, and I am just wondering, when the department says that it can't be approved unless it has certain professional techniques, what the department has in mind, when it says 'professional techniques' In light of the fact that we all seem to be at sea on this whole problem of treating addiction or fighting re-addiction or rehabilitation and we seem to have an overwhelming number of professionals all over the country applying techniques which just haven't worked, and I am wondering whether some new techniques have been developed or whether the department is just going to apply the standard orthodox techniques that we know about that have been used throughout the country and refuse to approve any other techniques which do not comply exactly with those

"Dr. Forman. I don't think the department is refusing to utilize agencies such as Synanon which use a generally accepted social and psychological technique for the treatment of the addict What it is asking for is that whatever program is established be based on some kind of pilot experimental program by which the results could be properly evaluated If you do not set up some kind of research program you can't talk very much or you can say a good deal but you can't say it very intelligently, from time to time, about what the program is accomplishing

"Q Perhaps I misunderstood In other words, your phrase relating to professional techniques then applies to the evaluation process and recording and research rather than the program itself?

"Dr. Forman: Yes, I think I would—many aspects of the Synanon program are similar to the treatment program utilized at Chino and on parole during the past six years and will be utilized in connection with the California Rehabilitation Center under Senate Bill 81

"Q Do you have, well I have asked you about statistics at Chino

"Q You didn't receive them though

"Q Well, apparently they are not ready You don't have any, do you?

"Dr. Forman: The report is being prepared now and will be available—will be in the director's hands by early November ⁴⁸

"Q Are you familiar—do you know Dr. Cressy, Donald W. Cressy of U C L A ? Are you familiar with any of his writings in the field of criminology regarding the different theories of group treatment wherein

⁴⁸ As of October 1962, this committee was still unable to obtain statistics on the Chino program. We are informed that the Department of Corrections hopes to have some developed in time to present them to the 1963 Legislature

the antisocial elements are encouraged to help each other in their solution of their problem? There is a fancy title which explains Dr. Cressy's theory which was written in 1954 and in 1955—several years before Synanon was ever thought of. As I understand it, Dr. Cressy, after he became acquainted with Synanon, discovered that the very theories that he had proposed on the basis of many years of experience in the field, working in penal institutions and observing them and teaching criminology, he discovered that the very theories he had proposed were being applied here at Synanon, very successfully in his judgment, for the first time anywhere that he knew of in the country.

"I am thinking specifically of his theory that holds in part that the problem of trying to channel the thinking and the attitudes of the addict or ex-addict or any person with a criminal record, or let us say a convict who was in an institution, anybody who has had this type of problem of antisocial conduct. He defined it in a hearing in Sacramento as follows. He said that one of the big problems is to try, No 1, to change the basic orientation in thinking of this person from a destructive attitude or antisocial to a constructive attitude. That one of the things that influences and governs the shaping of this attitude is the attitude of the group. Now, when this group is in a federal prison or state prison or a state hospital, even a federal narcotics hospital they acquire status among themselves by bragging about their previous antisocial exploits when they are having their bull sessions, for example in the absence of the warden or the guard or the doctor or the nurse or the trustee, that person that can come up with the best story about how bad or how tough he was on the outside becomes a hero. Whereas here at Synanon the highest status is conferred by mutual agreement and admiration of the coresidents on that person who can claim that he has had the longest record of constructive conduct, to wit, being free and clear of addiction for the longest period of time or having studied certain books that he had never thought of studying before which stimulate his intellectual interests and also his interest in returning to society in a very constructive capacity.

"Now without laboring this too much, this seems to me to be the key distinction between the Synanon program and all of the other programs that I have heard and read and learned about and this is only made possible because there are no guards or administrators or wardens or any of the group that constitutes the restrictive element that confines these people, confines their thinking and prevents this free expression on their own part toward a constructive outlook. In other words, when you get into an institution whether it's a hospital or a prison, you automatically have built into it the psychology or the attitude of 'it's we versus they.' We are the inmates, they are the administrators. They could be the most Christian, the most tolerant, the most understanding, it's just in the very nature of things—by definition they are traditionally and classically and immediately set apart from each other, regardless of their own attitude and the key to the operation here at Synanon seems to be that there are no such people here. That everybody works together and have their bull sessions and their group discussions and all these other things, many of which are done at Chino. It isn't the staff on one side and the residents on the other, it is all the residents

together plus some cases when they have the synanons that are not closed and confined to the residents they have the visitors and the doctors and others who do come in to help in the program

"Now in the light of this, assuming that this is a fairly accurate representation of part of the Synanon program, would the Department of Corrections in your judgment refuse to approve it because it doesn't fit into accepted patterns and techniques?"

"**Dr. Forman:** Not at all. I agree wholeheartedly with much of your statement. I too feel, and I am sure the department and many of the department personnel do feel, that treatment could be more effectively accomplished in a real life community setting than in the somewhat artificial confines of a prison. But, unfortunately, people do go to prison, they do go to mental hospitals and we have to establish the best kind of programs for them in these places. I am sure the department has co-operated with Synanon in the past and will do so again at such time as this matter of illegality of this operation is resolved.

"**Q:** Do you feel that is the main stumbling block, the legal status? Suppose the legal status were to be cleared tomorrow, and there is no further problem from the standpoint of zoning or whatever the problem now is?"

"**Q:** You weren't talking about zoning only, were you?"

"**Dr. Forman:** I was talking about whatever violations of local code and State ordinance were involved. It was violations of the Business and Professions Code—operating as a hospital and zoning—whatever has been involved. The department just could not say, 'Here is an operation which is being sued by the community.'

"**Q:** Is that the reason why the—"

"**Dr. Forman:** This is the essential reason why we would give the parolees—"

"**Q:** Was that the only reason?"

"**Dr. Forman:** I think there was some question again as to the professional qualifications of the staff here but I am sure that this would not have been the overriding reason that Synanon had not gotten—"

"**Q:** Are you telling us that if the approval set forth as a condition in Assemblyman Petris' bill was granted by the Board of Medical Examiners, that your department still would not permit parolees to be associated with Synanon? Is that the current thinking of the department?"

"**Dr. Forman:** I hope I didn't give you that impression.

"**Q:** Well, that would still leave open the question of violation of local law.

"**Dr. Forman:** Oh, yes.

"**Q:** But you have obtained approval as envisioned in Assemblyman Petris' bill and we are stipulating that as a premise here. If that approval were granted, are you stating that the department's position is that that is not enough? It is a matter of principle—violation of local law. It precludes permitting parolees to associate here. Then before you answer that, if that is so, then do we have a State Department of Corrections that's reduced, in administering its responsibilities, to whatever any given local community decides is or is not acceptable?"

we have been very limited in group counseling for parolees in general, but, with respect to our narcotics program these small intensive units which we have established, three here in the south and one in the north, group counseling is a very valuable tool and utilized extensively.

"I would like to emphasize again it seems to me that the impression I get sitting here in this seat, is that the committee feels that the department is an opponent of Synanon and this is not the case at all. We merely feel that, as a state agency, we could not continue to co-operate with Synanon at such time as it was involved in litigation. As soon as this matter is cleared up and conforms with, receives approval with the Board of Medical Examiners, we will ask for Synanon's help. We want to do all we can to help out.

"Q I think that is exactly what this committee, or at least I, as chairman, would like it to be. I know that the Department of Corrections has been handicapped in the past by lack of funds and so on to do what I consider to be the kind of job with parolees that has to be done and I would hope that the department would co-operate as much as it possibly can with Synanon provided that it is satisfied that Synanon has something to offer. And I hope that the department would make it its business to determine whether or not Synanon has something to offer. I think that is about as fair a way to put it as it can be put.

"Q I am being pedantic I think, but Dr. Forman, just for the record, and I wonder if you would agree with me, you used the term 'illegality of operations' several times. This seems to imply more than I think is involved here. Would you agree with me that that term could be changed to the question legality of location rather than illegality of operation? I think it looks better in the record.

"Dr. Forman: This is an unfortunate use of the term. It is violation of local ordinance, I would say that.

"Q It is primarily the zoning problem. I mean, assuming for the moment that the Board of Medical Examiners is going to approve. Have you had anything—the Department of Corrections in other situations where a parolee might be working in a store or something and the owner might be involved in zoning or other problems of local ordinances where you have withdrawn the parolee?

"Dr. Forman: Never. We have never—

"Q Wouldn't it be possible to put parolees in Synanon as long as the matter is in litigation? It is not illegal as long as the court has withheld execution by the city on any of its attempts to move Synanon.

"Dr. Forman: I would say it is possible. I think that the first step would be to achieve approval. Yes, I think the first step would be for Synanon to obtain approval by the State Board of Medical Examiners and the other question of litigation would again be reviewed by the director.

"Q Well, is it fair to say that if the Board of Medical Examiners gives the approval under the Petris Bill, that at least you will consult the Attorney General or some legal counsel to determine whether or

not it is possible to continue to co-operate while this matter is being litigated?

"Dr. Forman: I think it is very possible

"Q I want to be clear in my mind as to your statement as to why Synanon has not been approved. I understood you to say in your initial testimony one of the reasons was that there wasn't any trained personnel here that met the requirements of the department. Is that a factor?

"Dr. Forman: I think that this is a factor. I don't feel it is a factor which precludes co-operation between the department and Synanon. I think it is something which the department would desire. We feel that there is nothing dirty or untoward about the term professional, having professional staff, would in any way endanger Synanon's operations.

"Q No, but I want to be clear in my own mind that you aren't saying—or are you? That is what I want to be sure of, that if we had the zoning problem taken care of and if we got the medical approval why then automatically Synanon would be all right as far as a place for parolees. Or is there this additional problem in the mind of the department and, if so, that is what we are trying to explore, not having the people that you feel are adequately trained.

"Dr. Forman: I think there is the additional question which is a reasonable one as Mr. O'Connell stated, is the program here a useful one, an effective one? This involves the additional question as to whether Synanon was a useful program, whether it was in fact helping drug addicts. We would like to see some kind of data accumulated. Mr. Dederich has already indicated that some research program is underway so this is fine. We would like to know whether the operation of Synanon is in fact kosher, that there is nothing untoward about the people who run the operation.

"Q Wouldn't it be right to say that the burden of determining that, one way or the other, is on you, the department?

"Dr. Forman: Yes. Let me say this.

"Q My next question is, at what point do we know the answer?

"Dr. Forman: Let me say that if Synanon did receive, in fact, the approval of the Board of Medical Examiners, I could not see how the Department of Corrections would then have very pointed questions to ask about its operation because, the point which I raised in my statement would certainly be covered by the Board of Medical Examiners when it came to making its investigation, such things as professional staff and collection of data, and the like. I am sure it would all be covered by the Board of Medical Examiners.

"Q I want to state a couple of things for the record and then ask a couple more questions. I agree wholeheartedly with what the chairman said. My desire is to see that the lines are kept open and that the department really hasn't closed its mind and, if it is truly a matter of this legal obstacle then it is only temporary and you will re-evaluate it at the proper time, why that reflects my desire too. I wanted to point out that the group is embarking upon a research program with the federal authorities. We are going to hear more about that later and the Public Health Committee of our Assembly has been assigned the task by the Rules Committee pursuant to a resolution which I introduced

which is designed primarily to get statistics and do some research and make a survey of some kind and find out what has been going on in the past and Synanon people have indicated a willingness and eagerness to co-operate with that committee for that purpose too. Now, I wanted to ask whether this policy of not permitting parolees to become residents of Synanon during this period whether that policy also applies to individual deputies or parole officers. Is there any ban against them coming to Synanon to visit it for their own observation or other purposes?

"Dr. Forman: Oh, not at all.

"Q: Are they free to come in at any time?

"Dr. Forman: Oh, yes. I am sure that some of our agents have been here.

"Q: Since the ban? To your knowledge does the County Probation Department have the same policy as the state parole?

"Dr. Forman: To my knowledge it does.

"Q: It does. Now who makes the policy for the State? Who is going to decide all of these things? Is this your function? Will you make a recommendation from this area up to the director of corrections or how is that going to be determined?

"Dr. Forman: Well, I think the essential points have been covered. The approval by the state board and the resolution of some of the legal difficulties here.

"Q: Yes, but I mean after that.

"Dr. Forman: After that I think it is almost a matter of the director's approval, his discretion. I would, of course, as regional administrator, make a report to the director regarding—

"Q: Well, that is what I want to find out. The director has the biggest prison population in the country to worry about plus all his other problems, and I didn't think that he would be on top of this every day. I am trying to find out where in this structure most of the work will really be done and where the recommendations will be made before he makes his decision. Will that come out of your office?

"Dr. Forman: I think most of the work will come out of our office. I think that the director has had a good deal more information and he is much more abreast of the situation than you might expect. The present narcotics thing has been a hot —

"Q: I have had many discussions with him on it. I assure you. Thank you.

"Q: Dr. Forman, in October 1960, there were 20,773 inmates under the direction of the board of corrections in California. I asked at that time that the department give me some information about the psychiatrists and correctional counselors and people of the professional type who are treating these people. At that time the department had authorized 10 full-time psychiatrists of which three positions were filled. Six one-quarter-time psychiatrists of which all positions were filled. Three psychiatrists, Chief Correctional Facility, two of which were filled. Under Clinical Psychologists, No. 1, there were six positions

authorized, of which none were filled. In that category a person must have completed a Ph D requirement, except for foreign languages, and an internship of at least one semester. In another category, Correctional Counselor, No 1, there were 86 positions listed of which 78 were filled. In this category, the Correctional Counselor, grade No 1, the minimum requirement for employment is the equivalent of college graduation plus one year as a paid trainee in the Department of Corrections. Now under the Department of Personnel's job classification description of that personnel is included this phrase: 'He does technical therapeutic work involving examination, classification, diagnosis, group and individual therapy.' This is one year of college, excuse me, equivalent of college education and one year as a trainee. Is this still the situation? Apparently at that time these were the people who were doing most of the group therapy work with the inmates of the whole State.

"Dr. Forman: We would have to differentiate I think to some extent between our group counseling program and group therapy. Now the department launched a rather ambitious group counseling program some years ago, I guess seven or eight years ago. And about half of all the inmates in the institutions there are . . . in this group counseling program. But this is not the—this is different from our group type of therapy program, which has as leaders, a clinical psychologist and psychiatrist, professionally trained and skilled people. But the counseling program would be on a somewhat different level, perhaps it might be equivalent to what the group here at Synanon would be doing.

"Q. That is the impression I got.

"Dr. Forman: Yes, I believe so.

"Q. Well, have you employed since that time a great many more psychiatrists and clinical psychologists?"

"Dr. Forman: I don't know. It is unlikely, considering salaries paid by the State. It is unlikely the situation has changed radically.

"Q. There is an interesting difference in salary classification between the grade one clinical psychologist who has a much higher minimum training requirement and the correctional counselor. The psychologist is paid \$530 a month, and a grade one correctional counselor is paid \$613 a month, which might have something to do with the fact that none of those positions were filled.

"Dr. Forman: The Grade One Psychologist is not the journeyman psychologist. That is a Grade Two Psychologist. The pay is certainly higher than the Correctional Counselor. The Grade One Psychologist is a trainee, is learning the ropes. He has got some background in education and he is getting some practical experience.

"Q. There is listed a correctional case work trainee but that is separate, and there were 12 of those positions, seven of which were filled. Is a Correctional Counselor No. 2 a more advanced step? There were 44 of those authorized of which 34 were filled. But among the psychologists you had six authorized but none filled in the grade 1 classification, 19 authorized, 14 filled in grade two, and three classified as group No 3. That is in the entire Department of Corrections. Unless

you have a great many more people than that now you aren't really able to give very extensive psychiatric treatment to the people in your program, are you?

"Dr. Forman: We can give an adequate amount of psychiatric treatment to those people, those inmates, who are in need of psychiatric attention. Now those inmates who are psychotic, very psychoneurotic, are housed at our California Medical Facility at Vacaville. This is a medical institution. Here you will find the highest concentration of psychiatrists and psychologists. Now for the bulk of the prison inmate population this kind of treatment is not needed nor is it desired.

"Q: How about narcotics addicts?

"Dr. Forman: For narcotics addicts we had—well, the experimental program at Chino has clinical psychologists who do the therapy and, of course, medical psychiatric supervision and a qualified medical staff. For other narcotic, former narcotic addicts, spread throughout the prison system they have the normal medical facilities available. They may not have any specialized psychiatric—

"Q: I have tried to listen carefully and perhaps we have a semantic problem here. If the Board of Medical Examiners grants approval, and if you find that the work being done here is useful, would it be a fair statement of your position that you would have an open mind about the possibility of working co-operatively with Synanon until there has been a final determination and affirmative action by the courts that there is a violation of local zoning laws? You have a problem, we may have a case that is in court for a year and a half or two years and it is of some real moment whether you are going to assume that the action taken by a lower court is final or whether you are going to assume the matter has not been finally adjudicated and therefore this does not prejudice Synanon's case if they meet these other two standards that I mentioned. Now is that a fair statement of your position?

"Dr. Forman: That is a fair statement. I certainly would feel this way. Whether or not the Director of Corrections and Governor Brown would feel the same way I do not know, but I certainly would support this, because we want to use whatever is available to the community to help solve this problem, and if it means that Synanon has a service which we can utilize but is tied up for three, four, or five years in litigation, it seems a shame that we could not come in and utilize it."

The following letter from the executive officer of the Board of Corrections is in reply to this committee's inquiry regarding the whereabouts of the parolees withdrawn from Synanon.

"September 27, 1962

"In response to your request of September 26th, the following detailed information is furnished concerning the dispositions of adult male parolees who were required to relinquish residence at Synanon as the result of departmental policy. Information concerning the following four men is derived from our own records.

PAROLEE NO 1—"Parolee No 1 was released to parole supervision February 10, 1960. He was granted permission to reside at Synanon, April 20, 1960. He remained there until September 14, 1960. On March 15, 1962, he was confined at the Narcotic Treatment Control Unit after apparently reverting to the use of narcotics. He was released from that unit on June 1, 1962. Since that time he has continued in the community under parole supervision.

PAROLEE NO 2—"Parolee No. 2 was paroled February 3, 1960. He entered Synanon June 8, 1960. It was reported to us that he was expelled from Synanon August 17, 1960, after admitting the use of narcotics.²⁰ In any event, he left Synanon that date. Subsequently there were 13 consecutive negative Nalline tests. He was arrested October 17, 1960, on a charge of possession of narcotics but was found innocent in Los Angeles Superior Court and was released March 10, 1961. On May 17, 1961, Parolee No. 2 failed to report for a Nalline test. On June 2, 1961, the Adult Authority suspended his parole and ordered his return to prison as a parole violator at large. On November 4, 1961, he was arrested by the Los Angeles Police Department and booked as a parole violator and subsequently ordered to the Narcotic Treatment Control Unit. He was released on May 2, 1962. After coming out of the Narcotics Treatment Control Unit he resided at Crenshaw Home. On July 15, 1962, he was arrested for loitering by the Los Angeles Police Department and served 30 days in the Los Angeles County Jail. On August 31, 1962, it was recommended by his parole agent that his parole be violated in order to preclude the commission of a new offense. The agent noted the circumstances of the loitering conviction, unauthorized association with another parolee and drinking to excess and evidence of emotional disturbance and felt that he had been tendered all available parole resources but had failed to make satisfactory progress. He was received at the San Quentin Parole Violator Unit, September 14, 1962.

PAROLEE NO 3—"Parolee No 3 was paroled February 4, 1960. He entered Synanon March 6, 1960, and remained there until approximately August 10, 1960. He was ordered sent to the Narcotics Treatment Control Unit. November 11, 1960, after apparently relapsing to the use of narcotics. He was released on February 3, 1961, and apparently refrained from narcotics use until he absconded from parole supervision the last week in April 1961. Because of his flight, the Adult Authority suspended his parole and, while under that condition, he was arrested by the Los Angeles Police Department on May 27, 1961, charged with the robbery of a pharmacy. Subsequently convicted, he was returned to prison, July 11, 1961, with a new term.

PAROLEE NO 4—"Parolee No 4 was released on parole May 13, 1959. He took up residence at Synanon approximately March 17, 1960, and left there on September 1, 1960. Almost at once he absconded from parole supervision and was subsequently apprehended and returned to prison as a technical parole violator to finish his term on January 23, 1961. He is still in prison.

"Information concerning the following three men is taken from our records and supplemented by information from the records of the Bureau of Criminal Identification and Investigation for the period subsequent to their discharge and parole.

PAROLEE NO 5—"Parolee No 5 was paroled December 1, 1959. He went to Synanon February 15, 1960. He left Synanon once, relapsed to the use of drugs and was readmitted. He left at the order of the Parole Division on September 14, 1960. On December 27, 1960, he was released from the Los Angeles County Jail after having served 30 days.²¹ He was discharged from parole on January 15, 1961, and, as a consequence, was free of any state control subsequent to that period. On April 5, 1961, he and Parolee No 6 (below) were arrested by the Los Angeles Police Department on a charge of burglary and were subsequently sentenced to six months in the county jail.²² There have been no subsequent arrests reported by any law enforcement agency.

PAROLEE NO 6—"Parolee No 6 was paroled on March 29, 1959. He went to Synanon September 25, 1959, and remained until August 15, 1960, more or less

²⁰ Actual names have been deleted and number substituted by the committee.

²¹ See letter from Charles Dederich to Walter Stone, *supra*.

²² Apparently the result of an arrangement with the Department of Corrections as he was not sentenced for a crime but served this time for failing Nalline test while on parole.

²³ Parolees five and six were convicted of burglarizing a pharmacy.



Charles Dederich testifying at Synanon hearing



Synanon board of directors



At signing ceremony for A.B. 2626



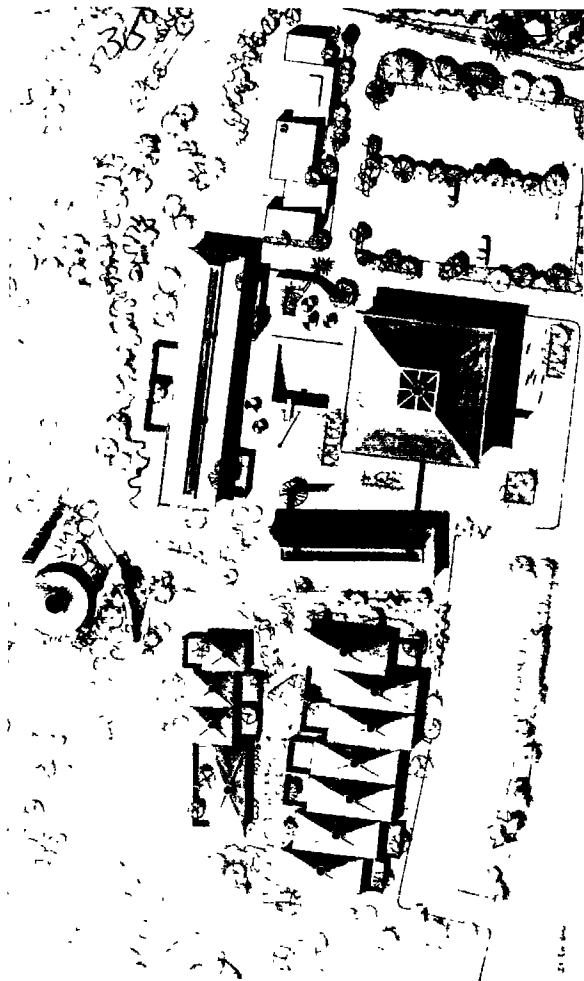
Dr. T. Hemmi, Chief Psychiatrist, Nakano Prison, Tokyo, talking with Reid Kimbell, a member of Synanon's board of directors



Withdrawal treatment



A seminar at Synanon



Aerial projection of proposed facility at Malibu



Members of Synanon's jazz band



Daily life at Synanon



Daily life at Synanon

continuously. It is reported that he left there frequently for short periods of time. He was discharged from parole March 29, 1961. On April 5, 1961, he and Parolee No. 5 were arrested by the Los Angeles police and he, too, was sentenced to six months in the county jail.⁵² There have been no further reports from any law enforcement agency.

PAROLEE NO. 7—Parolee No. 7 was paroled January 3, 1959, and he went to Synanon May 13, 1959. He left there on June 4, 1959. He returned, however, to Synanon on February 27, 1960, and remained there until August 15, 1960. He was discharged from parole on October 3, 1960, without having evidenced any use of narcotics. After October 3, 1960, of course, he was free to return to Synanon. As a matter of fact, he did attend Synanon meetings periodically until his arrest on April 11, 1961, for 'mailing.' He was convicted on this charge and was sentenced to 90 days in the county jail. He was released from the county jail on June 14, 1961. Since that time he has collected four or five rap sheet entries including a couple on which it appears he served five days. The latest entry is on July 19, 1962, by the Santa Monica Police Department for investigation. He was deemed 'not arrested.'⁵³

Very truly yours,

WALTER L. BARKDULL
Executive Officer
Board of Corrections'

APPENDIX 2-A

STATE OF CALIFORNIA

Interdepartmental Communication

To:

Assembly Committee on Criminal Procedure
State Capitol, Sacramento

From:

OFFICE OF THE ATTORNEY GENERAL
Department of Justice
Bureau of Criminal Statistics
P.O. Box 1583, Sacramento

DATE: October 18, 1961

FILE No

SUBJECT: Narcotic Statistics
for Santa Monica, Long Beach,
and Pasadena

Pursuant to your telephone request of October 16, 1961, we are providing the attached unpublished material for the information of the committee. Following traditional bureau policy, copies are being sent simultaneously to the chiefs of police of the named cities.

Long Beach and Pasadena were selected as being somewhat similar to Santa Monica in composition and in procedures for handling narcotic arrest reports.

FRED A. KNOLES, Chief
Bureau of Criminal Statistics

⁵² Parolees six and seven are now back at Synanon as residents. Parolee six returned several months ago. No. 7 has been back only a few weeks.

⁵³ Since June 14, 1961, Parolee No. 7 has had two arrests in which the disposition noted is 'released—deemed not arrested.' Two traffic violations resulted in a five-day jail sentence.

Notes

In general, the data in the tables refer to arrests under provisions of 11721 H&S Code. In addition, arrests are shown if the arrest information submitted indicated the arrestees were known or believed to be users of heroin-type narcotics. This would be true even where the arrestees were charged with felony narcotic offenses. For this reason the data are not in the same terms as previously published data. In addition, they may not agree with information maintained in files of the police departments in the three cities. Also, all of the arrests were not necessarily made by the city police departments. The State or Federal Bureau of Narcotics or sheriff's office may have made some of the arrests and merely used the cities' jail facilities. However, all of the arrests were reported as having been made within the confines of the cities indicated.

Except where clearly indicated, all information shown is in terms of arrests and not in terms of separate individuals.

There was no particular reason for selecting Long Beach and Pasadena for comparison except that both cities are in the same general area as Santa Monica and have similar volumes of narcotic arrests. It will be noted that Long Beach is shown as having no arrests of addict-user for July 1959 or June 1960. This may have actually been the case or they may have omitted to submit arrest reports. This possibly is what occurred in July 1959 when the reporting project had just begun.

Table 1 shows that in Santa Monica 90, or 54.5 percent of the addict-users had at least one arrest for a narcotic violation somewhere in the State prior to the arrest shown in the table. In Long Beach this percentage was 48.9 and in Pasadena it was 38.2. This might be interpreted as meaning that the addict-users arrested in Santa Monica are a more repetitive type offender than those arrested in the other two cities. The ratio of rearrests to initial arrests in Santa Monica became greatest in September 1960 and had continued since then. The other two cities did not show this same pattern.

Table 2 shows the total addict-user arrests and the number of individuals arrested. The 165 arrests in Santa Monica were of 133 different individuals. This means that 32 persons had more than one arrest in Santa Monica for the period shown. In Long Beach 21 individuals had multiple arrests as compared to 31 in Pasadena. From Table 2, Santa Monica had a higher percentage of multiple arrests of the same offenders than did Long Beach but a lesser percentage than did Pasadena. One interpretation of this might be that the addict-users arrested in Santa Monica were more mobile than those found in Long Beach, but less mobile than those in Pasadena. The data do not support a firm statement to this effect.

Table 3 gives the sex of arrestees in the three cities shown. In Santa Monica 17.6 percent were females as compared to 10.5 percent in Long Beach and 14.1 percent in Pasadena. There were no juvenile addict-user arrests reported in Santa Monica whereas Long Beach reported six and Pasadena two. None of the three cities reported arresting juvenile females.

The prior criminal record of addict-users arrested is given in Table 4. The term "none" means that the arrestee had no prior record identifiable from CII "rap sheets." "Minor" includes all persons who had a prior record of an arrest without conviction or a record of a conviction resulting in a jail sentence of something less than 90 days. "Major" includes those individuals with prior jail sentences of over 90 days or felony probation sentences. "Prison" denotes that the arrestee had previously been committed to prison at least once.

Table 4 shows that in Santa Monica 4.9 percent of the arrestees had no identifiable record, 20.0 percent had minor records, 53.9 percent had major records, and 21.2 percent had prison records. In Long Beach these percentages were 8.3, 26.7, 45.0, and 20.0 respectively. In Pasadena they were 7.6, 18.2, 47.7, and 26.5.

Table 5 is similar to Table 4 except that it shows the prior narcotic records of arrestees rather than their overall criminal records. In Santa Monica, 16.4 percent of the arrestees had no prior narcotic record, 29.1 percent had minor narcotic records, 47.3 percent had major narcotic records, and 7.2 percent had prior narcotic prison records. In Long Beach these percentages were 24.5, 30.0, 33.3, and 12.2 percent, respectively. In Pasadena, they were 20.0, 20.0, 44.1, and 15.9.

Section 11721 H&S Code requires that the convicted addict-user be given a minimum 90-day jail sentence. This type of sentence would place the arrestee in the "major" prior record group. Santa Monica appears to have the highest percentage of arrestees in this particular group for criminal record as well as narcotic record.

Table 6 gives the probation or parole status of arrestees at the time of their arrest. "None" means that the arrestee was not known to be under any type of supervision. "Department of Corrections" refers to arrestees on parole from the California prison system at the time of the arrest. In like manner, "CYA" refers to those on parole from one of the California Youth Authority institutions at the time of arrest. "Other" includes misdemeanor probation, felony probation, federal parole or probation, out-of-state parole or probation and juvenile court wards.

Table 6 shows that in Santa Monica 44.3 percent of the arrestees were not under supervision, 9.7 percent were on parole from the Department of Corrections; 12.1 percent were on parole from the Youth Authority, and 33.9 percent were under other types of supervision—primarily county probation. In Long Beach these percentages were 58.9; 6.1, 11.7, and 23.3 percent, respectively. In Pasadena they were 52.4, 15.9, 2.9, and 28.8. These figures indicate that a higher percentage of arrestees in Santa Monica were under some type of supervision than were those in the other two cities.

TABLE 1
ARRESTS FOR NARCOTIC ADDICTION OR USE^a
Reported in Three California Cities—July 1959 to June 1961—Showing Initial Arrests and
Rearrests—By Month and Type of Arrest

Month of arrest	Santa Monica			Long Beach			Pasadena		
	Total	Initial ^b	Rearrests ^a	Total	Initial ^b	Rearrests ^a	Total	Initial ^b	Rearrests ^a
1959									
Total.....	165	75	90	180	92	88	170	105	65
July.....	3	3	--	--	--	--	5	5	--
August.....	5	5	--	2	2	--	18	15	3
September.....	9	6	3	5	5	--	6	3	3
October.....	8	6	2	9	6	3	8	6	2
November.....	6	5	1	3	3	--	9	9	--
December.....	4	4	--	1	1	--	6	4	1
1960									
January.....	3	2	1	14	11	3	14	10	4
February.....	4	3	1	2	2	--	7	6	1
March.....	9	6	3	5	--	5	13	8	5
April.....	7	3	4	4	4	--	6	2	4
May.....	5	2	3	9	6	3	8	6	2
June.....	8	4	4	--	--	--	9	4	5
July.....	8	4	4	5	3	2	4	2	2
August.....	5	2	3	--	--	--	1	1	--
September.....	10	2	8	4	2	2	2	2	2
October.....	5	2	3	10	3	7	7	3	4
November.....	3	1	2	5	2	3	10	5	5
December.....	10	2	8	19	8	11	8	3	5
1961									
January.....	10	3	7	28	15	13	7	3	4
February.....	9	1	8	6	1	5	4	3	1
March.....	6	2	4	15	3	12	--	--	3
April.....	9	3	6	10	4	6	8	4	4
May.....	10	2	8	12	4	8	2	3	1
June.....	11	3	8	7	4	3	3	1	2

^a Includes arrests under 11731 H & S Code and other arrests which included alleged use of heroin-type narcotics

^b First recorded narcotic arrest since July 1, 1959

^c Having already been arrested in the State at least once since July 1, 1959, for some narcotic offense

TABLE 2
ARRESTS FOR NARCOTIC ADDICTION OR USE^a
Reported in Three California Cities—July 1959 to June 1961—showing Number of Times
Individuals Were Arrested in the Same City

	Santa Monica			Long Beach			Pasadena		
	Total arrests	Total individuals	Percent	Total arrests	Total individuals	Percent	Total arrests	Total individuals	Percent
Total.....	165	133	100 0	180	159	100 0	170	139	100 0
One arrest only.....	112	112	84 2	140	140	88 1	115	115	82 8
Two arrests only.....	24	12	9 0	34	17	10 7	40	20	14 4
Three arrests only.....	21	7	5 3	6	3	1 2	6	2	1 4
Four arrests only.....	8	2	1 5	--	--	--	4	1	0 7
Five arrests only.....	--	--	--	--	--	--	5	1	0 7

^a Includes arrests under 11721 H and S Code and other arrests which included alleged use of heroin-type narcotics

TABLE 3
ARRESTS FOR NARCOTIC ADDICTION OR USE ^a
Reported in Three California Cities—July 1959 to June 1961
By Month of Arrest and Sex

Month of arrest	Santa Monica				Long Beach				Pasadena			
	Total	Adult male	Adult female	Juvenile male	Total	Adult male	Adult female	Juvenile male	Total	Adult male	Adult female	Juvenile male
1959												
Total	165	136	29	--	180	155	19	6	170	144	24	2
July	3	2	1	--	--	--	--	--	5	3	1	1
August	5	4	1	--	2	1	1	--	18	15	3	--
September	9	5	4	--	5	4	1	--	5	4	1	--
October	8	7	1	--	9	8	1	--	8	6	2	--
November	6	6	--	--	3	--	1	--	1	1	--	--
December	4	4	--	--	1	--	1	--	5	4	1	--
1960												
January	3	2	1	--	14	13	--	1	14	13	1	--
February	4	3	1	--	2	2	--	--	7	7	--	--
March	6	5	1	--	5	5	--	--	13	11	2	--
April	7	5	2	--	4	3	1	--	5	4	1	--
May	5	4	1	--	9	9	--	--	8	7	1	--
June	6	5	1	--	--	--	--	--	9	7	2	--
July	8	7	1	--	5	4	--	1	4	3	1	--
August	5	5	--	--	5	5	1	1	2	2	--	--
September	10	8	2	--	4	3	1	--	4	4	--	--
October	5	5	--	--	10	8	2	--	7	7	--	--
November	3	3	--	--	5	4	--	1	10	10	--	--
December	10	7	3	--	19	17	2	--	8	6	2	--
1961												
January	10	9	1	--	28	26	2	1	7	5	2	--
February	9	7	2	--	6	6	--	1	4	3	1	--
March	9	5	4	--	15	13	2	--	3	3	--	--
April	9	6	3	--	10	8	2	--	6	7	1	--
May	10	9	1	--	13	11	1	--	4	3	--	1
June	11	9	2	--	7	6	1	--	3	3	--	--

^a Includes arrests under 11721 H & S Code and other arrests which included alleged use of heroin-type narcotics

TABLE 4
ARRESTS FOR NARCOTIC ADDICTION OR USE *
Reported in Three California Cities—July 1959 to June 1961
By Month of Arrest and Prior Criminal Record

Month of arrest	Santa Monica					Long Beach					Pasadena				
	Total	None	Minor	Major	Prison	Total	None	Minor	Major	Prison	Total	None	Minor	Major	Prison
1959	155	8	33	89	35	180	15	48	81	36	170	13	31	81	45
July.....	3	--	--	2	1	--	--	--	--	--	5	--	2	1	2
August.....	5	1	1	2	1	2	1	--	--	1	18	6	4	8	--
September.....	8	1	1	7	1	5	1	1	2	1	5	1	--	3	2
October.....	8	1	1	3	3	9	--	1	5	3	8	1	3	1	3
November.....	6	--	1	4	1	3	2	--	1	--	9	--	2	3	4
December.....	4	--	2	2	--	1	--	--	1	--	5	--	1	3	1
1960															
January.....	3	1	--	--	2	14	2	4	5	3	14	--	4	7	3
February.....	4	1	1	--	--	2	--	1	1	--	7	--	--	5	2
March.....	4	--	3	5	1	5	--	3	1	1	13	1	3	7	2
April.....	9	--	2	5	--	4	--	2	3	--	8	1	3	2	1
May.....	5	--	--	5	--	9	1	4	--	--	9	--	1	4	1
June.....	6	1	1	3	1	--	--	--	3	1	9	--	1	4	4
July.....	8	--	2	6	--	5	1	--	--	--	2	--	1	2	1
August.....	5	--	2	9	--	6	1	2	1	2	4	--	--	--	2
September.....	10	--	2	5	3	4	--	5	2	1	7	1	3	3	3
October.....	3	--	--	2	1	5	--	--	3	7	10	1	1	6	3
November.....	2	--	1	1	--	5	--	--	5	--	8	1	1	5	1
December.....	10	1	1	6	2	10	--	8	9	2	8	--	--	--	--
1961															
January.....	10	1	2	2	5	28	5	10	10	3	7	--	--	3	4
February.....	9	--	2	5	2	6	--	1	3	2	4	1	1	1	1
March.....	6	--	2	2	2	15	1	1	9	4	3	--	2	1	1
April.....	9	1	1	7	--	10	--	2	9	3	4	--	--	3	1
May.....	10	--	1	5	4	12	--	--	2	3	3	--	--	3	1
June.....	11	--	3	5	3	7	--	2	2	3	3	1	--	2	--

* Includes arrests under 11721 H & S Code and other arrests which included alleged use of heroin-type narcotics

TABLE 5
ARRESTS FOR NARCOTIC ADDICTION OR USE^a
Reported in Three California Cities—July 1959 to June 1961
By Month of Arrest and Prior Narcotic Record

Month of arrest	Santa Monica					Long Beach					Pasadena				
	Total	None	Minor	Major	Prison	Total	None	Minor	Major	Prison	Total	None	Minor	Major	Prison
1959	165	27	48	78	12	180	44	54	60	22	170	34	34	75	27
July.....	3	--	2	1	--	--	--	--	--	--	5	3	--	1	1
August.....	6	2	2	2	--	5	1	1	--	--	18	8	4	6	1
September.....	8	3	3	2	--	8	3	1	--	1	15	--	--	3	--
October.....	8	2	3	5	--	9	1	3	3	2	8	1	4	2	1
November.....	6	--	1	4	1	3	3	--	--	--	9	--	3	4	2
December.....	4	2	1	1	--	1	--	1	--	--	5	1	--	3	1
1960															
January.....	3	1	--	2	--	14	6	2	3	3	14	3	3	5	3
February.....	4	1	1	2	--	2	1	1	--	--	7	--	--	5	2
March.....	9	4	4	4	1	5	--	3	1	1	13	2	4	6	1
April.....	7	1	3	3	--	4	2	--	2	--	5	1	2	2	--
May.....	5	1	1	3	--	9	2	5	2	--	8	3	1	3	1
June.....	6	2	1	2	1	--	--	--	--	--	9	--	3	3	4
July.....	8	3	1	3	--	5	1	1	3	--	4	--	2	1	--
August.....	5	2	2	2	1	4	1	2	2	2	4	--	--	2	1
September.....	10	2	3	3	2	10	2	4	2	2	7	2	2	4	1
October.....	3	--	1	1	1	5	--	2	3	--	10	1	1	6	2
November.....	8	1	4	5	--	19	3	8	6	2	8	2	2	4	--
December.....	10	1	4	5	--										
1961															
January.....	10	3	4	1	2	28	11	9	7	1	7	--	1	4	2
February.....	9	--	5	4	--	6	1	1	3	1	4	1	1	2	--
March.....	6	2	1	2	1	15	1	3	10	1	3	--	1	1	1
April.....	9	2	1	6	--	10	2	2	4	2	8	3	1	3	1
May.....	10	--	3	6	1	12	3	3	5	1	4	2	--	1	1
June.....	11	1	4	5	1	7	--	2	3	2	3	1	--	2	--

^a Includes arrests under 11121 H & S Code and other arrests which included alleged use of brown-type narcotics

TABLE 6
ARRESTS FOR NARCOTIC ADDICTION OR USE *
Reported in Three California Cities—July 1959 to June 1961
By Month of Arrest and Probation or Parole Status

Month of arrest	Santa Monica					Long Beach					Pasadena				
	Total	None	Dept Corr	CYA	Other	Total	None	Dept Corr	CYA	Other	Total	None	Dept Corr	CYA	Other
1959															
Total.....	105	73	16	20	56	180	106	11	21	42	170	89	27	5	49
July.....	3	2	1	1	2	2	2	--	--	--	5	5	--	--	--
August.....	5	2	--	--	2	5	4	--	--	1	18	17	--	--	1
September.....	9	8	--	--	1	9	8	1	3	2	5	5	3	1	--
October.....	8	5	1	3	2	3	2	--	1	--	9	2	4	--	3
November.....	6	--	1	--	1	1	1	--	--	--	5	3	1	--	1
December.....	4	3	--	--	1	1	1	--	--	--	5	3	1	--	1
1960															
January.....	3	2	1	--	--	14	10	--	--	4	14	7	2	--	5
February.....	4	1	--	--	3	2	1	--	--	1	7	1	2	--	4
March.....	4	3	1	3	1	5	4	1	--	--	13	6	1	--	4
April.....	7	3	--	1	1	6	3	--	--	--	9	4	--	--	1
May.....	5	3	1	1	2	1	7	1	--	1	8	5	1	--	2
June.....	6	3	--	--	2	--	--	--	--	--	9	3	2	1	3
July.....	8	3	--	2	4	5	3	1	--	1	4	2	--	--	3
August.....	5	2	--	--	3	5	3	2	1	--	2	2	1	--	1
September.....	10	5	1	1	3	4	1	1	1	1	4	1	2	--	1
October.....	5	1	2	--	2	10	6	1	--	3	7	2	2	--	3
November.....	3	2	--	1	--	5	1	--	1	3	10	2	2	--	6
December.....	10	3	--	1	6	19	9	1	6	3	8	3	1	1	3
1961															
January.....	10	4	3	--	3	28	18	--	4	6	7	2	1	--	4
February.....	6	2	--	--	1	16	4	--	1	1	3	3	1	--	--
March.....	6	4	--	--	2	13	7	1	2	5	4	3	1	--	2
April.....	9	5	--	1	3	10	6	--	--	4	8	6	--	--	1
May.....	10	4	3	2	1	12	7	--	2	3	4	1	1	1	1
June.....	11	5	1	2	3	7	4	1	--	2	3	1	--	--	2

* Includes arrests under 11721 H & S Code and other arrests which included alleged use of heroin-type narcotics

APPENDIX 2-B

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, October 5, 1962

HON JOHN A. O'CONNELL
870 Market Street
San Francisco, California

NARCOTIC ADDICTS—No. 5111

DEAR MR. O'CONNELL: You have asked us whether a city can stop the operation of a "place of aid," i.e., an establishment described by the last paragraph of Health and Safety Code Section 11391, by not having any area zoned for such establishments. Also you wish to know if there are other instances in which conformance to zoning ordinances is required before places regulated by the State may be established.

Health and Safety Code Section 11391 provides:

"11391 No person shall treat an addict for addiction except in one of the following:

"(a) An institution approved by the Board of Medical Examiners, and where the patient is at all times kept under restraint and control;

"(b) A city or county jail;

"(c) A state prison;

"(d) A state narcotic hospital;

"(e) A state hospital;

"(f) A county hospital.

"This section does not apply during emergency treatment or where the patient's addiction is complicated by the presence of incurable disease, serious accident, or injury, or the infirmities of old age.

"Neither this section nor any other provision of this division shall be construed to prohibit the maintenance of a place in which persons seeking to recover from narcotic addiction reside and endeavor to aid one another and receive aid from others in recovering from such addiction, nor does this section or such division prohibit such aid, provided that no person is treated for addiction in such place by means of administering, furnishing, or prescribing of narcotics. The preceding sentence is declaratory of pre-existing law. Every such place shall register with and be approved by the Board of Medical Examiners. The board may inspect such places at reasonable times and, if it concludes that the conditions necessary for approval no longer exist, it may withdraw approval. Every person admitted to such a place shall register with the police department of the city in which it is located or, if it is outside of the city limits, with the sheriff's office. The place shall maintain its own register of all residents. It shall require all its residents to register with said police department or sheriff's office and, upon termination of the residence of any person in said place, it shall report the name of the person terminating residence to said police department or sheriff's office."

Thus, a "place of aid" must be approved by the Board of Medical Examiners

Administrative Code, Title 161, Chapter 132, Section 1399.29, adopted by the Board of Medical Examiners, reads, in part as follows:

"Approval will not be given to any place of aid which does not conform to the local fire safety, zoning, and building ordinances; evidence of such conformance shall be presented in writing to the board."

It seems clear from the quoted regulation that the Board of Medical Examiners will not approve a place of aid which is located in an area where a city has legally prohibited such an institution. There are however limitations upon a city's power to prohibit certain uses of property.

It would appear that in certain instances a city may completely exclude certain uses from its boundaries. The test appears to be whether exclusion of a use from an entire city bears a real and substantial relationship to public health, safety, morals or the general welfare (*Mooney v. Village of Orchard Lake*, 333 Mich. 389, 53 N.W.2d 308). What is reasonable in one city may not be reasonable in another. For instance, the City of Piedmont can probably completely exclude certain uses which the City of Los Angeles cannot reasonably exclude.

A factor going to the reasonableness of an exclusion of places of aid is, that the State has authorized the establishment of such places. The following language from *Desert Turf Club v. Board of Supervisors of Riverside County*, 141 Cal. App. 2d 446, 452 seems on point.

"A board of supervisors, acting of course in good faith, may by properly adopting zoning restrictions exclude on soundly-based grounds the installation of a horseracing track or any other type of activity from those portions of the county as to which such exclusion is reasonable, just as manufacturing establishments or business houses may be legitimately prohibited in residential districts. But the board cannot under guise of doing one thing, accomplish a wholly disparate end. The board here, on moral grounds, contrary to the legislative fiat of the people, has in effect excluded all horseracing from all parts of the county—or, to borrow an analogy from the field of liquor regulation, has exercised a local option with respect to horseracing."

The classification of uses allowed within a particular zone must be reasonable. However, much discretion is given to the local board in determining what uses are allowed (55 Cal. Jur. 2d 689).

In brief, a city can exclude such an institution where it would be incompatible with the other uses in the area, but it cannot exclude an institution merely because it disagrees with the state determination that such institutions are to be permitted.

State provisions requiring compliance with local zoning requirements are quite common. The following list of provisions is not intended to be exhaustive.

Government Code Section 53091. With certain limitations, schools must be located in areas zoned for schools.

Business and Professions Code Section 23790 A license for the retail sale of alcoholic beverages will not be issued unless there is compliance with the local zoning provisions.

Administrative Code, Title 16, Chapter 23, Section 2326 A person applying for a permit to operate a cemetery must comply with local zoning requirements.

Administrative Code, Title 17, Chapter 1, Sections 177 and 259. Clinics and hospitals must conform to local zoning ordinances before a license will be issued.

Very truly yours,

A C MORRISON
Legislative Counsel

TERRY L BAUM
Deputy Legislative Counsel

APPENDIX 2-C

ASSEMBLY BILL 2626

An act to amend Section 11391 of the Health and Safety Code, relating to narcotic addiction

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

SECTION 1 Section 11391 of the Health and Safety Code is amended to read:

11391 No person shall treat an addict for addiction except in one of the following

- (a) An institution approved by the Board of Medical Examiners, and where the patient is at all times kept under restraint and control.
- (b) A city or county jail
- (c) A state prison
- (d) A state narcotic hospital
- (e) A state hospital
- (f) A county hospital

This section does not apply during emergency treatment or where the patient's addiction is complicated by the presence of incurable disease, serious accident, or injury, or the infirmities of old age.

Neither this section nor any other provision of this division shall be construed to prohibit the maintenance of a place in which persons seeking to recover from narcotic addiction reside and endeavor to aid one another and receive aid from others in recovering from such addiction, nor does this section or such division prohibit such aid, provided that no person is treated for addiction in such place by means of administering, furnishing, or prescribing of narcotics. The preceding sentence is declaratory of pre-existing law. Every such place shall register with and be approved by the Board of Medical Examiners. The board may inspect such places at reasonable times and, if it concludes that the conditions necessary for approval no longer exist, it may withdraw approval. Every person admitted to such a place shall register with the police department of the city in which it is located or, if it is

outside of the city limits, with the sheriff's office. The place shall maintain its own register of all residents. It shall require all its residents to register with said police department or sheriff's office and, upon termination of the residence of any person in said place, it shall report the name of the person terminating residence to said police department or sheriff's office.

APPENDIX 2-D

LIST OF WITNESSES

Charles Dederich, Director of Synanon, Santa Monica
Charles Champlin, Staff Correspondent, Time Magazine, Beverly Hills
Robert W. Kenny, Attorney at Law, Los Angeles
Rev. C. M. Hailey, First Presbyterian Church of Santa Monica
Dr. Bernard Forman, Regional Administrator of the Division of Adult Parole in Southern California
Dr. Lewis Yablonsky, Associate Professor of Sociology, University of California, Los Angeles
Dr. Bernard Brandchaft, Psychiatrist and Psychoanalyst, Beverly Hills
Reid Kimball, member of the Board of Directors of the Synanon Foundation
William Crawford, member of the Board of Directors of Synanon
Ephraim Ralph, 1843 Ocean Front, Santa Monica, owner of the Synanon Building
Dr. Walter Bailey, School of Social Welfare, University of California, Los Angeles
Miss Frank Maddocks, President, Women's Activity Committee of the Sponsors of Synanon
Eva Zucker, 3001 Fourth Street, Santa Monica
Robert Wilson, Instructor, Santa Monica City College
Frederick M. Nicholas, Attorney at Law, Beverly Hills
Harold Leader, member of the American Friends Service Committee
Jack Hurst, member, Board of Directors of Synanon Foundation
Hobbs Lattison, resident of Synanon Foundation
Lillian Finan, Attorney at Law, Beverly Hills

PART 3
DETAINERS

RECOMMENDATIONS

RECOMMENDATION No. 1

The committee strongly recommends that the Interstate Agreement on Detainers be ratified by California.

Along with ratification of the agreement, it should be provided that

- (a) Escape from custody while out of State pursuant to the agreement is punished as if the escape were made from a state prison, as in Penal Code Section 4530.
- (b) The Interstate Compact Administrator is designated as the administrator of the agreement.

RECOMMENDATION No. 2

Section 1381 of the Penal Code should be amended so as to provide that the section will apply to prisoners in federal prisons against whom a California detainer has been lodged. However, the time limits in the section should apply only from the time the federal authorities make the prisoner available to California authorities.

It should also be provided that in the event of the ratification of the Agreement on Detainers by California and the United States, this amendment to Section 1381 will no longer have any effect.

RECOMMENDATION No. 3

Section 2900 of the Penal Code should be amended so as to allow the Director of Corrections to designate any federal or out-of-state prison as the custodial institution wherein a person convicted in a California state court may serve his sentence. Such designation should occur only when the prisoner is already serving a sentence in the other prison, and the California sentence is made concurrent with the original prison term.

REPORT

One of the problems arising out of the independent sovereignty of the federal government and the states is that of placing detainers against persons held in the prisons of other jurisdictions. A detainer is placed against a prisoner by another jurisdiction, the detainer being notice to the prison authorities that the prisoner is wanted in the other jurisdiction. In the absence of an agreement between the two jurisdictions, the detainer does not place the prison authorities under any obligation. However, in the interests of comity, the detainer is usually recognized. In such cases, notice will be sent to the other jurisdiction prior to the prisoner's release, so that the requesting state may obtain custody of the prisoner upon his release. The requesting state, however, is not obligated to act on the detainer, and may, due to the expense of transporting the prisoner or for other reasons, forget about the detainer and allow the prisoner to return to society.¹ This release of

¹ See Appendix 3-B for a table of detainers filed, exercised and released on prisoners in California.

detainers usually occurs when the prisoner is wanted for trial, rather than when he is wanted for violation of parole or probation.

The advantage of a detainer is obvious: it makes available a fugitive without the expense of finding him once released to society. The present system, however, presents many problems to the requesting authorities, the prison authorities, and the prisoner himself. It was to overcome many of these problems that the Council of State Governments drafted the Agreement on Detainers, which has now been ratified by six states.²

The principle of the agreement is not revolutionary, in fact, California has had a similar law, effective solely within the State, since 1931.³ The California law has been most effective, and was used as the model for the interstate agreement, but in today's society, § 1381 simply cannot adequately deal with the problem.

The advantage of the agreement to a prosecuting attorney is rather obvious. A prosecutor who feels he has a case may well want it to go to trial while the witnesses are still available and the evidence is fresh. Under the present law, however, the prosecutor cannot demand that the prisoner be turned over for trial, he can only hope that the holding state will, at its discretion, give him temporary custody of the prisoner. Under the agreement, the prosecutor has the right to demand custody of the prisoner, and this must be complied with unless within 30 days the governor of the holding state disapproves the request.⁴ It is expected that the governor will disapprove the request in only a few cases that involve some public policy.⁵ Thus in practically all cases the prosecuting attorney will be able to bring the prisoner to trial when the time is best, and not many years later, as is now often the case.

All the problems that face the prosecutor are also a burden on the prisoner; the availability of witnesses and evidence is equally important to the prisoner. More important than this, however, is the psychological effect a detainer has upon a prisoner. The adjustment to prison is difficult at best, when the prisoner does not know whether he will have to serve another sentence at the completion of the present one, the problem is greatly increased.

As the Director of the Federal Bureau of Prisons has said:

"Yet it is in their effect upon the prisoner and our attempts to rehabilitate him that detainers are most corrosive. The strain of having to serve a sentence with the uncertain prospect of being taken into the custody of another state at the conclusion interferes with the prisoner's ability to take maximum advantage of his institutional opportunities. His anxiety and depression may leave him with little inclination toward self-improvement."⁶

² Conn. Gen. Stats. §§ 54-186 through 54-193, Mich. Comp. Laws § 790.601 [Mich. Stat. Ann. § 4147(c)], N.H. Rev. Stat. Ann. ch. 606-A, N.J. Stat. Ann. §§ 2A:159A-1 through 2A:159A-15, N.Y. Code Crim. Proc. § 669-b, Penna. Stat. Ann. Crim. Proc. § 1491.

³ Cal. Penal Code § 1381.

⁴ Article IV of the Agreement on Detainers, as set out in Appendix 3-A.

⁵ Testimony of Edward P. O'Brien, Deputy Attorney General, at the Los Angeles hearing, August 16, 1962.

⁶ Bennett, *The Last Full Ounce*, *The New Era (Leavenworth Penitentiary)* Vol. 14, No. 1 (1960).

And from the California Department of Corrections:

"For him this is the big thing You can't talk program with him, you can't talk getting back to his family, you can't talk getting into seeing a psychologist or a sociologist, or anything else I mean this thing is just continual There he is just knocking on your door every day to see whether this hold is being resolved and when it doesn't get resolved, in some cases as I mentioned, they [the authorities placing the detainer] won't even answer, this situation gets to be pretty difficult " ⁷

When a detainer is placed against a prisoner, it is often reason for an automatic denial of parole, and at the very least is a factor that is taken into consideration. Thus, of course, will also affect the prisoner's attitude

"My wife and I were married just one week when I was arrested She has stayed with me and has done so much to help the possibility of parole She has had a priest consent to act as parole adviser She has secured two good jobs for me All her family and mine are doing all they can to help me gain a parole, but parole cannot be granted because of this detainer My wife is becoming a nervous wreck because of this detainer I may lose her because of it This detainer causes a cloud of uncertainty over the future. I can't ask her to wait for me not knowing whether it will be one year or ten before we are together That is why I wanted an immediate trial, so that she would know one way or the other " ⁸

Although an interstate agreement would be most beneficial to both prosecutors and prisoners, it is the correctional authorities who have been most vigorous in demanding that an interstate compact be accomplished, for without it much of their work to rehabilitate prisoners and return them to society is undermined

"It can be extremely frustrating to the individual, as well as to the Adult Authority, for him to have spent some months or, as happens in many cases, some years in prison without being able to participate in those programs and activities which would enable him to prepare himself for life on the outside and thus enhance his chances of receiving a favorable disposition of his case at the time of his board appearance

"One of the circumstances which, across the country, inevitably results in an inmate being placed in a custody classification which represents a high degree of security is the existence of a detainer filed against a man by another jurisdiction Such cases are flagged immediately, and the man's program may be drastically restricted because no institution wishes to place a man who is wanted by another jurisdiction in a situation where he might escape " ⁹

Perhaps the most flagrant example of the detrimental effect of a detainer is the case of *United States v Candelaria* ¹⁰ The defendant

⁷ Testimony of Laurence M. Stutsman, Deputy Director, Department of Corrections, at the Los Angeles hearing, p. 27

⁸ Letter from prisoner "X" Lavenworth Penitentiary, April 4, 1961. See Appendix 2-C for excerpts from a series of letters between the prisoner, the Committee on Criminal Procedure, and the Los Angeles County District Attorney's office

⁹ Testimony of John W. Brewer, Chairman, Adult Authority, at the Los Angeles hearing, p. 5 of a prepared statement

¹⁰ 181 F. Supp. 797 (1955) See also the section on detainers in Donnelly, Goldstein and Schwartz, Criminal Law, pp. 377-434 (1962)

had been convicted in the Federal District Court for Southern California of robbing a bank with a deadly weapon. District Judge Tolin evaluated the probation officer's report, and then passed sentence based on what he felt were the prisoner's needs.

"Defendant's past life, while certainly not exemplary, does show a record of industry and ambition mixed with bad conduct indicative of immaturity, lack of education and supervision, yet with strong possibilities of rehabilitation. The defendant is in need of a moderate term of prison discipline and education with supervision after his release."

"This defendant definitely appeared to the court as one who most probably would respond to rehabilitation treatment in a federal institution, and, on February 7, 1955, was sentenced to custody for a term of five years."¹¹

After the defendant was sentenced, Judge Tolin learned that the Los Angeles authorities had placed a detainer against the defendant for the same robbery, which violated California law as well as federal law. The judge then wrote to the Los Angeles Chief of Police and the Los Angeles District Attorney's office, asking that the detainer be withdrawn. The only reply was from the district attorney, who said that it was the policy not to consider removal of detainees until 30 days before the prisoner would be made available to the local authorities.¹² The effect of this detainer was made quite clear by Judge Tolin:

"Because of the detainer, the prisoner must be denied the privilege of work in the portions of the prison which are not within the walls (farms, fishery, etc.) and cannot be granted parole at any time, nor may he be a trusty and have the privileges and responsibilities connected with such a position."

"If his case for employment by Federal Prison Industries, Inc. is borderline, he might not be hired by that 'within the walls' employer. In short, the privileges which co-operative acceptance of prison life usually bring to a prisoner are to be denied him throughout his term because California wants to again imprison him upon release from the federal prison for the very same offense for which he is now being punished."¹³

"Attempts at rehabilitation, treatment, and a gradual, supervised readjustment to free life are in such cases, obviously completely defeated."¹⁴

The judge then determined that since it was now impossible to carry out the program that he had anticipated for the defendant, he would not allow the defendant to waste five years in maximum security:

"Because the action by officials of Los Angeles and California has effectively nullified so many of the beneficial aspects of this court's judgment which was made after careful consideration, this court will terminate its efforts to rehabilitate this prisoner and will

¹¹ 131 F. Supp. 797, 798.

¹² The Los Angeles District Attorney at the time of the *Candelaria* case is no longer in office, but in correspondence between the committee and the present district attorney, it became apparent that the same policy is still in effect.

¹³ 131 F. Supp. 797, 799-800.

¹⁴ *Ibid.*, p. 805.

terminate further federal supervision. Since local officials have obstructed federal efforts to properly punish and correct, they may pursue the prosecution they have commenced by their detainer. The clerk will present a modified judgment, fixing the term of imprisonment at 60 days."¹⁵

In this particular case the State, of course, was virtually forced to prosecute, since not to prosecute would allow the defendant to go free after only 60 days in prison. But in a great percentage of cases interstate detainers are never executed.¹⁶ In these cases a prisoner is then released at the end of his sentence and sent back to society without having had the benefits of a rehabilitation program. Indeed, as it is difficult to see how a man will improve himself when kept in maximum custody and uncertain of his future, it is most probable that such a person will be more dangerous to society than when he was first imprisoned.

Thus a detainer creates a cloud of uncertainty over the prisoner's future, creating personal anxiety and making him unwilling to cooperate with prison authorities. At the same time it hinders the rehabilitation program and permits prisoners to be released into society totally unprepared to assume a responsible and fruitful life. And it does not allow a prosecutor to obtain an early trial when it would be in his best interest to do so. Clearly there is a great need for a change in our law on detainers.

The Agreement on Detainers was drafted by the Council of State Governments and has been ratified by six states.¹⁷ None of these states has found any major flaw in the agreement,¹⁸ and for the sake of uniformity, therefore, the agreement should be ratified as drafted by the Council of State Governments.

Two arguments have been made against ratifying the Agreement on Detainers.¹⁹ The first is that the added costs of returning the prisoner to the sending state would impose an undue burden. There is no doubt that even the cost of bringing the prisoner to the jurisdiction for trial is a burden, but this is merely one of the factors that must be considered when determining whether to place the detainer. The increased cost of returning the prisoner is only one of the considerations that will determine whether the prisoner will be returned for trial, along with such other factors as the seriousness of the crime, the probability of conviction, etc. Certainly the increased cost is not a sufficient reason for rejecting all the benefits of the Agreement on Detainers.

¹⁵ *Ibid.*, p. 807.

¹⁶ In a letter of October 24, 1962, L. M. Stutzman, Deputy Director of Corrections, informed the committee that from January 1 to June 30, 1962, 136 out-of-state and 38 federal detainers had been dropped, while 40 out-of-state and 18 federal trial detainers had been exercised. It is impossible to determine how many of the dropped detainers were for trial, and how many for parole or probation violations, but authorities usually estimate that most of the dropped detainers are for trial, since there is always a question as to the prisoner's guilt. Assuming that only half of the dropped detainers were for trial, there were still 87 of these detainers dropped as against 58 exercised. See Appendix 3-B.

¹⁷ See footnote 2.

¹⁸ The Connecticut State's Attorney, in a letter to the committee dated October 18, 1962, thought that a definition of "bringing a person to trial" might be helpful, but it does not appear to be really necessary. No other compact state had any suggested improvements.

¹⁹ Letter from Los Angeles District Attorney's office, June 27, 1962.

Another objection to the agreement concerns Penal Code Section 2900, which provides that

"The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant into the custody of the Director of Corrections at the place designated by the Director of Corrections as a place for the reception of persons convicted of felonies."

The problem arises when the prisoner is convicted in a California court and the imposed sentence is made concurrent with that already being served. Since the prisoner would be in the temporary custody of the California authorities, and would have to be returned to the other jurisdiction as soon as the trial is completed, it would appear that Section 2900 prohibits the prisoner from serving a concurrent sentence, since at the time he is not in custody of the Director of Corrections. A couple of recent cases have held otherwise,²⁰ and the law now seems to be that where the sentence is explicitly made concurrent, the prisoner must be given credit on his California sentence for the time served in another jurisdiction's institutions.

The trial court has before it the entire record of the prisoner, and it is thus in the best position to determine what sentence will best serve the needs of the prisoner and of society. In upholding the trial courts by finding the means to accomplish the lower court's sentence, the appellate courts have reached a decision necessary for the effective treatment of prisoners. Nevertheless, neither appellate case mentioned Section 2900, and, therefore, at some future time this section might prove to be an obstacle in the administration of justice.

This problem was also faced by federal authorities, since 18 U.S.C. Section 3568 is similar to Penal Code Section 2900. In order to allow federal authorities to carry out a sentence of a United States court made concurrent with a state sentence, 18 U.S.C. Section 4082 was passed allowing the U.S. Attorney General to designate any state institution for the service of the federal sentence. In a similar way, Section 2900 should be amended to allow the Director of Corrections to designate an out-of-state or federal institution for serving a concurrent California sentence, such as might occur when California obtained custody of the prisoner under the agreement, and he was then sentenced. In such a way the statutory law of California would conform to the obviously desirable results now being reached.

The Council of State Governments recommends that when ratifying the Agreement on Detainers, the state provide penalties for escape from custody while in another state pursuant to the agreement. Most states have simply provided that such escape will be penalized to the same extent as escape from a state prison,²¹ and it is recommended that California does likewise, perhaps adding a cross reference to Penal Code Section 4530, or Section 4531.

Penal Code Section 1381, the pioneer legislation in the field of detainers, only applies intrastate. However, there is no reason why the

²⁰ *In re Hothker*, 49 Cal. 2d 75, 315 P.2d 12 (1957). *In re McClure*, 192 Cal. App. 2d 38, 13 Cal. Rptr. 298 (1961).

²¹ Conn. Gen. Stat., Sections 54-190; Mich. Comp. Laws, Section 780.605; N.J. Stat. Ann., Section 2A:159A-13; N.Y. Code Crim. Proc., Section 602-b; Penna. Stat. Ann. Crim. Proc., Section 1481.

section could not be extended so as to apply, at no extra expense, to prisoners in federal prisons in California.

This extension of Section 1381 is opposed by the Los Angeles District Attorney's office because "we have no present definite way of obtaining prisoners serving time in a federal penitentiary in another state for prosecution in our state courts."²² However, this contention is completely without foundation. It is the policy of the Federal Bureau of Prisons to use every reasonable means to secure the disposition of detainees during the time prisoners are serving their sentences in federal prisons. When a state makes known its intention to prosecute, a writ of habeas corpus ad prosequendum issued by the state court will be honored, and temporary custody of the prisoner will be given to the state. Furthermore, whenever it is possible to do so the federal government will transfer its prisoner to an institution within the state where the prosecution is to be undertaken.²³

Of course the State of California cannot force the federal authorities to produce the prisoner for state trial, so in this case the time limit already provided in Section 1381 should not begin to run until the federal authorities actually make the prisoner available. With this one change, the proposed extension would grant to federal prisoners in California the same rights as now granted to state prisoners under Section 1381. The extension of the benefits of such legislation, with no resulting disadvantages, is most desirable.

SUMMARY

Under the present law, detainees placed by federal or out-of-state authorities work to the detriment of the prosecutors, prison authorities, and the prisoners, by delaying trials until witnesses are unavailable, creating anxiety and hostility in the prisoners, and hindering their rehabilitation programs. The Interstate Agreement on Detainers would remedy all these problems, as to those states that have ratified it. Extension of Penal Code Section 1381 would extend these advantages to federal prisoners, until such time as California and the United States both ratify the Agreement on Detainers.

APPENDIX 3-A

AGREEMENT ON DETAINERS

THE COUNCIL OF STATE GOVERNMENTS
1313 East Sixtieth Street
Chicago 37, Illinois

Program for 1958

AGREEMENT ON DETAINERS

At the present time, there is no means by which a prisoner may initiate proceedings to clear a detainer placed against him from another jurisdiction. This is equally true on an interstate and a federal-state

²² Letter from Los Angeles District Attorney's office, June 27, 1962.

²³ Statement of Raymond W. May, Warden at the Federal Correctional Institution at Terminal Island, at the Los Angeles hearing, August 16, 1962. Warden May appeared at the request of, and read a paper prepared by James V. Bennett, Director, Federal Bureau of Prisons.

basis. In addition, the only way that a prosecuting official can secure for trial a person already imprisoned in another jurisdiction is by resort to a cumbersome special contract with the executive authority of the incarcerating state. Because of the difficulty and red tape involved in securing such contracts, they are little used.

The Agreement on Detainers makes the clearing of detainers possible at the instance of a prisoner. It gives him no greater opportunity to escape just convictions, but it does provide a way for him to test the substantiality of detainers placed against him and to secure final judgment on any indictments, informations or complaints outstanding against him in the other jurisdiction. The result is to permit the prisoner to secure a greater degree of knowledge of his own future and to make it possible for the prison authorities to provide better plans and programs for his treatment.

The agreement also provides a method whereby prosecuting authorities may secure prisoners incarcerated in other jurisdictions for trial before the expiration of their sentences. At the same time, a governor's right to refuse to make the prisoner available (on public policy grounds) is retained. Since the problems in the detainer field are both interstate and federal-state, the Agreement on Detainers provides that the United States may become a party thereto. If this is done, the procedures provided in the agreement will be available on both an interstate and a federal-state level.

The following provisions of the agreement deserve a few words of special explanation.

Article III(d) provides that a prisoner's request to clear one detainer shall operate as a request to clear all detainers emanating from that same state and based on untried indictments, informations or complaints. This is to prevent a prisoner from attempting to clear these detainers singly and making necessary a separate trip for the purpose of trial on each of them. Since the purpose of the agreement is to produce as much certainty in the prisoner's situation as possible, the clearing of the two or more detainers instead of merely one, is in line with this purpose.

Article IV(d) safeguards certain of the prisoner's rights. Normally, the only way to get a prisoner from one jurisdiction to another for purposes of trial on an indictment, information or complaint is through resort to extradition or waiver thereof. If the prisoner waives, there is no problem. However, if he does not waive extradition, it is not appropriate to attempt to force him to give up the safeguards of the extradition process, even if this could be done constitutionally. Nevertheless the right to insist on action by the governor is a right of the state and not of the prisoner. Consequently, it is provided that the prisoner shall not be able to plead gubernatorial inactivity in resisting delivery to the other state. The situation contemplated by this portion of the agreement is different from that dealt with in Article III. That article relates to proceedings initiated at the request of the prisoner. Accordingly, in such instances, it is fitting that the prisoner be required to waive extradition. In Article IV the prosecutor initiates the proceeding. Consequently, it probably would be improper to require the prisoner to waive those features of the extradition process which are

designed for the protection of his rights. Nevertheless, Article IV(a) gives the governor an opportunity to refuse the request for prisoner availability if the governor acts within 30 days. It is quite likely that in the large majority of cases these will be no gubernatorial action or even a request for it. The possibility is left open merely to accommodate situations involving public policy which occasionally have been found in the history of extradition.

Article V(a) provides for the arrangements necessary to bring the prisoner into court in the receiving state where he is to be tried. In most instances it is contemplated that this will be accomplished by giving the prisoner into the temporary custody of the official of the jurisdiction where the trial is to be had. However, the federal government has jurisdiction throughout the United States and can therefore make the prisoner available in any state without actually surrendering custody. If the federal authorities wish to do this, they should be allowed to do so. What any party state wants is the availability of the prisoner and any method which accomplishes this purpose meets the practical purposes of the agreement. Some thought was given to giving all jurisdictions the same option afforded the federal authorities in determining whether to give temporary custody or simply to make the prisoner available to their own custody. However, it was felt that in effect the states could achieve this same result by the process of deputizing officers to act for them. Moreover, in most instances it is not contemplated that states will find it convenient to make the prisoner available in their own custody.

Suggested Legislation

[Title should conform to state requirements]
(Be it enacted, etc)

Section 1. The Agreement on Detainers is hereby enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows:

TEXT OF THE AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of co-operative procedures. It is the further purpose of this agreement to provide such co-operative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America, a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official

having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated, provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said

authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice

Article V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers or other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Section 2 The phrase "appropriate court" as used in the Agreement on Detainers shall, with reference to the courts of this State, mean [here enumerate or otherwise define courts that are affected]

Section 3 All courts, departments, agencies, officers and employees of this State and its political subdivisions are hereby directed to enforce the Agreement on Detainers and to co-operate with one another and with other party states in enforcing the agreement and effectuating its purpose.

Section 4 Nothing in this act or in the Agreement on Detainers shall be construed to require the application of the [habitual offenders law] to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

Section 5 [This section should be utilized to make it an offense to escape from custody while in another state pursuant to the Agreement on Detainers, perhaps by amendment to the criminal code. Unless already adequately covered by existing law, it is essential that this type of provision be inserted.]

Section 6 It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the Agreement on Detainers.

Section 7 [This section should be utilized to designate the officer who will serve as central administrator of and information agent for the Agreement on Detainers, or to give the governor power to make such designation—see Article VII of the agreement]

Section 8 Copies of this act shall, upon its approval, be transmitted to the governor of each state, the attorney general and the administrator of general services of the United States, and the Council of State Governments.

Section 9 This act shall take effect immediately.

APPENDIX 3-B

DETAINEES—CALIFORNIA DEPARTMENT OF CORRECTIONS JANUARY 1-JUNE 30, 1962

1. Number of Detainers Placed:			
In State	-----		327
Out-of-state	-----		152
Federal	-----		70
Immigration	-----		44
2. Number of Detainers Dropped:			
In State—			
Trial	----- 47	Dismissal	----- 325
Out-of-state	-----		136
Federal	-----		38
Immigration	-----		16
3. Number of Detainers Exercised at Time of Release			
In State	-----		8
Out-of-state—			
Parole or Probation	----- 65	Trial	----- 40
Federal—			
Parole or Probation	----- 38	Trial	----- 18
Immigration	-----		33
4. Number of Detainers on File, June 30, 1962			
In State	-----		233
Out-of-state—			
Parole or Probation	----- 236	Trial	----- 250
Federal—			
Parole or Probation	----- 162	Trial	----- 50
Immigration	-----		152

APPENDIX 3-C

EXCERPTS FROM A SERIES OF LETTERS CONCERNING A PRISONER IN LEAVENWORTH

April 4, 1961: From the prisoner to Assemblyman O'Connell

"On April 4, 1960, I was sentenced to a term of three years in the federal penitentiary on the charge of 'interstate transportation of forged securities' . . . On April 28, 1960, a detainer . . . from the county of Los Angeles was received by officials of this institution. The warrant charges forgery.

"On June 5, 1960, I wrote to the District Attorney's Office in Los Angeles, asking that they withdraw the detainer so that I would be able to take advantage of the rehabilitation program here. Having the detainer causes a man to be kept in maximum custody and it is impossible to take full part in the program. In answer to my letter I

received a mimeographed form letter stating that they do not withdraw detainees until the release date and decide at that time whether or not to extradite

"On December 20, 1960, I wrote again to the Los Angeles District Attorney's Office requesting that I be granted an immediate trial, or within a reasonable length of time. I stated that I was ready for trial, available for trial, and anxious to clear the matter up in court before my appearance before the Federal Parole Board for parole consideration. Enclosed was a letter from the warden of this institution stating that I am and would be available to authorities from California when they should want me. This letter was not answered."

May 15, 1961: From Assemblyman O'Connell to Los Angeles District Attorney William B. McKesson

"I would very much appreciate receiving any information you may have on the above case."

July 16, 1961: From the prisoner to Assemblyman O'Connell

"As I mentioned in my first letter, the Los Angeles detainer warrant could seriously affect my eligibility for parole. I have just received the decision of the parole board and I have been denied parole. I can not say positively that I was or was not denied because of the detainer, but when I appeared before the parole board I had a perfect conduct and work report, a wife and home to go to and a good offer of employment. My request for transfer to Terminal Island so that I could visit my wife and salvage my marriage is not advisable because of the detainer."

July 27, 1961: From Assemblyman O'Connell to District Attorney McKesson

"I have as yet received no reply to my letter of inquiry and would much appreciate it if you would let me know what the policy of your office is with regard to cases of this type."

August 3, 1961: From District Attorney McKesson to Assemblyman O'Connell

"This will acknowledge receipt of your letter of July 27, 1961, relative to the above-named defendant

"There is no record in our files of any previous communication from you concerning this matter. However, we have had voluminous correspondence with the defendant, as well as with his parents, who reside in Antioch, California. We have endeavored to make known to them our position in this matter. The defendant is presently serving a term in the federal penitentiary at Leavenworth, Kansas. Our so-called 'detainer' is a warrant which was issued by the Los Angeles Municipal Court at the time our complaint was filed, and which was forwarded to the warden of Leavenworth penitentiary. This warrant acts as a 'hold' against the defendant, and assures us of notification of his release date from Leavenworth. Just as soon as we are notified of his release date it is our present intention to start extradition proceedings for his return to California for prosecution on our pending charges.

"As to your assertion that 'the prisoner has been made available by prison authorities,' this is to advise you that we have not received any notification whatsoever from the authorities at Leavenworth penitentiary that the defendant is available to us for prosecution on our pending charges "

October 18, 1961: From T. R. Kildall, Chief, Classification and Parole, Leavenworth penitentiary, to District Attorney McKesson

" . We did not specifically record the sending of said letter [of the availability of the prisoner], so can only assume, rather than definitely confirm, that such enclosure reached you earlier. However, we trust the information contained therein is not new to you, that you likely have understood the matter of availability from the handling of like matters concerning other federal prisoners "

Quotes:

1. "Because we are aware of the effect of unresolved detainers on prison programs so vital to the inmate's improvement, because we are persistently brought face to face with the sheer demoralization vividly reflected in the attitudes of men who look to the future with the fear born of uncertainty and a sense of futility, and because we believe that many of the difficulties we have described can and must be eliminated, the California Adult Authority endorses the principles of the agreement on detainers as an enabling act, and hereby respectfully recommends it to your committee "

JOHN BREWER, Chairman, California Adult Authority

- 2 "The Attorney General favors the adoption of legislation dealing with the interstate disposition of detainers ."

EDWARD P. O'BRIEN, Deputy Attorney General, State of California

3. "As the California Administrator of the Interstate Compact I am strongly in favor of the interstate agreement on detainers "

FRED FINSLEY, Interstate Compact Administration; member, California Adult Authority

- 4 "Pennsylvania has used the agreement on detainers in conjunction with other states which have adopted it and we find that it has been most effective

"Personally, I can think of no changes which would make the legislation more effective and I would strongly urge that California adopt the same "

FRANK P. LAWLEY, JR., Deputy Attorney General, Pennsylvania

- 5 "The interstate agreement on detainers has worked satisfactorily "

JOHN D. LABELLE, State's Attorney, State of Connecticut

- 6 "I believe ratification of the agreement on detainers . . . would be a most affirmative step toward resolving this problem "

JAMES V. BENNETT, Director, United States Bureau of Prisons

- 7 "Most of our problems centered around parole planning, inasmuch as we had no indication what the other states would do on the detainers and the interstate agreement has helped considerably with this problem "

ARTHUR T PRASSE, Commissioner of Correction,
State of Pennsylvania

- 8 "Be It Resolved, that the Section of Criminal Law and the American Bar Association support efforts to make every state and the federal government a party to the agreement on detainers."

APPENDIX 3-D

LIST OF WITNESSES

John W Brewer, Chairman, Adult Authority, Sacramento
Eugene M Barkin, Legal Advisor, Bureau of Prisons (representing U S Department of Justice, Bureau of Prisons)
R W May, Warden, Federal Correctional Institution, Terminal Island, San Pedro, California
Elton K McQuery, Director, Western Office, the Council of State Governments, San Francisco
Albert Wahl, Chief, U S Probation Officer, Northern District of California, P O Box 487, San Francisco
Angus D McEachen, Chief U S Probation Officer, Southern District, Los Angeles
Laurence M Stutsman, Deputy Director, Department of Corrections, Sacramento
Edward P O'Brien, Deputy Attorney General, San Francisco
Robert O Fort, District Attorneys and Peace Officers' Association of California, Sacramento
Hazen L Matthews, State Bar of California, San Francisco
George W Kemp, L A County District Attorney's Office
Laurence Drvon, California District Attorney's Association
Elley E Cuff, Los Angeles County Public Defender

PART 4

ADVERTISING BY PEACE OFFICERS

RECOMMENDATIONS

RECOMMENDATION No. 1

The committee recommends the enactment of A B. 2591, as originally introduced, with one amendment. On lines 7 and 8, "peace officers" should be substituted for "persons connected with law enforcement."

The committee does not recommend the enactment of A B. 2591 as amended in Assembly May 26, 1961.

RECOMMENDATION No. 2

The committee recommends the enactment of A B. 2615, as amended in Assembly on May 17, 1961, with the following amendments:

(1) At the end of the last paragraph of Section I, a new paragraph should be added to read:

"As used in this section, 'peace officer' includes those mentioned in Penal Code Section 817, plus any other officials in any segment of law enforcement who are employed by the State or any of its political subdivisions."

(2) Section 2 should be changed to read:

"Every person who sells or gives to another, a membership card, badge, or other device, where it can be reasonably inferred by the recipient that display of the card, badge or device will result in less rigorous enforcement of the law than otherwise be the case, is guilty of a misdemeanor."

SALE OF ADVERTISING

REPORT ON A.B. 2591 AND A.B. 2615

A B. 2591, as originally introduced by Assemblyman Carrell, would prohibit the selling of advertising in law enforcement magazines and magazines representing themselves to be such. A B. 2615, as originally introduced by Assemblyman Reagan, would prohibit any organization not actually composed of at least 90 percent active or retired peace officers from representing itself as an organization of peace officers. As amended, the bills now overlap to a great extent.

Mr. Reagan's bill is primarily aimed at the privately run organization that holds itself out as representing peace officers when, in fact, there is no connection between any peace officer and the organization. It has become quite apparent in the past few years that such organizations have been deceiving the public into making contributions to what was thought to be a "police" organization.

The operations of these organizations vary somewhat, but basically they are similar. First, an official-sounding title is chosen, such as "California State Law Enforcement Officers Association" or "Western States Law Enforcement Officers Association." Each organization will publish a magazine, which also has an official sounding name. The

CSLEOA magazine was *The Law Enforcement Review*,¹ while the WSLEOA publication is called *The State Policeman*.²

Money is raised either by selling memberships in the association, or by selling advertising in the magazine. In either event, the organization creates the impression that the money will go towards police activities, or that membership will entitle the member to police favors,³ and it is on this basis that contributions are usually made.

This type of confidence racket is harmful to the public not only because it fraudulently deprives people of their money, but also because, by linking these activities to the police, public respect for our law enforcement officers is destroyed. Thus it is imperative that these organizations of deceit be prohibited from using names and operating in a manner that will confuse people into believing that their contributions are going to legitimate police organizations.

The problem of advertising in law enforcement magazines brings to light a question that is not directly related to fraudulent organizations, and this is whether any magazine associated with a law enforcement organization should sell advertising to the public.

In California today, there are many private organizations composed of policemen, sheriffs, judges, marshals, constables, highway patrolmen, et cetera.⁴ Most of these organizations publish some form of magazine in which advertising is sold to the public. Very often the revenue from the advertising is a major part of the association's total revenue, and is used for other purposes of the association.⁵ It is undisputed that without the revenue obtained from advertising, many, if not all, of the magazines would operate at a loss, and many of the other activities supported by the magazines would have to be discontinued, unless supported from another source.

Nevertheless, the entire practice of accepting advertisements must be questioned, for regardless of the manner in which the ads are solicited, there is always a degree of coercion when the solicitor represents a law enforcement organization. The best example of this is a

¹ In November 1961, Mr. Forrest Seter and Mr. Joy Levitt, officers of the CSLEOA, were convicted of conspiracy to commit theft in the Sacramento County Superior Court. There is no record of any complaints filed with police concerning this organization during 1962.

² John Murray of *The State Policeman* testified at the hearing in San Francisco on May 24, 1962, that *The State Policeman* does not have any present connection with the WSLEOA, but it is expected that the former relationship will be resumed in the future.

³ John Price, District Attorney of Sacramento County, testified at the San Francisco hearing on May 24, 1962, as follows, concerning the CSLEOA: "Now, for a certain type of person, the pitch was 'Put this on your windshield and you can park in alleys,' and, you know, this type of thing. To others, to the little old ladies in Sacramento, it was 'of the \$50 membership, a great deal of it goes into our Juvenile Assistance Trust Fund.' The Juvenile Assistance Trust Fund was established in the Bank of America in San Francisco in 1959 with a deposit of \$1 and with the exception of the interest that the dollar earned since that time up to the time we tried these people, not one dollar had been added to it nor had any been withdrawn."

⁴ Organizations having a representative at the San Francisco hearing were: California Association of Highway Patrolmen, California State Peace Officers Association, California State Sheriff's Association, Judges, Marshals and Constables Association, and the Peace Officers' Research Association of California.

⁵ In fiscal 1961, the magazine profit of the Highway Patrolmen was \$53,000 out of a total gross income of \$100,000. In fiscal 1962, it was \$33,000 out of \$87,000. The net income of the association goes into the Widows and Orphans Fund, out of which a payment of \$2,000 is made to a member's beneficiary upon the death of the member. The net surplus as of June 30, 1962, was \$508,449.21.

⁶ For fiscal 1961, advertising accounted for \$24,500 of the \$52,000 revenue of the Peace Officers Association.

couple of surveys taken by Assemblyman Carrell⁶ and the Committee on Criminal Procedure.⁷ Mr. Carrell sent 300 postcards to advertisers in the *Highway Patrolman*, of which 165 were returned. Of these, 66 said that they did not consider the advertising worthwhile, while only 25 said they did. One hundred six people said that they considered the ad to be just a "donation."

The committee mailed out 225 questionnaires to advertisers of *The California Peace Officer*, and 75 replies were received. Sixty-nine persons did not consider the advertising to be worthwhile, and 74 considered it just a donation.

It seems obvious that many people do not advertise for business reasons, but for some other reason. Even the associations recognize that there is often no sound business reason for advertising in the magazine.

"They (the officers of the Peace Officers Association) appreciate further the fact that perhaps, in some instances, this advertising that is given isn't advertising in return for sales of merchandise that you expect generally to recover from expenditure of advertising money."⁸

If no increase in business is expected from the ad, what is expected?

Because of the coercion that is always present, whether intended or not, many authorities now advocate that police personnel and organizations refrain from soliciting the public for funds.

"Therefore, to be specific, both positive and negative discipline is necessary to remove misconduct—such as

"Extortion—by demanding advertisements in police magazines, or by the pressured sale of tickets to police 'balls' or 'rodeos,' or by accepting 'bail' in 'street traffic court'."⁹

"The public often resents solicitation of funds by the police. If absolutely necessary, one drive should be held at the same time each year. Rackets using police names or relationships should be constantly watched for and eliminated."¹⁰

This attitude is shared by the Peace Officer's Research Association of California, an association composed of police associations throughout the State, and representing 17,000 peace officers.

"I think that it is well to point out that many of the major cities throughout our state have discontinued Widow's and Orphan's Balls and things of this type, and have discontinued the solicitation of advertising from any of the merchants and certainly we feel that law enforcement should stand and contributions needed should come from within law enforcement. That if we are going to raise the ethical standards of law enforcement, certainly, this is

⁶ See Appendices 4-A, 4-B and 4-C.

⁷ See Appendix 4-B.

⁸ Testimony of Robert O. Fort, Counsel, California State Peace Officer's Association, at the San Francisco hearing, May 24, 1962, p. 20.

⁹ Germann, *Police Personnel Management*, Charles C. Thomas, Springfield, Ill. (1958), p. 173.

¹⁰ Gourley, *Public Relations and the Police*, Charles C. Thomas, Springfield, Ill. (1953), p. 55.

one of the first steps that must be taken and we subscribe to this objective" ¹¹

Chairman O'Connell "In essence then, the position of PORAC is that you believe that it is beneath the professional dignity of police officers to solicit advertising or to have any organization of police officers soliciting advertising?"

Mr. Lovejoy "That's right, sir" ¹²

As a result, many police forces today do not allow their members to solicit from the public

"The Police Department *does not solicit funds for police relief, advertising, or any organizational purposes.*" ¹³ (Emphasis in original.)

Other responsible organizations also feel a need to raise the standards of the police profession, but are worried about the loss of revenues if all advertising were to be prohibited

"The association in last years has had as its fundamental purpose a drive towards the professionalization of its personnel and any step in that direction which will assist, not only in terms of a public image, to bring about a greater degree of professionalization, we are vitally interested in We appreciate the problems that are appended to solicitation of this type of advertising. . . . On the other hand, we have a problem of support of the activities of the association and until a better method of financing is found they feel that this is one of their primary sources of income to support the association" ¹⁴

If these activities are legitimate law enforcement activities, it would seem that the entire public, as taxpayers, should support them, rather than forcing a small number of businesses to shoulder the burden. Non-law enforcement activities, of course, should be borne by the organization itself, and not by a portion of the public

The activities of the Highway Patrolman's Association provide a good example of the preceding statement All profits from the association's magazine are put into a Widow's and Orphan's Fund, and upon the death of any members, \$2,000 is paid to his named beneficiary (The fund is now over \$500,000.) The California Highway Patrolmen are public employees engaged in a dangerous occupation for the benefit of the public It should be expected, therefore, that the public will compensate these men for injuries or deaths resulting from activities in the line of duty, and if such compensation is not now available, this fact should be brought to the attention of the proper legislative committee.

However, where the death is unrelated to the employment as a patrolman, there is no reason why these benefits should be coerced out of the public In this respect, these benefits are a purely private function and should be financed by the dues of the association The use of an official sounding name for a purely private purpose is a misuse of the name, and should be stopped

¹¹ Testimony of William Lovejoy, State Legislative Chairman, Peace Officer's Research Association of California, at the San Francisco hearing, May 25, 1962, pp 106-107

¹² Transcript of Hearing, May 25, 1962, p 107

¹³ Los Angeles Police Department, *Daily Training Bulletin*, Charles C. Thomas, Springfield, Ill (1954), p 23

¹⁴ Testimony of Robert O. Fort at hearing, May 24, 1962, p 20.

Finally, there is the problem of the cards, badges and other paraphernalia that are often given to contributors. Almost all the legitimate organizations are quite emphatic about not giving out any sort of device that could be construed as granting favors, but the Highway Patrolman Association generally distributes gold cards to its advertisers.

"We had about \$30,000 or \$35,000 in accounts receivable. So I hit on the idea of giving them something if they paid cash. It first started with a 5 percent discount and that didn't work. Well, it worked to a certain extent, but not with all of them. So now we give out a card and I assume that you have seen the card. The only thing it says is that they're a member, not a member, but they are sponsoring safety on the highways. I have one here. There is nothing there that designates that there are any special favors."¹⁵

Even if no favors are granted to the holders of these cards (see Appendix C for a contra inference) the possession of these cards by the public, with no control over them by the Highway Patrol, means that they can be used for purposes of fraud and misrepresentation, or can otherwise be used to damage the reputation of the Highway Patrol. It appears that the only legitimate reason for distributing these cards is to encourage payment of accounts receivable. Other businesses have solved this problem without distributing cards, and a prohibition against this distribution would not have any grave consequences.

Summary

The Reagan Bill (A B 2615) is aimed at the fraudulent organization that represents itself as a law enforcement organization. Such a bill is definitely needed at this time, and its enactment is strongly recommended. There are, however, two necessary amendments to the bill as it now reads.

First, the bill requires that any organization representing itself as a law enforcement or peace officer association must be composed of at least 90 percent active or retired peace officers. No definition of peace officer is included in the bill, so reference would have to be made to Penal Code Section 817, which defines "peace officer." Section 817, however, does not include district attorneys as peace officers, and a problem may arise where a legitimate organization includes a number of district attorneys in its membership. Therefore, A B 2615 should be amended so as to provide that "peace officer" means the Section 817 definition, plus any official active in any segment of the field of law enforcement who is in the employ of the State or any of its political subdivisions.

Section 2 of A B 2615 prohibits the selling or giving of any device when it is represented that display of the device will result in less rigorous law enforcement. This section would simply add another weapon against the fraudulent organization, which would probably be covered by Section 1 as well. Under the present wording, however, it

¹⁵ Testimony of W. Howard Jackson, editor of the *California Highway Patrolman* at the San Francisco hearing, May 24, 1962, p. 73.

would not stop the distribution of cards where no active misrepresentation is made. To be more effective, this section should be amended to prohibit the selling or giving of these devices where it could be reasonably inferred by the recipient that display of the device would result in less rigorous enforcement of the law as to the recipient.

The Carrell Bill (A B 2591) is aimed at advertising in law enforcement magazines. As amended, it would allow the legitimate magazines to continue to solicit advertising while prohibiting the fraudulent magazines from doing so. Since these magazines make most of their money by selling ads, it can be assumed that the fraudulent magazines will have to discontinue operations once this source of revenue is cut off. Thus, in effect, the Carrell Bill will accomplish exactly what the Reagan Bill will. It will accomplish this, however, only by the expenditure of time and money by the Secretary of State and the Department of Justice, and will establish a vague set of standards that will be difficult to work with and could lead to prolonged litigation. For these reasons, it is recommended that the amended Carrell Bill not be enacted.

As originally introduced, the Carrell Bill prohibited the selling or attempted selling of advertising in *any* law enforcement magazine, legitimate or fraudulent. In this form, the bill goes beyond the Reagan Bill and attempts to raise the standards of the law enforcement profession. In order to gain these desirable results, it is recommended that the Carrell Bill be enacted as originally introduced, with one minor amendment. For the sake of clarity, "persons connected with law enforcement," on lines 7 and 8, should be changed to "peace officers," so that reference can be made to Penal Code Section 817.

APPENDIX 4-A

ASSEMBLY, CALIFORNIA LEGISLATURE

May 22, 1961

STATEMENT ON ASSEMBLY BILL 2591—CARRELL

In presenting this bill, I would like to state that I conducted a survey on public reaction to this proposed legislation—and sent a questionnaire to all the advertisers in the most recent issue of the Highway Patrol magazine. Three hundred postcard questionnaires were sent and 165 were returned with the following results:

Total favoring legislation as provided by A B 2591	140
Total not in favor of A B 2591	25
(These figures include letters received on subject)	
1 "We have felt there was either a threat or promise of immunization if we did or did not buy ads in law enforcement publications"	85 YES 68 NO 22 No opinion
2-A We have been offered a "Gold Card" by State Highway Patrol for taking ads	106 YES 36 NO 21 No reply
2-B Others have offered us comparable "exemption"	47 YES 60 NO 53 No reply

3	We approve of this type of solicitation for our advertising--	133 NO 24 YES 8 No reply
4.	We will support your proposed legislation (A B 2591)-----	131 YES 22 NO 20 No reply
5	Do you consider this advertising worthwhile? -----	66 NO 25 YES 15 No reply
6	Or do you consider it really just a "donation" -----	106 YES 26 NO 9 No comment

APPENDIX 4-B**REPLIES TO QUESTIONNAIRES MAILED TO ADVERTISERS OF "THE CALIFORNIA
PEACE OFFICER," SEPTEMBER-OCTOBER, 1961**

1.	We have felt there was either a threat or promise of "immunization" if we did or did not buy ads in law enforcement publications -----	17 YES 50 NO 8 No comment
2	We have been offered an identification card or other emblem indicating that we have bought advertising -----	28 YES 41 No 6 No comment
3	We approve of this type of solicitation for our ad- vertising -----	4 YES 65 NO 6 No comment
4.	Do you consider this advertising worthwhile? -----	3 YES 69 NO 3 No comment
5	Or do you consider it really just a "donation"? ---	74 YES 1 NO

Two hundred twenty-five questionnaires were mailed out
Total of 75 replies received by the committee

APPENDIX 4-C**ORIGINAL OF THIS LETTER, BEARING LETTERHEAD AND
SIGNATURE, IS IN ASSEMBLYMAN CARRELL'S FILE**

May 1, 1961

TOM CARRELL, member assembly
3113 State Capitol
Sacramento 14, California

DEAR SIR May I congratulate you for introducing Assembly Bill 2591 I, too, have felt with considerable cause that there was more than salesmanship involved in soliciting advertising in law enforcement publications This last year I have become convinced it has become a legal "shakedown" especially the "Highway Patrol" magazine. The

last call made by the salesman for this publication made his point quite well. In fact I gave considerable thought to calling it to the attention of the Legislature but after inquiry I found he was not actually affiliated with the patrol but was instead an independent solicitor and as such could not be guilty of coercion.

You say you are a businessman, then you can readily understand that the small ad I placed could not be worth \$80 to me, however since this ad was placed our number of citations for technical violations have dropped about 85 percent. Since there has been no change in our operations during this period what caused the drop? Coincidence, lack of enforcement, I doubt it very much. I would hate to be placed in the position of proving my accusations but I would not hesitate to express my opinion under oath to any Legislative committee at any time.

I have a high regard for the Highway Patrol in California, but I feel this is a disgrace to the patrol and the men in it. I have no argument with a widows and orphans fund for patrol members and their families, but I feel this is a public responsibility and as such should be borne by public taxation rather than squeezed from a small number of businessmen. Thank you for your interest in this matter and feel free to call on me at any time regarding this matter.

Very truly yours,

/s/ Original signed

APPENDIX 4-D

LIST OF WITNESSES

Harold E. Curtis, Better Business Bureau, San Francisco
 Thomas Lynch, District Attorney, San Francisco
 Inspector Alfred Annand, San Francisco Police Department
 Raymond Mombousse, Deputy Attorney General, Sacramento
 John Price, District Attorney, Sacramento
 W. Howard Jackson, Editor, the California Highway Patrolman, Sacramento
 Harold K. Jacobs, Inspector, California Department of Highway Patrol, Sacramento
 Robert O. Fort, Fence Officers' Association of California, Sacramento
 James S. Markey, Chairman, Publication Committee, Judges, Marshals and Constables Association, Santa Monica
 John Dinkelspiel, State Sheriffs' Association, San Francisco
 Patrolman William Lovejoy, P. O. R. A. C., Oakland Police Department
 Inspector Ralph Condit, Fraud Detail, Oakland Police Department
 Inspector Roy Hudgens, Berkeley Police Department
 John Murray, 70 Oak Street, San Francisco
 Leo DeLos Rios, California Association of Highway Patrolmen, Costa Mesa

PART 5
FAILURE TO PROVIDE: CRIMINAL SANCTIONS

REPORT ON PENAL CODE SECTION 270— FAILURE TO PROVIDE

RECOMMENDATION No. 1

The committee recommends (1) that Penal Code Section 270 be amended so as to provide that where a person charged with violating Section 270 by not providing for his illegitimate child in good faith denies or seriously questions whether he is the father, there must be a prior civil suit to determine the issue of paternity before there is any violation of Penal Code Section 270, and (2) that a failure to provide is only willful from the time paternity has been determined in the civil suit.

RECOMMENDATION No. 2

Welfare and Institutions Code Section 1574 should be amended to make it clear that the district attorney may bring an action under Section 231 of the Civil Code regardless of the source of the complaint

RECOMMENDATION No. 3

Code of Civil Procedure, Section 1870 (2) provides that "the act, declaration, or omission of a party, as evidence against such party" may be introduced as evidence at a trial. It is recommended that evidence of support of a child, when unaccompanied by any other form of admission, be excluded from a trial determining the paternity of the child. However, in the past the courts have themselves exercised discretion as to what should be excluded for policy reasons, and since this precise point has yet to be ruled on by the courts, no recommendation is now made to change the present statute.

REPORT

The law of California today provides that "a father of either a legitimate or illegitimate child who willfully omits without lawful excuse to furnish necessary clothing, food, shelter or medical attendance or other remedial care for his child is guilty of a misdemeanor and punishable by a fine not exceeding \$1,000 or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment . . ." ¹ The purpose of this law is, obviously, to try to make the father assume the responsibility for the care of his child, and it is considered a necessary aid to welfare organizations in placing this responsibility upon the father ²

In order to convict under Section 270, the prosecution must prove that: (1) the defendant is the father of the child, (2) he did not support the child, and (3) such nonsupport was willful. The courts have held that a failure to provide support is not willful where the father did not have the means to provide support, in spite of diligently searching for work, ³ where the father did not know the whereabouts

¹ Cal. Pen. Code, § 270.

² Testimony of Larry Driven, District Attorney of San Joaquin County, at Los Angeles hearing, 15 August, 1962.

³ *People v. Caseri*, 129 Cal. App. 88, 18 P.2d 389 (1933).

of the mother and child;⁴ where the father was not told that the child needed support;⁵ and where the father had no knowledge of the existence of the child.⁶ But a recent case held that the defendant's belief that he was not the father of the child did not negate the element of willfulness, and thus once paternity is proved, the defendant is guilty if he failed to provide, regardless of his intent or belief.⁷ Thus once a man is told that he is the father, either by the mother, a welfare agency, or the district attorney's office, he is subject to conviction even though he believes that he is under no obligation to act.

Therefore, once a man is accused of being the father of an illegitimate child, the only way he can be sure of protecting himself from criminal prosecution is to support the child. This accomplishes the primary goal of having the child provided for, but sometimes poses a great problem for the man, since under the law as it stands today, any support given by the man can later be used as an admission against him in a later paternity action.

"But the man who doubts that he is the father has a very difficult problem in advance of being prosecuted by a case, because if he makes payments for the support of the child during the period in which his mind is not made up, the city prosecutor or the district attorney will most certainly prove the fact that he made those payments as evidence of his admission of paternity and they argue that no one who didn't believe he was the father of the child would support it and yet we know, I am sure, that it is true that there may be many instances when goodhearted persons would be willing to make a tentative support on the basis of 'let's see whether it could be my child'."⁸

Since the primary consideration of this section of the Penal Code is the welfare of the child, the law should do all it can to encourage temporary support while the paternity issue is being settled, not to discourage such support. For this reason, when such support is unaccompanied by any other form of admission, evidence of such support should not be admitted in the paternity suit. The policy behind this is quite similar to that excluding evidence of compromise settlements and post-accident repairs in later negligence actions.⁹

⁴ *People v. Wallace*, 62 Cal App 385, 217 Pac 81 (1923).

⁵ *People v. Maud*, 28 Cal App 140, 151 Pac 552 (1915).

⁶ *People v. Freitas*, 34 Cal App 2d 684, 94 P 2d 397 (1939).

⁷ *In re Clarke*, 149 Cal App 2d 802, 309 P 2d 142 (1957). The court held that there could be no conviction unless it was proven that (1) the defendant was the father, (2) he had knowledge of the existence of the child, and (3) some claim or assertion of his paternity had been made to him.

⁸ Testimony of Hon. Richard F. C. Hayden, Los Angeles Superior Court Judge, at the Los Angeles hearing.

In *People v. Nelson*, 71 Cal App 694, 236 Pac 208 (1925), a support agreement admitting paternity was accepted by the court as an admission in *People v. Swiggy*, 69 Cal App 574, 233 Pac 174 (1924), where the defendant married the mother after the birth of the child, the terms of the support agreement were admitted to disprove paternity by countering the implied admission of the marriage. No case has been found concerning only the support of a child, with no other admission of paternity.

⁹ McCormick, Evidence, Section 251.

"The only substantial ground for excluding offers of compromise is not that they are irrelevant, but the reason of policy that their admission would discourage what the law wants to encourage, the settlement of disputes."

Section 252. "The predominant reason for excluding such evidence [taking safety measures after the accident], it seems, is not lack of probative significance, but the very urgent policy against discouraging the taking of safety measures."

Thus today a putative father is placed in the position that he must either support a child that he knows or believes is not his, or take the chance of a criminal conviction if he is found to be the father. Since most men will support a child, if they have the means, once there has been a judicial determination of paternity, a procedure that requires a prior civil determination of paternity will not only save the defendant from the stigma of having a criminal record, but will probably save the State a great deal of expense, as the district attorney's office would only prosecute such civil cases where the mother could not get a private attorney or legal aid society to do it for her.

Q. "Judge Hayden, wouldn't the fact of your proposed statute be that we would have two actions resolving instead of one, as now is probably the case?"

A. "Well, theoretically, certainly that is the effect.

Q. "This would be a greater expense to society?"

A. "I question practically whether when a man has been to court on the issue of paternity that you would thereafter have as many defenses by men in that situation, except on this—in other words, I doubt very much that men would thereafter fail to provide in many instances where they now do."¹⁰

Another advantage of the civil suit prior to a criminal prosecution is that it may be easier to get witnesses to testify, and thus the truth is more likely to be ascertained.

"I have represented numerous clients in this particular area, and am quite familiar with the dilemma that the present state of the law creates. In more than one circumstance the reputed father was only one of several persons known to have had intimate relations with the mother of the child. It is practically impossible to get the testimony of those other persons in a criminal proceeding for rather obvious reasons."¹¹

The situation where the mother has had relations with a number of men during the period of conception brings to light another problem. Welfare and Institutions Code Section 1572 provides that a child may be deprived of welfare aid if the mother refuses to give reasonable assistance to the authorities. The problem this presents is best described by Thomas T. Jordan, Associate Counsel, State Department of Social Welfare:

"The Welfare and Institutions section most directly affected is Section 1572. This section requires, as a condition of eligibility for Aid to Needy Children, that the applicant, generally the mother, render reasonable assistance to law enforcement officers in the area of the identity or whereabouts of the absent parent. Under this section the mother must co-operate and name the father of the child or she may in some cases have to forego aid. If the mother does not co-operate she will be denied assistance although the child and the mother may be in need.

¹⁰ Testimony of Hon. Richard F. C. Hayden, Los Angeles Superior Court Judge, at the Los Angeles hearing, p. 19.

¹¹ Letter received from Arthur T. Jones, Attorney at Law, 17 August, 1962.

" . . . Some of the mothers cannot state with certainty the true identity of the father of the child. Several men may have had access to the mother during the period in which conception occurred, the relationship may have been brief, and some of the mothers are not intellectually capable of arriving at a reasonable conclusion as to the true identity of the father of the child."

" She can state that she cannot identify the father, assuming that she will be believed and that aid will be granted for her child. On the other hand she may feel that the action will be considered a refusal to render reasonable assistance or a failure to co-operate and that aid will be denied. In the latter situation and if she and her child are needy, she may, rather than risk the possibility of not receiving aid, name as the father one of a number of men who had intercourse with her at or about the time the child was conceived. She may be naming a man who is not the father. The consequences of her statement and its possible effect on the man she has named are not carefully weighed by her because of her need and the economic pressure she is facing." ¹²

Thus we may be presented with the situation where the man accused of being the father is not the one most likely to be the father, thus emphasizing the unfairness to the accused man.

"Now undoubtedly if this girl is promiscuous in her relations with other men, they pick upon the most prosperous looking man they could find. That is one of the difficulties." ¹³

The purpose of the civil trial is to give notice to the defendant that he is the father of the child, and therefore has an affirmative obligation to support the child. After such a determination the criminal sanction can be applied if the child is not supported, and the defendant could not complain of unfairness due to lack of notice to act. The civil action is not intended to establish one of the elements of a violation of Section 270. It has long been established that in a civil case a verdict must only be supported by a preponderance of the evidence. Recently there has been some confusion as to the amount of evidence needed to settle the paternity issue in a criminal trial under Section 270.

"It is true that in a prosecution under Section 270, Penal Code, the parenthood of the defendant is a fact that must be established. We are unaware, however, of any principle of constitutional law that prevents the Legislature from providing, as it has in Section 270e, that this fact may be established by a preponderance of the evidence." ¹⁴

But on the other hand:

"A man's neglect of a child raises no presumption that he is guilty of violating the section. Proof, *beyond a reasonable doubt*,

¹² Testimony of Thomas T. Jordan, Associate Counsel, State Department of Social Welfare, at the Los Angeles hearing. Mr. Jordan went on to suggest that Section 1572 be amended to allow the child to receive aid where the mother does not identify the father, if (1) the identification appears to be a guess, rather than based on actual knowledge, or (2) if the mother lacks the mental ability to identify the father.

¹³ Testimony of Ellery Cuff, Public Defender, Los Angeles County, at Los Angeles hearing, p. 59.

¹⁴ *People v. Alvarez*, unreported, decided in the Los Angeles Superior Court, Appellate Department on 12 January, 1959.

that the neglected child is his, is required to make out a case, and is a prerequisite to, and not raised by, the presumption" (Emphasis added) ¹⁵

Penal Code Section 270e provides that "no other evidence shall be required to prove marriage of husband and wife, or that a person is the lawful father or mother of a child or children, than is or shall be required to prove such facts in a civil action" This section has caused a great deal of confusion, it seems, both with the courts and with practicing attorneys

"I would like to go to a question raised by Assemblyman Knox directly if I can so as to get into what I think is the heart of what can be done in this area and that is that there is a present confusion existing on the part of prosecutors, courts and judges as to whether or not Section 270(e) does not say that all the prosecutor has to do is to prove paternity within the criminal action only by a preponderance of the evidence as opposed to beyond a reasonable doubt There is a case . *People v Alvarez*, CP 3960, which says exactly that. That you don't prove paternity beyond a reasonable doubt Then there is another case . *People v Crawford*, CP 4985, which was rendered within the last month, which in the language and which, apparently, is dicta, says that you have to prove it beyond all reasonable doubt" ¹⁶

"Although there is some question as to that which Mr Worrell pointed out and I agree with him, this is one of the areas where we find the most difficulty In other words, what burden of proof do we follow in a paternity action, even a criminal action? Is it by preponderance or beyond a reasonable doubt and to a moral certainty So we are concerned and have been with this problem" ¹⁷

There has also been some doubt as to whether it would violate the due process clause of the 14th Amendment of the United States Constitution for a state to require only a preponderance of the evidence for a conviction in a criminal case The U S Supreme Court, however, has held that it is not a violation

"In that case [*Davis v United States*, 160 US 469 (1895)] this court, speaking through Mr Justice Harlan, announced the rule for federal prosecutions to be that an accused is 'entitled to an acquittal of the specific crime charged if upon all the evidence there is reasonable doubt whether he was capable in law of committing crime' . . . The decision obviously establishes no constitutional doctrine, but only the rule to be followed in federal courts. As such, the rule is not in question here" ¹⁸

Thus, there isn't any prohibition on requiring only a preponderance of evidence on the issue of paternity in a criminal trial for a Section 270 violation But the law of California seems to be that in a criminal

¹⁵ *People v Crawford*, 265 ACA Supp 919, 23 Cal Rptr 566 (1962)

¹⁶ Testimony of Claude Worrell, attorney at law, at Los Angeles hearing, p 27

¹⁷ Testimony of Larry Driven, District Attorney, of San Joaquin County, at Los Angeles hearing, p 54

¹⁸ *Leland v Oregon*, 343 US 790, 797 (1952)

trial *all* elements of the charge must be proven beyond a reasonable doubt.¹⁹ Therefore, it is possible that under the law as suggested, the district attorney might have to prove first that the defendant is the father of the child in a civil suit, and then prove it again in a criminal prosecution. No undue burden is foreseen, however, since, as was mentioned earlier, it is anticipated that once a man is determined to be the father in a civil suit, he will more than likely support the child, and therefore, there will be no need for the criminal action.

At the hearings questions were also raised as to the actual procedure by which the civil suit would be conducted before the criminal prosecution. The primary problem was who would initiate the civil action. In the past such action has usually been left to the mother of the child. Often, however, the mother does not have the funds to hire an attorney. This is particularly true where the mother has had to apply to the Aid for Needy Children program to help support the child.²⁰ It has been estimated that up to 75 percent of the Section 270 complaints filed in Los Angeles County originate with women applying for welfare support;²¹ other counties have a greater percentage of cases where the mother comes in on her own.²² It is obvious that anyone receiving aid from ANC will not have much money, so that it may be difficult to bring the putative father into court for a civil paternity suit. It is possible that a legal aid society will help, if one is available, but usually the legal aid societies are insufficiently staffed to handle very much trial work.²³ If, therefore, the district attorney cannot convict under Section 270 until the paternity of the child has been settled in a civil suit (where the paternity is in issue) some provision must be made to allow the district attorney to initiate the civil action where no one else can or will do it. Section 1574 of the Welfare and Institutions Code provides that when the county welfare department is not satisfied that the paternity has been adequately established, it must refer the applicant to the district attorney. The district attorney shall then investigate, and where he deems it appropriate, he may bring an action under Section 231 of the Civil Code. As the district attorney now has the power to initiate a civil paternity suit, all that is needed

¹⁹ *People v. Kovacevich*, 19 Cal. App.2d 325, 65 P.2d 807 (1937). In a prior civil suit the defendant was found to be the father of the child. In the subsequent criminal trial for failure to provide, the former judgment was held to be conclusive on the paternity issue. The District Court of Appeal reversed, stating: "It is a fundamental rule of criminal procedure that in the trial of an action wherein a defendant is charged with the commission of a crime, the prosecution is required to prove every element of the offense beyond a reasonable doubt."

"This element [the paternity of the defendant] the prosecution was required to establish beyond a reasonable doubt, and not by a mere preponderance of the evidence, which was all that was required of the plaintiff in the civil suit brought in conformity with Section 196a of the Civil Code."

Since 1937 Penal Code Section 270e has not been changed in any way that would effect the validity of this case law.

²⁰ Welfare and Institutions Code Section 1573 requires all women applying for welfare support for their children to co-operate with the law enforcement officers by naming the father of the child and signing a complaint against him. This is then turned over to the district attorney's office for investigation and possible prosecution.

²¹ Testimony of James Bigler, Chief of the Bureau of Investigation of the Los Angeles District Attorney's Office, at the Los Angeles hearing, p. 83.

²² Testimony of Larry Driven, District Attorney of San Joaquin County, at the Los Angeles hearing, p. 56.

²³ Telephone conversation with Mrs. Yunquez, secretary to the Sacramento Legal Aid Society, 1 October, 1962. Although approximately one paternity case a month applies for help from the Legal Aid Society, no paternity case has been taken to trial in the past five years.

to cover the present problem is to amend section 1574 to allow the district attorney to initiate the civil suit regardless of the source of the complaint ²⁴

Summary

Under the present law of California, a man accused of being the father of an illegitimate child is placed in a very difficult position from which to challenge the accusation of paternity. If he refuses to support the child, he leaves himself vulnerable to criminal prosecution, with the attaching stigma of social condemnation. On the other hand, if he does support the child while denying the paternity, such support can later be used as an implied admission of fatherhood.

A civil suit prior to criminal prosecution would be no more expensive to the man who is willing to assume his responsibility once the determination of paternity is made, and would possibly be a less expensive procedure to the State, while at the same time eliminating the coercion of criminal prosecution from those who deny paternity until such time as they have been given judicial notice that they are obligated to support the child.

APPENDIX 5-A

LEGISLATION PROPOSED BY HON. RICHARD F. C. HAYDEN, JUDGE SUPERIOR COURT, LOS ANGELES COUNTY

Proposed Section 26530 of Government Code

The district attorney may, and when directed by the board of supervisors shall, bring a civil action to enforce the obligations for support provided in Section 196 of the Civil Code on behalf of a minor child residing within the county where, by virtue of a parent failing to support such minor child, it appears that such minor child has become or likely to become a charge upon any public agency for support.

Proposed addition to Section 270 of the Penal Code

A father who denies his parental relationship to an illegitimate child is not guilty of a crime under this section unless his omission to furnish necessary food, clothing, shelter or medical attendance or other remedial care for such child occurs after a court of competent jurisdiction has decreed either that he is the father of such child or, pending a final determination of the question that he must support said child. Support furnished under such a decree may not be proved as evidence of his admission of parentage if such decree shall thereafter be set aside for any reason.

²⁴ At the Los Angeles hearing, Hon. Richard Hayden proposed that the Government Code be amended so as to allow the district attorney to initiate a civil suit. He was apparently unaware that the district attorney already had the power to proceed civilly.

APPENDIX 5-B**LETTER TO ASSEMBLYMAN WOLFRUM FROM J. B. BIGLER, CHIEF
BUREAU OF INVESTIGATION
Los Angeles District Attorney's Office**

DEAR MR WOLFRUM At the hearing held by the interim legislative committee on August 15, 1962, you requested that I furnish you with accurate information on our case load in the Failure to Provide program.

On January 1, 1962, there were 29,742 cases pending. During the first six months (January to June, inclusive), there were 19,567 cases opened or reopened. This gives a projected total for the year of 1962 of 68,876 cases. The above estimate varies from the estimate previously given because effective April 1, 1962, the practice of opening cases on receipt of BPA form 210-1 from the Bureau of Public Assistance was discontinued. These 210-1 cases accounted for about 40 percent of the cases opened prior to this change of procedure.

The BPA 210-1 form is a report made by the Bureau of Public Assistance to the district attorney pursuant to Section 1571, Welfare and Institutions Code. Although previously the applicant was interviewed and a full report and case history was worked up, experience had shown that in many cases there was no cause for further action and that in those cases where further action was required at a later date, that the information assembled on receipt of the 210-1 form was obsolescent and required verification and/or amendment. Accordingly, the procedure was modified. Had this change not been adopted, it is estimated the case load would have approximated 100,000 for 1962.

Very truly yours,

WILLIAM B. MCKESSON, District Attorney
/s/ By J. C. BIGLER, Chief, Bureau of Investigation

APPENDIX 5-C**LIST OF WITNESSES**

J. Robert Smith, Reporter, Pasadena Independent Star-News
Hon. Louis T. Fletcher, Municipal Court Judge, Pasadena Judicial District
Richard P. B. Tyson, Attorney at Law, Pasadena
Hon. Richard F. C. Hayden, Los Angeles Superior Court
Claude Worrell, Attorney at Law, Los Angeles
Larry Driven, District Attorney, representing District Attorney's Association, Stockton
Thomas T. Jordan, Associate Counsel, representing Department of Social Welfare, Sacramento
Ernest Ludo, Altadena
James C. Bigler, District Attorney's Office, Los Angeles
Elleiy Cuff, Los Angeles County Public Defender

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REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON
CRIMINAL PROCEDURE'S SUBCOMMITTEE ON
CUSTODIAL INSTITUTIONS

MEMBERS OF COMMITTEE

VERNON KILPATRICK, *Chairman*

NICHOLAS C PETRIS
JOHN A. O'CONNELL

BRUCE SUMNER
CHET WOLFRUM



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JANUARY 1963

HON JESSE M UNRUH
Speaker

HON CARLOS BEE
Speaker pro Tempore

HON JEROME R WALDIE
Majority Floor Leader

HON JOSEPH C SHELL
Minority Floor Leader

ARTHUR A OHNIMUS
Chief Clerk

LETTER OF TRANSMITTAL

January 8, 1963

HON JESSE M UNRUH, *Speaker of the Assembly*
and Members of the Assembly
Assembly Chamber
Sacramento, California

GENTLEMEN: In compliance with the provisions of House Resolution No. 361, the Subcommittee on Custodial Institutions of the Assembly Interim Committee on Criminal Procedure herewith submits a report on subjects studied during the interim

The conclusions and recommendations were based upon public hearings and additional staff research. We believe they merit the careful attention of the Legislature.

Respectfully submitted,

VERNON KILPATRICK, *Chairman*
JOHN A O'CONNELL
NICHOLAS C. PETRIS



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ADMINISTRATION OF LOCAL JAILS

RECOMMENDATIONS

1 The Legislature should urge city and county law officials and magistrates to alleviate jail population pressures through a continued drive for more facilities, especially those of minimum security. It is the finding of this subcommittee that while several measures, such as use of citations for state misdemeanors, probation, work furlough and rehabilitation farms, have been expressly passed by the Legislature to give local officials the means to relieve overcrowded maximum security facilities, most counties have taken little or no advantage of them.

Bail practices are another area which should be studied carefully to determine if many persons now incarcerated because they cannot raise bail, might be released without bail. Currently there is a very successful program along these lines in the New York City Municipal Court. With the sincere co-operation of judges, the bail project workers have effected release without bail for hundreds of arrested persons. The casualty rate of those who did not return for trial has been less than for those out on bail.¹ It may be that present bail procedures as practiced here in California have the effect of establishing a double standard of justice—one for those who can afford bail, another for those who cannot. The central question here is not whether bail be excessive, but whether it be necessary at all.

2 The Board of Corrections is urged to complete its revision of the "Minimum Jail Standards" as soon as possible and to include in their distribution to all concerned officials an inspection form for those responsible for their compliance. There must be no room for excuses of ignorance, improper procedure or incomplete reporting forms. It is recommended that some procedure for explaining and promoting the new and more detailed standards be initiated, that all counties and municipalities they are issued to be encouraged to ask questions and seek elaboration of the Board of Corrections. While the subcommittee recognizes the excellent job that has already been done by the board, as well as the need to continually cultivate co-operation and good relations with local jail officials, there has seemingly in the past been little effort to correct violations of the minimum standards.

Presently, the responsibility for enforcement of laws pertaining to local jail administration is nebulous. This has the effect of making mandatory statutes only permissive in power and authority. A clarification of enforcement responsibility should be studied by the Board of Corrections. If greater enforcement of these laws cannot be achieved by the board, the Legislature should seek means either to strengthen the board's power, or establish an alternative enforcement body. Since the Legislature has seen fit to establish minimum standards for the local jails, it should be interested in assuring their enforcement.

¹ *New York Times Magazine*, August 19, 1962, p. 13

3. The subcommittee has been impressed with the idea that the improvements brought to local custodial facilities are mainly due to an increased awareness by better-trained jail personnel of the importance of well-administered jail programs. As in all businesses, both public and private, it is the man at the top who sets the standards and establishes management policies. Sheriffs, not inmates, run jails—their attitudes are reflected by the jailers under their supervision. It is the sheriff as the top manager who determines the policies and sets the tone for jail management. Minimum standards, better salaries, and improved instruction and information, such as the Sheriffs' Association's *Jail Manual*, have all increased the awareness by law officials and jailers of jail management problems. This subcommittee, in accepting the vital role played by responsible personnel, would recommend that training opportunities for them be expanded. Presently the jail administration course is limited in depth and requirement. The Board of Corrections is urged to confer with the Peace Officers Standards and Training Commission in drawing up an expanded training program for local jailers. If better men are the key, we wish to promote whatever personnel programs will be most effective in producing them.

4. The Legislature should urge the sheriffs and boards of supervisors of all counties of the State of California to request and provide, as is proper, the minimum facilities and supplies needed to house and maintain those incarcerated at a safe, decent and healthy level of existence. The sheriff must be informed of his duties, he must in turn inform his board of supervisors of his needs. It is mandatory that they meet these. The state minimum standards are a fact as are Health and Safety Code sections dealing with jail facilities; that people are daily imprisoned in substandard facilities is a violation of state laws. The attitude shown by some local officials at a subcommittee hearing in January 1962 was one of indifference and ignorance of these laws. A strongly worded resolution by the Legislature would do much to stir this local lethargy toward an aspect of law enforcement which is already the victim of too much public apathy.

5. The subcommittee discovered a great disparity in the county rehabilitation programs over the State. This report spells out but briefly this aspect of jail administration, but by no means does it wish to leave the impression that it is unimportant. Counties such as Marin, Alameda and Santa Clara are the current leaders in their efforts to rehabilitate and release inmates who will be responsible and healthy citizens. The Legislature has enacted the Short-Doyle Act to provide counties with the means to construct juvenile rehabilitation facilities, the need for such a program to assist the counties in adult facilities should be further investigated. Certainly no aspect of jail administration is of greater ultimate import, for penologists point out that it is by these methods and at this level that rehabilitation of sentenced persons should and can be most effective. If the convicted citizen is to be improved and first offenders corrected, the local level is the

essential one. The subcommittee strongly urges the adoption of extensive rehabilitation programs by all counties—their social and economic benefits to society have been shown to exceed their cost. The subcommittee has also discovered a great lack of postrelease services for the inmates of local jails. Men released from jail have special problems of unemployment and social adjustment. Many, if given no assistance in re-entering free society, are tempted to return to their former out-law state—this being more familiar and easiest to do.

Presently several private organizations such as the Salvation Army and various religious groups maintain “halfway houses” to provide a place where former inmates may effect the transition to free society.² Only recently has the State established a special employment opportunities co-ordinator for former state prisoners.³ The expansion of these successful services by both public and private groups is urged as a means of providing an easier transition from criminal custody to the responsibility and independence of a free citizen.

6 Finally, this subcommittee commends the responsible and intelligent action of the California State Sheriffs' Association in issuing its *Jail Manual*. The effect of this thorough and instructive document will surely be to improve the body of knowledge and procedures available to all California sheriffs. Such action as this is but another reason for this subcommittee's sincere belief in the progress made in improved jail conditions since 1945. This publication alone should be a major factor in improving the information, practices and procedures of all local custodial personnel. If they are the key to further improvements, the subcommittee feels this manual will do much to inform them of their duties and responsibilities.

² San Mateo Times & News Leader, November 1, 1962

³ San Francisco Examiner, October 21, 1962

I. ADMINISTRATION OF LOCAL JAILS

A. THE BASIC PROBLEM—OVERCROWDED JAILS

Nearly all reports on conditions in city and county jails in California repeat a problem that has grown, and will continue to grow in the years ahead—serious overcrowding of facilities. This is especially true of those jails designed as maximum security facilities, many having been built at a time when *all* arrested and sentenced persons were thought to be of grave danger to the rest of society. Penologists and jailers have retreated considerably from this position, to the point where in some California counties, Alameda for instance, over 90 percent of those persons sentenced to the county jail serve their time at the minimum security Santa Rita rehabilitation facility. Most of the local jails were built to handle population one-third to half those they are forced to take today, they were built for counties whose populations at the time of construction may have been one-fifth to one-quarter of what they are today. The Del Norte County Jail was built to handle the lawbreakers among 2,500 persons; present county population is over 18,000. The Merced County facility was designed to serve a population of perhaps 10,000; present population, over 95,000. Tulare County, with more than 174,000 citizens, which only this year completed a new county jail, was getting along with a jail which was supposed to serve a county of 20,000.¹ This pattern is repeated all over the State. California's recent and continued phenomenal population growth has been composed of law offenders as well as babies.

Many examples of these crowded conditions were stated at hearings before the Subcommittee on Custodial Institutions of the Assembly Interim Committee on Criminal Procedures in January 1962.

Senator Fred S. Farr of Monterey County, Chairman of the Senate Committee on Correctional Facilities, in reporting on conditions in Los Angeles County stated:

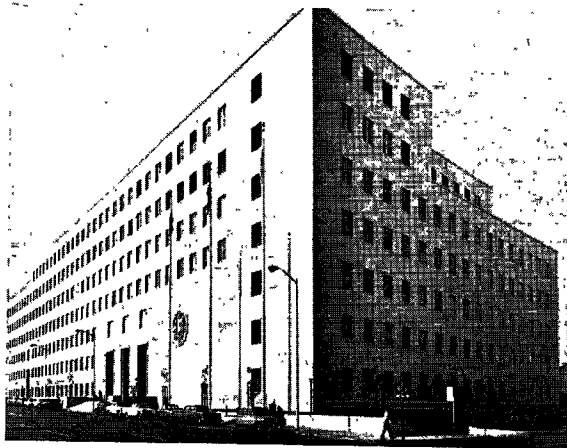
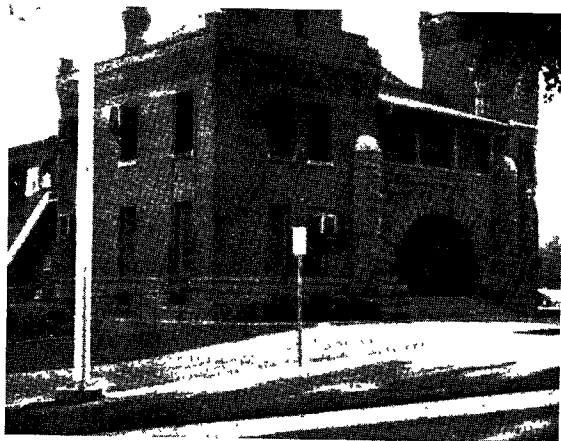
" . . . Our committee went into the main county jail and we found a rated capacity of, I believe, for 1,500, that they have had as many as 4,100 people; that is on the top three or four floors of the Hall of Justice of Los Angeles. . . . We found many people sleeping on the floor of the jail. . . . We found that they had to sit on the beds, sometimes even on the lavatories to be served their meals. These were served up in buckets and trays."²

Inmates were so overcrowded that most received a bath only once every two weeks. Mr. Joseph Dieffenbacher testified, concerning conditions in the Monterey County jail, that

" . . . they had a 'bullpen' there. As I remember it was about 15 by 30 feet. There were 43 men in there. There were bunks for,

¹U.S. Bureau of the Census, 15th Census, 1930, *Population Bulletin*, California.

²Hearings of Custodial Institutions Subcommittee, January 1962, p. 53.



A CONTRAST IN COUNTIES

Top: Merced County Jail, built in 1903. Bottom: San Francisco County Jail No. 1, constructed in 1960-61.

I think, 12 The rest of them were sitting on the floor, around on their mattresses they had folded up and spread out on the floor. But 43 men in a little confined area like—it had a sign 'BULLPEN' on the outside of the door so I know that's what it was. But the overcrowding there was terrific!''³

The Monterey facility was built to house the lawbreakers among a population of 30,000, present population is over 206,000.⁴ The Merced County Jail, built in 1903, had a capacity of 40 before a new wing was added nearly three years ago. Sheriff John J. Latorraca testified before the subcommittee that this facility had held as many as 186. With the new wing, the jail has a capacity of 84. A news item in the Merced *Sun-Star* of September 1, 1961, stated

"In August, a record number of 795 were booked into the jail. Each night there were about twice as many prisoners as bunks, the sheriff said. On weekends there are often three times as many prisoners as bunks. One result is that many prisoners sleep on the concrete floor. Others, unable to sleep, sit up on benches or on the floor throughout the night."''⁵

Sheriff Sandy Robinson related the situation in Tulare County before occupying their new jail recently by stating that often he had 200 to 250 inmates crowded into a facility built for 64.⁶ San Francisco presently has a unique problem in that it has a brand new facility which must remain only partly full due to lack of the necessary personnel to man it.

A recent report by the State Board of Corrections recommended that

"To meet minimum safety and security requirements, immediate action should be taken to add 11 men to the jail staff—eight at the overcrowded San Bruno jail, three at the Hall of Justice jail."''⁷

While these examples of crowded facilities are not heartening, there are many bright aspects to this problem, namely, the construction of many new modern facilities and the expansion of old ones. Recently, new jails have been built in Tulare, San Joaquin, San Francisco, Los Angeles, Inyo, Orange and Mono Counties to name but a few. New facilities are planned or are in construction in Del Norte, Marin, Mono, and Merced Counties. Since the inception of the first Assembly Committee on jails under Assemblyman Vernon Kilpatrick in 1945, dozens of new and improved custodial institutions have been constructed. During this period ideas as to the type of facility needed by local governmental units have changed considerably. That they will change even more was well expressed by Mr. Tom Hudson, former Chairman of the Monterey County Board of Supervisors, when he stated before the subcommittee in January 1962

³ *Ibid.*, p. 32.

⁴ State of Calif., Dept. of Finance, Population Report, August 1962.

⁵ Merced *Sun-Star*, September 1, 1961, p. 1.

⁶ Hearings, p. 207.

⁷ San Francisco *Examiner*, October 24, 1962.

"We have not considered a special bond election for the jail. We have the money to improve the jail to the satisfaction of the Department of Corrections. We feel that's satisfactory—it is not the ultimate solution obviously. We are looking forward to the next 10 years when a number of my friends in law enforcement have told me that we may have a different situation with regard to the type of facilities we want to build. It may be that instead of building maximum security facilities, that 10 years from now, under an enlightened probation program, it may be indicated that a different type of facility is needed . . ."⁸

Certainly progress in the adoption of rehabilitation facilities, probation, parole and work furlough programs will go a long way to alleviate crowded conditions. Such programs have also proved to be far more economical to the taxpayer as well as socially successful in such counties as Marin and Santa Clara where they are used extensively.

This problem in local jails may be accurately summed up by quoting an exchange between Assemblyman Phillip Burton and Senator Fred Farr during the hearings:

Assemblyman Burton: "Senator Farr, do I infer . . . that perhaps the capital construction program of some of the counties . . . is too heavily invested in maximum security construction?"

Senator Farr: "I think very definitely. I think I'd like to see the money and I think you members of the Assembly will recall several years ago when Dr. Menninger addressed the Assembly as a whole, he talked to you about a program, I believe, in the State of Kansas where their emphasis is on brains rather than bricks. I think in California that I would like to see more emphasis go into training and into salaries for correctional officers, peace officers and sheriff personnel . . ."⁹

B. JAIL CLEANLINESS—A MAJOR DEFICIENCY

The most inexcusable aspect of local jail administration discovered by the subcommittee's investigation is the general filth that exists in some county facilities. Reports filed by the subcommittee's investigator, Mr. Joseph Diefenbacher, painted a pretty dismal picture. He wrote the following about the Merced County Jail:

"This is like a pigsty in the midst of a beautiful garden. Men having to live like swine. Human beings who have made a mis-step forced to live under conditions that would nauseate the people who support this institution. In the doorway of one of these drunk tanks I scraped some dried material off the floor which seemed to be vomit. . . How often is an inspection made of this area by those in charge? I asked this question of the deputy that was showing me through. He answered, 'Maybe once a week or maybe once a month.' This whole area could be cleaned and repainted a light color, and some new lighting installed to make it appear fairly presentable. As it is there is no incen-

⁸ Hearings, pp. 96-97.

⁹ Hearings, p. 60.

tive on the part of the employees or prisoners to try to keep the place clean. This is in no way meant as an excuse for the filth and general condition of the jail through inattention, but in my opinion the complement of men who are employed here should certainly be augmented materially." ¹⁰

Testifying before the subcommittee a few months later, Sheriff John Latorraca stated that the board of supervisors had given him a new man whose primary duty is to clean and inspect the jail on his eight-hour shift ¹¹

Speaking of the Tulare County Jail in Visalia, Mr. Dieffenbacher in describing one of his pictures at the hearings stated "Look at the floor—an inch of dirt and filth there collected in back of that shower." This jail's kitchen was overrun with cockroaches, they were in drawers, on shelves, and all over (the) cooking utensils. The Monterey County cell blocks, Mr. Dieffenbacher wrote "are without exception in a dirty condition. The floors are littered and unkempt. The walls and bars had been painted long ago. The last coat of paint was, at this date, in a very dirty condition. I know that with adequate and proper supervision these walls and bars can be kept clean because I have seen it done elsewhere." ¹² And indeed it can as Mr. Dieffenbacher testified during the hearings. He praised the fine job done by the sheriffs in Alameda, Sacramento and Siskiyou Counties. Senator Farr, speaking about San Diego County, said "One of the things that was remarkable in that jail despite the fact that they were terribly crowded, the jail was very clean. It was run by—I recall talking to the head jailer there, they've been ex-chief boatswain mates in the Navy, they knew how to use a paint bucket, and they used it very freely and the jail was very clean." ¹³

Chairman Kilpatrick, to illustrate his belief that even an old and formerly filthy facility could be well maintained, called upon Sheriff Larry Gillick at the hearings, who testified that "One of the first things I did when I went to the Butte County Jail was to clean the place up. And, of course, being an old building (built in 1890), it was a chore and it is a chore to keep it neat and clean. But that is one of the main things that I do stress throughout the jail is cleanliness." ¹⁴

Plain and simple cleanliness in a jail is not primarily a matter of money—it is one of supervised attention and effort on the part of the sheriff. Certainly in view of the many idle hands needing exercise to be found in all jails, there is not the slightest excuse for the neglect of sanitary problems. Speaking of the prevalent lack of such leadership, Mr. Dieffenbacher told of his experience in the Merced County Jail: "There's no supervision whatsoever. In fact, I want to tell you something. One of these men that showed me through—I asked him—'How often do you get in here to inspect this place?' 'Well,' he said, 'I'm going to have to level with you—maybe once a week or maybe once a month.'" ¹⁵

¹⁰ *Op cit* Report on Merced County Jail by Dieffenbacher, pp 1-3

¹¹ Hearings, p 202

¹² Report on Monterey County Jail by Dieffenbacher, p 1

¹³ Hearings, *op cit*, p 59.

¹⁴ *Ibid*, p 88

¹⁵ *Ibid*, p 29



DEL NORTE COUNTY JAIL

Top The present facility, and bottom an architect's drawing of the jail soon to be started in Crescent City.

Section 26605 of the California Government Code states "The sheriff shall take charge of and keep the county jail and the prisoners in it."

While there well may be overlapping responsibilities as to the condition of jail buildings, its maintenance is clearly that of persons so delegated and led by the sheriff. Such conditions as exist are a reflec-

tion of the attitudes and actions of the sheriff. If concern and supervision are lacking, it is chiefly the result of the man at the top who has chosen not to exercise his responsibility over this important aspect of law enforcement. In short, as part of Section 673 of the Penal Code states

"It shall be unlawful in the jails to allow any lack of care whatever which would injure or impair the health of the prisoner, inmate or person confined . . . Any person who violates the provisions of this section . . . shall be guilty of a misdemeanor."

Also, as Chairman Vernon Kilpatrick made reference to during the subcommittee's hearings,^{15a} Section 1222 of the California Government Code states

"Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

Cleanliness is mandatory, and any lack of it is clearly inexcusable.¹

The best final note on this matter is a quote from the excellent new *Jail Manual*, a product of the California State Sheriffs' Association.

"Carelessness, indifference, ignorance on the part of inmates, and lack of supervision on the part of jailers are the main causes of poor sanitation, poor housekeeping, and lack of safe living conditions in jails. A jail can be kept clean by inmate labor by the liberal use of hot water and soap, under the supervision of an officer . . . If sanitation and safety are insisted on by the jailer, the new prisoner will fall in line and the job of supervision will be less difficult."¹⁶

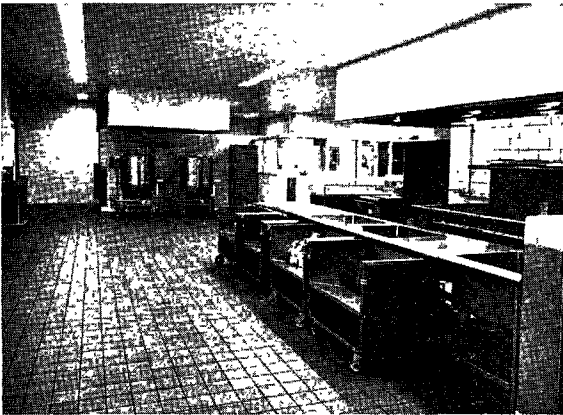
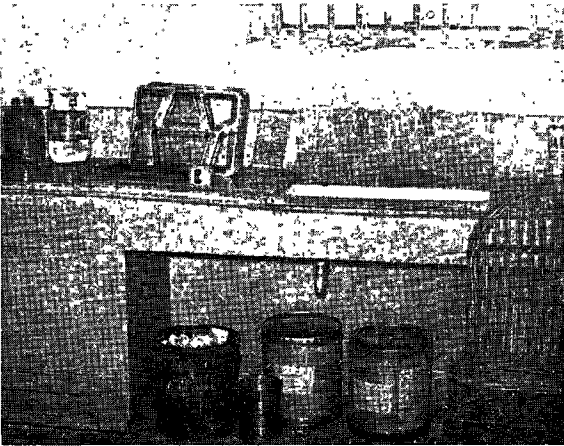
C. THE STATE BOARD OF CORRECTIONS' MINIMUM STANDARDS

Section 459 of California Health and Safety Code, as amended by Chapter 168 of the Statutes of 1961, requires county health officers to investigate health and sanitary conditions in every county jail at least annually. This investigating officer shall determine if the food, clothing and bedding is of sufficient quantity and quality to equal the minimum standards and requirements prescribed by the Board of Corrections for the furnishing of these services to prisoners in all county, city and other local jails. The investigations by the subcommittee revealed that while many of the local jails in the State did meet and even exceed these standards, there are widespread violations of these standards, some of a very serious nature.

1 Feeding Programs. There are two aspects of this requirement which are being neglected by some jails; one, the proper maintenance and use of kitchens was found sadly lacking in Del Norte, Madera and San Luis Obispo Counties. The kitchens of these jails were quite filthy; grease and dirt coated most of the equipment, the walls and ceilings. In violation of the Restaurant Code, No. 10 cans (gunboats) were being

^{15a} *Ibid.*, p. 13.

¹⁶ California State Sheriffs' Association, *Jail Manual* (The Association, 1962), Section 435.



TWO METHODS OF HANDLING FOOD

Top: The kitchen sink area in the Del Norte County Jail in Crescent City Bottom Main kitchen area in new San Francisco County Jail No. 1.

reused for the heating and/or serving of foods and coffee. Describing the old Tulare County Jail kitchen, Mr. Dieffenbacher listed the following features.

- (1) Grease, dirt, and lint-coated walls largely peeled of paint.
- (2) An old wooden cupboard, its drawers cracked with food particles and cockroaches for contents
- (3) An adjacent boilerroom used for storing cooking utensils. This room was so crowded it was difficult to enter, its floor, walls and ceiling so dirty that it was certainly no place to keep utensils used in preparing food.
- (4) A small refrigerator, nowhere near adequate for a jail feeding 115 men. Meat, milk, fruit and vegetables had to be piled up in this box.

The Monterey County Jail had dirty utensils, old equipment very difficult to keep clean, inadequate refrigeration, filthy garbage cans plus a host of other violations of a basic nature. This problem of dirty and inadequate facilities is partly a financial one, partly a supervisory one. There is no county in this State which cannot afford to decently equip and maintain a clean and sanitary jail kitchen.

The second major violation of the feeding standards concerns the quality and quantity of food served inmates. The Minimum Jail Standards of the Board of Corrections, which are mandatory requirements, specify that the daily food ration *must* include selections from all of seven basic food groups. Mr. Dieffenbacher in investigating the feeding of prisoners at the Sacramento City Jail in August 1961 had this to report:

"My main criticism of the operations at the Sacramento City Jail pertains to the feeding of the prisoners. In order to get an accurate figure covering the costs, etc., I used the daily records of meals served and added separately the number of breakfasts and dinners served during the last fiscal year. From these figures it can be calculated that the average cost per meal served in the Sacramento City Jail is 15½ cents. In comparison with any other like figures obtained elsewhere this is the lowest."¹⁷

Mr. Dieffenbacher's report goes on to state that only one real meal is served in this facility, breakfast consisting of only coffee and bread. Dinners were somewhat more, but of a monotonous nature.

At the January 1962 hearings of the subcommittee it was accurately determined that Sacramento's menu was deficient in four of the seven basic food groups, their menu being void of foods in group 2—citrus fruits and tomatoes, vegetable and salad greens, group 4—milk and milk products; group 6—cereals, natural, whole grains, enriched; and group 7—butter or fortified margarine. In the required inspection report filed by a county health official on June 7, 1962, it was specifically stated that these minimum basic food requirements were all being met.¹⁸ On October 31, 1962, a staff member of the subcommittee

¹⁷ Dieffenbacher Report on the Sacramento City Jail, p. 2.

¹⁸ Report to Board of Corrections on Sacramento City Jail.

checked by telephone with a cook at the Sacramento City Jail who stated, in no uncertain terms, that the menu was still as it had been for the last few years. By having this same cook read the current week's menu, it was readily ascertained that the city jail was still deficient in the same *four basic food groups*¹

Sacramento City Jail has one of the best equipped kitchens in the State. The jail is well maintained, clean and sanitary. Why the city continually refuses to feed its prisoners adequately while fulfilling and in most instances exceeding minimum standards is difficult to understand. In responding to the first report on food deficiencies, Sacramento City Manager Bartley Cavanaugh stated he was unaware of the standards required by the State. This acknowledgment was made in a Sacramento *Union* item August 31, 1961. Mr. Cavanaugh has thus been informed for over a year.

Prison conditions are bad enough psychologically without the additional aggravation of insufficient or bad food. There can be no pride or excuse for a capital city in the midst of this country's richest agricultural area to serve a famine diet to its inmates. Certainly the additional expenditure required to meet the minimum standards is an item which the city can well afford.

Again, the new *Jail Manual*, published by the Sheriffs' Association sums up this issue very well:

"Decent and adequate food is the right of every prisoner. Wholesome food, properly prepared and served, is a vital factor in the operation of every jail. Overcooked, poorly prepared, poorly served, or inadequate food causes innumerable problems and leads to serious disturbances and disciplinary problems. When people are deprived of their liberty, they become acutely conscious of bodily needs. Good, simple food, attractively served, has a definite bearing on the morale and discipline of prisoners." ²⁰

2 Inadequate Clothing Issues—A Common Deficiency in Local Jails. Section 4015 of the California Penal Code states:

"The sheriff must receive all persons committed to jail by competent authority. The board of supervisors shall provide the sheriff with necessary food, clothing and bedding, for such prisoners, which shall be of a quality and quantity at least equal to the minimum standards and requirements prescribed by the Board of Corrections. . ."

Section 459 of the Health and Safety Code, as amended by Chapter 168 of Statutes of 1961 *requires* that city and county health officers investigate jail conditions to determine whether the standards referred to in Section 4015 of the Penal Code are being met. Findings of the subcommittee's investigator, Mr. Joseph Dieffenbacher, as well as testimony at hearings in Sacramento during January 1962 reveal that the clothing standards and requirements as established by the Board of Corrections under state law, are being grossly neglected either in full

²⁰ *Jail Manual*, *op cit*, Section 430

or in part, by many counties. Of Merced County Jail, Mr. Dieffenbacher had this to report:

"No article of clothing is issued to any inmate regardless of time he is held. This tends to give the cells a junky and unkempt appearance with various articles of clothing hung on strings across and around cells. My conclusion is that the reason for much of the dirt and filth found here is a lack of attention to such matters on this by those in charge." ²⁰

Contrasted with this approach is the testimony by Sheriff Larry Gillick of the County of Butte, who when asked by Acting Chairman John O'Connell at the January hearing how often he gave clean clothing to the prisoners, replied:

"Clean clothing, sir? When a man is sentenced to the Butte County Jail, we give [him] clean jeans and shirts, shoes and socks and so forth that we buy from Folsom Prison through the Board of Corrections. And we have our own washing machine, our own dryer that is available for the jail itself. I have one man that does all the laundry for the prisoners. And they are given clean clothes whenever they wish to have them." ²¹

The law requires that *all* persons who are to be detained in jail facilities for a period of over 48 hours be issued a set of clothing. And yet Monterey, Orange, San Luis Obispo, Madera and Tulare Counties all were found to be violating this section of the minimum standards. Some counties issue some clothing only to trustees, others only to kitchen personnel.

Dr. H. H. Schneider, the Public Health Director of Madera County, made this comment:

"Clean clothing certainly is important. Soiled clothing is unsanitary—a health hazard; it can transmit body conditions, body lice and skin and staphylococcus infections and such things as that. And clean clothing has two effects. I think it is beneficial from both a sanitation standpoint and from a standpoint of morale." ²²

Sheriff Marlin Young of Madera County did state that he was doing all he could to press the matter with his board of supervisors and thought they would approve such an expenditure.²³ As state law requires the issue of an adequate set of clothing, excuses such as lack of storage area, laundry facilities, or funds cannot be condoned in light of the detrimental health and morale effects of dirty clothing. The law has been adopted for good reason, to insure that certain standards and conditions will be met; that persons who are being held or are sentenced will live in a decent manner. The whole jail experience is one which to most people is extremely disturbing, any aggravation of this upsetting existence by such as dirty living conditions, bad food, and dirty clothing is a social insult and additional misery. Jailers must be sensitive to the idea that a person under the duress of arrest or sentence still has the right to clean clothing. An excellent summation of this ideal of

²⁰ Dieffenbacher Report on Merced County Jail, p. 8.

²¹ Hearings, *op cit*, p. 39.

²² *Ibid.*, p. 195.

²³ *Ibid.*, p. 132. See Appendix A, concerning latest improvements in Madera County.

custodianship is Section 625, entitled "Moral Responsibility," of Chapter VI in the *Jail Manual*:

"The committed prisoner is given to our care by the courts as punishment for his offense against society, but he is not given to us that we might punish him. The loss of liberty alone should be enough punitive action. Those of us engaged in the custodial field must realize that our obligations to the community and society are grave indeed. Even if we can do little to rehabilitate our charges and change their erring ways, we must do all that is possible to see that they are no worse when they are released than they were before their enforced removal from society and exposure to our custodial procedures." ²⁴

3. Bedding Deficiencies—A Key Health Issue. Of much greater health import than either jail feeding or clothing programs is that of supplying adequate clean bedding to local inmates. The following are but a few of a number of bad examples of deplorable bedding conditions in some county facilities:

Madera County Jail—

"The mattresses in use in these tanks are very dirty and the blankets also. It is difficult to determine the degree of filth in the blankets on account of their grey color. Pads and blankets are taken off the bunks and put on the floor to sit on. This helps in getting them more dirty. Proper supervision would require that each bunk be made up in the morning and kept that way during the day." ²⁵

Monterey County Jail—

"Many of the mattress pads in use here are in a filthy condition and black, especially on the ends. These pads are frequently used on the floor and thus become more contaminated. Some have a plastic fabric slipon cover which, it is said, can be washed off when given to a new inmate, but I was unable to find out who attends to this. Other pads were covered with the regular duck covering and appeared to have been in use for months without any laundering. A large number of pads had no cover at all." ²⁶

Tulare County Jail—

"Both the pads and blankets were filthy and are passed on from one prisoner to another without any washing or sterilizing. This was admitted to me.

When a person is required to sleep on the same filthy mattress, and with the same filthy blankets that many others have used before him, it is a wonder that skin infections, tuberculosis and other diseases are not thus transmitted. To a person who has any knowledge of the minimum standards of sanitation this program can surely be very offensive and eliminate any self-respect he may have possessed." ²⁷

²⁴ *Jail Manual*, op. cit., Chapter VI.

²⁵ Diefenbacher Report on Madera County Jail, p. 5.

²⁶ Diefenbacher Report on Monterey County Jail, pp. 1 and 2.

²⁷ Diefenbacher Report on Tulare County Jail, p. 5.

Note should immediately be made that such conditions as described above by no means exist in all jails. In Butte County, for instance, Sheriff Gilbek stated the following:

" . . . When I did enter office I made it mandatory that each man that came in received a clean mattress cover. Our mattresses are sterilized with a sterilizer. I issue them new clean mattress covers, two clean blankets and a clean towel. Now, if a man is just in overnight, still those blankets are not issued to anyone else until they are washed. And also the mattress cover. We allow two clean towels each week." ²⁸

Nor can it be said that clean bedding is an easy facet of jail management, as the following statement given by Sheriff John Latorraca of Merced County illustrates:

"Now, we furnish them with mattress covers and we put them on for them. And just as soon as your back is turned, they've got them rolled up and use them for a pillow or something else. Now, how are you going to fight that situation unless you have somebody standing over them every minute of the day?" ²⁹

Drunks, hostile prisoners, and bums do not make for easy bedding maintenance. But this fact does not detract from the great health hazards that unclean bedding presents. These hazards were outlined very well by Dr. Philip K. Condit, Chief of the Department of Public Health's Bureau of Communicable Diseases. Commenting on the vagueness of the bedding minimum standards, Dr. Condit urged that more specific and detailed standards be adopted. His bureau has been in the process of formulating new standards in co-operation with the Board of Corrections.

Dr. Condit discussed the findings from studies on institutional bedding and stated that disease prevention and health maintenance were directly threatened in the following ways:

Blankets, acting as reservoirs from which people may be infected with organisms left by previous occupants, can contain (1) pyogenic germs due to staphylococcus and streptococcus, (2) respiratory infections due to dry nasal secretions being deposited on bedding; (3) enteric infections due to fecal and urinary contamination of bedding; (4) vermin infestations such as lice and the itch mite, (5) tubercular virus which can be transmitted through bedding.

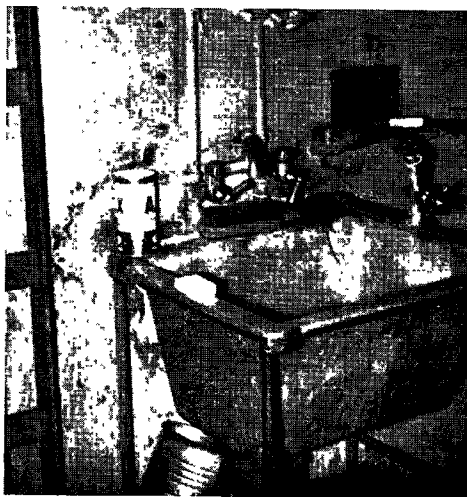
Dr. Condit went on to state the following on bedding requirements:

"Since most local jails do not provide adequate medical screening and since there are many transient occupants, the possibility of disease transmission by contaminated bedding is great. For this reason and reasons of common cleanliness, the following procedures are recommended as being minimal:

"Mattresses—(1) Use mattresses which are covered by some impervious material that can be washed, or; (2) Provide impervious

²⁸ Hearings, op cit, p. 9

²⁹ Ibid, p. 204



TWO ABUSES OF SUBCOMMITTEE CONCERN

Top: The bedding issue in Madera County when inspected by the Subcommittee Investigator, Joseph R. Dieffenbacher. Bottom: A typical shot of the sanitation and maintenance at the Merced County Jail. Part of the lavatory facility there.

cover for ordinary mattresses; (3) Launder mattress pad after each occupant's use

"Blankets—(1) Air blankets for 24 hours, preferably in the sun if possible, and withhold from use 48 hours between each occupant's use; (2) launder blankets whenever visibly soiled, (3) If mattress pads are not laundered after each use, blankets should be laundered every four to six weeks; (4) provide sheets which can be laundered between use " ³⁰

It is encouraging to note that following the reports by Mr. Dieffenbacher, several of the counties which had had bad bedding, immediately improved their respective situations and reported such to the subcommittee at the January hearings in Sacramento. Certainly this aspect of custodial management is one of vital interest to health officials who must think and act to preserve the health of whole communities. If diseases are fostered in jails, the cleanliness and maintenance of good jail bedding is a matter of concern to the whole society. The bedding aspect in jails is only part of the larger health problem which will be discussed in a following section.

D. SAFETY AND HEALTH PROBLEMS

Subcommittee investigations and hearings revealed several aspects of the local jail situation which were highly questionable from a health and safety viewpoint. The only two which will be discussed in this report are jail fire hazards and medical problems and procedures. The fact that this report does not deal with the many other aspects of inmate health and safety such as proper inspections and sanitary investigations should not be interpreted to mean these are not as important; they are, but space permits us only to deal with these two key issues.

(1) In a report dated January 11, 1962, submitted by the State Fire Marshal to Chairman Kilpatrick of this Subcommittee on Custodial Institutions, several of the county jails were listed as *not* being in compliance with minimum requirements of Subchapter 1, Chapter 1, Title 19, Public Safety, California Administrative Code.³¹ Jail structures in Del Norte, Fresno, Madera, Merced and Monterey Counties were all found to be insufficient in means and methods of evacuation, construction, and maintenance.

The background to this subcommittee's concern for this aspect of the local jail picture is tragedy: In early 1959, 21 boys died in Arkansas when an unattended brick-faced wooden-frame dormitory caught fire at a state training school for delinquents. Eight men died soon thereafter in a fire in the Ocean County Jail at Tom's River, New Jersey. Here, 65 men were jammed into a facility built in the 1920's to house 20. It, too, was a brick-faced wooden-frame structure. Closer to home in space and time, one man died as a result of a fire in the Hayfork Substation of the Trinity County Jail in December 1960. This building was also unsupervised at the time of the blaze.

With terribly overcrowded facilities such as the Los Angeles County Jail, the consequences of any outbreak of fire would be extremely

³⁰ *Ibid.*, pp. 70-71.

³¹ Information obtained from Glenn B. Vance in correspondence with Assemblyman Kilpatrick.

grave Senator Farr, in extending his remarks before the subcommittee at the January hearings, had this to say:

"We found that the fire conditions in the Los Angeles County Jail were very, very hazardous. Testimony from me, I believe it was, the county administrator and the fire chief, was one that if a fire broke out in the lower floors of that building, where there is a tremendous amount of combustible material, although the jail itself would not burn, the smoke would rise to the upper floors. And one of the things that causes many deaths and injuries in a fire is panic. There would certainly be panic in that jail. There are not the facilities to take them out."²²

Mr. Leon Baldwin, Deputy State Fire Marshal, had this to say about his own experiences:

"My [inspection] territory comprises San Benito, Santa Cruz and Monterey Counties. As regards the three county jails in these counties, we would have to say that San Benito County would have the best appearance of the three. However, they *all* have inadequate exits. They all have combustible construction inside, or as in the case of San Benito County Jail, there is a serious exposure of the exterior where a frame building has been attached to the Type One [maximum security] structure.

"Now, if we have a fire, how are we going to get them out? It causes us to have to consider the exiting, the way to the outside without too much trouble to get them out. And as regards jails, we get the lip and eyebrow when we say provide more exits, because people regard them as a place where you don't want exits. However, they have to be there. We've had, not in California, but in the East recently, a fire in a Type One building of combustible construction, where I believe eight persons lost their lives because there was not sufficient exiting from them."²³

The subcommittee had great interest in the Monterey County Jail because of legal action brought in December 1961 by a female inmate of that facility on grounds that it was a fire trap in violation of state fire laws. Speaking of this particular facility, Mr. Baldwin made the following statements:

"Our office had recommended that they provide additional exits from the second floor of the men's section. These exits had been provided at the time of my last inspection, however, they were nonconforming, that is to say, that the stairway itself serving as an exit was of wood which is not completely acceptable.

"We had also made a recommendation to enclose the stairway going to the women's section of the jail. The fire-resistant enclosure had been provided; however, there was wood studding and there were wooden frames on the door. The third floor of the women's section had not been provided with an alternate means of egress. However, I have been assured by the sheriff's department that they would not use this particular area for housing of prison-

²² Hearings, *op cit*, p. 58.

²³ *Ibid*, p. 38.

ers There was a very definite and decided improvement in house-keeping and there had been additional first-aid fire extinguishing appliances provided " 34

These facts, as outlined by the official responsible for their compliance, hardly could be said to comply with sections of Title 19 of the California Administrative Code, to the effect that

"No prisoner shall be confined under conditions of *maximum* restraint unless it complies with the *minimum* standards established for the prevention of fire and the protection of life When an imprisonment is more onerous than the law allows, habeas corpus will lie " 35 (Emphasis added.)

Applying this law with regard to fire protection and inmate safety, Attorney James R. Nielsen, who was successful in emptying the Fresno City Jail annex in January 1959 on grounds that it was a fire trap, had this to say

"The same regulation that prohibits a lack of care on the part of a sheriff also prohibits the use of thumb screws . Now, by an extension of this argument, it could be suggested, somewhat unreasonably, I think, that it isn't every thumb screw that is prohibited It is only an unreasonable one Now, I take issue with that Either it is a minimum standard, or it is not " 36

Speaking in more concrete terms, Mr Nielsen went on to say

"I am aware, too, and I think this committee should be aware, that 50 percent of the jails, in the State of California today fail to comply fully with the fire marshal's regulation In the discussions that I've had with interested parties on arguments on this problem, they can be summarized, I think, to the fact that practically this Legislature and this committee is faced with the proposition in the event the position is right that the jails do not comply, then the sheriffs are going to be put to a very practical problem of what to do with these people I'm not suggesting that it is their fault I am suggesting simply they haven't had the money or the facilities to do these acts with and the board of supervisors also haven't had the money or can't get it It's a question, I think, too, of public apathy " 37

In closing this discussion, mention should be made that sheriffs are responsible for their prisoners. injuries to a prisoner which are a result of a fire will result in a cause of action against a sheriff if that officer's negligence in any way caused the injury (*Allen v Carrin*, 44 Pac 2d 40, *Smith v Miller*, 40 N W 2d 597) Further, a jailer is liable in damages for injuries resulting from placing a prisoner in a jail that is in such an unfit condition as to make it dangerous to health to confine one therein (*Niza v McMullin*, 193 S.W 496.)

³⁴ *Ibid*, p 39

³⁵ Article IX, Sections 100-120

³⁶ *Ibid*, p 84

³⁷ *Ibid*, p 86

Efforts to rectify safety deficiencies in local jails must be stepped up; the occurrence of a disaster such as happened in New Jersey and Arkansas must not be the cause of this—society's concern for decent jail conditions is more than enough to rectify the conditions in some of our jails which could cause such an event

Inmate Health—A Neglected Issue

Testimony before the subcommittee's hearing in January 1962 revealed that the attention given inmate health and medical welfare was varied and in many instances negligible. There are two important aspects to this problem, one of a supervisory nature, the other plainly medical

In the latter part of 1961 several murders occurred in San Quentin Prison, all being examples of convict justice carried out by convicts against other convicts. In October 1961 a prisoner in the Sunnyvale City Jail was beaten to death in one of the drunk tanks. A probe following this death revealed jail officers had not inspected this drunk tank for over a six-hour period during which the beating took place. Time and again during the subcommittee's hearings, sheriffs were asked how close a watch was kept on the inmates, the frequency of jail inspection tours, and the care with which head counts were conducted. In the case of those facilities which had been found to be dirty and poorly maintained, they concomitantly proved to be poorly supervised. The sheriffs of these counties whose jails proved substandard invariably employed jailers who were poorly paid, poorly supervised and who generally neglected the active administration necessary for a clean and sanitary custodial facility. Jails must be run or prisoners will run them. If inmates are not firmly and fairly handled, they establish their own regulations, generally to the bodily harm of some of the other inmates. This report in earlier sections points out deficiencies and mentions examples, those sheriffs guilty of jail neglect are guilty of a misdemeanor. Drunks must be detained in facilities which are specially built and closely watched; they cannot take care of themselves or they would not have been arrested.

"Because of the status of an arrested person there arises a duty on the part of the person having him in custody to provide necessary medical care (*Spicer v. Williamson* (N.C.) 132 S.E. 291) "

People behind bars are generally there as a result of some social misconduct; this behavior does not stop just because they are incarcerated. Jailers are responsible to exercise the authority vested in them by sheriffs and society to maintain safe and orderly jails. The fact that some inmates have been the victims of violence on the part of other prisoners has led this subcommittee to believe that some jailers are guilty of serious negligence. Section 145 of Chapter I of the Sheriffs' Association's new *Jail Manual* states the issue very well:

"The custodian of prisoners owes a duty to the prisoner to keep him safely and protect him from unnecessary harm. Thus, the official must exercise reasonable and ordinary care for the life and health of the prisoner. Where the custodian knows that

injuries will be inflicted upon a prisoner or has good reason to anticipate the danger thereof, and fails to prevent the injury, the custodian may be held civilly liable." ³⁸

Turning now to the important medical problems in the local jail, it was stated by Dr. Condit of the State Department of Public Health that while tuberculosis is decreasing in the general populace, it remains comparatively high among those who frequent city jails. Only by continuously and consistently X-raying all jail admissions and reading films before inmates are released, can the number of new cases be gradually reduced. In a report by Dr. Robert Rowan of Santa Clara County's Tuberculosis Association, he revealed that the tuberculosis rate in that county's jail was double that in the outside world. ³⁹ Certainly the development of this ailment is not part of jail punishment nor is it calculated to lead to rehabilitation.

With reference to venereal disease, Dr. Condit stated that it had long been recognized by public health personnel that jail and juvenile hall inmates have a high incidence of venereal disease compared to the general population. Outlining a six-point program of supervision, testing, examination and treatment, Dr. Condit stressed the idea that any statutory minimum standard should contain a program to control venereal disease. Dr. Condit illustrated the serious and important role jails can and do play in disease and virus transmission by relating the following incident:

"It is rather interesting that during the 1957-58 pandemic of influenza, that the first outbreaks were reported in California jails. Now this is what you would expect because this is a disease the transmission of which is facilitated by conditions of crowding through respiratory contact." ⁴⁰

From this testimony one can gather that inmate health is one of general as well as particular concern. If jails can act as reservoirs of diseases which have been controlled in the free society, they pose a threat to the well-being of every healthy citizen. When asked by the subcommittee's Acting Chairman, John O'Connell, how health standards might be better enforced, Dr. Condit replied:

"Well, I think that there should be a state agency that has specific responsibility for enforcing the regulations and then it would be up to them to take the necessary action. We have a somewhat similar or analogous situation in public health with reference to a rabies control law that we have in California which requires under certain conditions, certain actions be taken by local areas—counties and cities—in reference to dog control. We have also found from experience that it's necessary and desirable to have some teeth in the situation if it's an enforcement problem so that when you run into a situation where people are more or less recalcitrant or drag their feet, the appropriate pressures can be applied." ⁴¹

³⁸ *Jail Manual*, op. cit., Section 145

³⁹ Editorial, *San Jose News*, February 25, 1963

⁴⁰ *Hearings*, op. cit., p. 77

⁴¹ *Ibid.*, pp. 78-79

In summary, Dr. Coudit urged that specific standards with reference to health matters and environmental sanitation be included in any revision of the minimum jail standards. He recommended these standards be in sufficient detail to be clearly understood, that they be developed by the Department of Public Health, investigated by local health officers, and enforced by the State Board of Corrections.

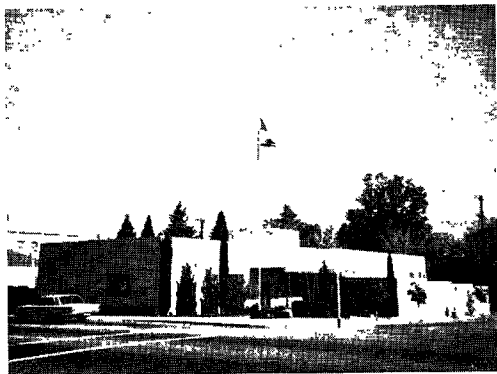
Proper and constant attention to inmate safety and health is a mandatory part of jail administration.

"The local jail exists solely to protect and maintain the peace of the community. It belongs to the community and not the jailer. The jailer is responsible for creating public understanding of the jail and its importance to the community. It can only function as a safe and decent operation and service to the community in relation to the amount of support received from the community." ⁴²

Jailers who disregard their duty and responsibility to the society they serve will do little to create public understanding for their function and problems. The jailer who neglects the welfare of those in his custody denies the very reason for his employment as well as doing society a disservice. Increased attention must be given to inmate health and welfare if jail conditions are to be improved. And, as the above quote indicates, such attention must in part be paid by the general populace. This is a matter affecting the health of all citizens; it should be of concern to all.

As outlined in the above sections, the subcommittee has discovered many violations of state laws in the administration of local custodial institutions. Unsanitary conditions, insufficient and bad food, dirty bedding, crowded cell blocks, insufficient sanitation facilities, meager clothing issues and sketchy welfare and medical services have been found to be the rule in some jails. The inspections conducted by Mr. Joseph Dieffenbacher were initiated to discover those jails which were in greatest violation of state laws. When it is stated that there are over 220 city jails and nearly 80 county jail facilities, one realizes that those in violation of the minimum standards are the exception rather than the rule. As outlined in the following section of this report, the progress in local jail administration since 1945 has been significant.

⁴² *Jail Manual, op. cit.*, Chapter I



TWO SMALL COUNTY FACILITIES

Top The Mariposa County Jail, built about 1860 Bottom Inyo County Jail in Independence, finished in 1958.

II. PROGRESS IN THE LOCAL JAILS

During the 17 years since the first Assembly committee on local jails was established, many changes have been effected in the local jails and their administration. During the January hearings as well as in earlier reports submitted to the subcommittee, many instances and examples of good jail management and new facility construction came to light. Since 1945 scores of new county and city jails have been constructed. One Pasadena architectural firm, Marion J. Varner and Associates, has designed over a dozen such facilities in the Southern California region.⁴³ Many facilities have been remodeled and expanded. Many new facilities are under construction or are in the planning stage. Small counties, such as Inyo and Mono have voted the funds for new facilities, as have medium size counties such as San Joaquin, Sacramento, and Tulare. The populous coastal metropolitan areas have done their best to keep up with exploding population, Orange, San Diego, Los Angeles, Santa Clara and San Francisco Counties have all opened new jails in the last few years.

And facilities are not the only important improvement. Jail conditions have improved tremendously through better administration and management. Formerly dirty and run-down facilities have been cleaned up and run in a decent and responsible fashion. During the hearings, Chairman Kilpatrick cited tremendous improvements in the Sacramento City and Butte County jails to name but a couple. Jailers have increasingly improved the food available to inmates, and their clothing and bedding. It is only since 1949 that the sheriffs have had state minimum standards on which to base their administration and train their own personnel. The speed and spirit with which they have been enthusiastically adopted by most sheriffs and other local law enforcement officials is a tribute to these men and their fine co-operation.

New programs for the rehabilitation of local inmates have made amazing progress. Over 30 minimum security work farms or facilities have been established since 1945. The Short-Doyle Act has enabled many counties to establish juvenile rehabilitation facilities for young offenders. Today, many thousands of dollars worth of agricultural and dairy products are produced on these farms. Sentenced persons have an opportunity to take part in constructive activities, to learn new skills, and maintain their health as well as spirit while serving their sentences. Rather than developing hostile attitudes due to an idle, dull and aggravating experience, they may actually improve their minds by formal academic training in some counties. Many such rehabilitation centers grow food products that are used in other county facilities, such as hospitals, juvenile halls, and welfare agencies. Some have repair shops for bicycles which are given to needy children in communities, others have machine shops, garages, and sewing rooms for women inmates.

⁴³ Information obtained from Marion J. Varner in correspondence with A. D. Jenkins.

New efforts are being exerted to rehabilitate the chronic alcoholic inmate. Several counties such as Fresno, San Francisco, and Los Angeles have opened special centers of a "halfway house" nature where those who have long alcoholic arrest records may be exposed to Alcoholics Anonymous self-help and counseling. A relatively recent project of this nature in Fresno County has cut the alcoholic population of that jail almost in half through the use of a special center to which chronic offenders are directed by the municipal judge there. A *State Board of Corrections Report* on San Francisco's program in this field stated that that city had made great strides in combating the problem and the program should be accelerated and expanded.⁴⁴

Another important advancement in local rehabilitation efforts is the work furlough program now in use in six California counties. Pioneered by Marin and Santa Clara Counties, this program has enabled hundreds of sentenced misdemeanor prisoners to hold regular jobs and serve their sentence by spending their nights and days off in jail. The cost of this program is but a fraction of that of regular confinement, and has actually saved the counties from using tens of thousands of dollars. While taxpayers benefit so do the families of the inmate as they receive the major part of his earnings. The program also enables the prisoner to pay fines and provide restitution to those he may have damaged.

New post release services and counseling have also been established in some areas of the State. In Alameda and Contra Costa Counties, parolees from state institutions now have the advice and services of the State's first Parolee Placement Co-ordinating Center. Here a Department of Employment placement officer is working with state youths and adult parolee representatives to find and develop jobs for qualified parolees. If the plan proves successful in the East Bay, it will be extended to other areas of the State.⁴⁵ This subcommittee would be vitally interested in seeing the same service extended to those paroled and released from local jails. Another program, for parolees again, is that of Halfway Houses recently established in Oakland and Los Angeles. Another such facility, to help parolees learn how to live and work as free men again, has been started in San Mateo. These centers provide practical help—room, board, and counseling to men recently released and on parole from penal institutions. Again, this type of service now carried on mainly by private volunteer organizations is in need of wider public support and recognition.

Perhaps the most important and significant progress in local jail administration has been in raising the level of jail personnel standards and training. The subcommittee received testimony time and again that the real progress in programs, management, supervision and facilities has been effected by a better paid and more thoroughly trained custodial official. Through the efforts of the sheriffs and local law officials, the former great disparity in salary between jail personnel and other law officers has been largely erased. Through training courses in the State's universities and colleges and by the Board of Corrections law

⁴⁴ Report, State Board of Corrections—San Francisco County Jails, October 23, 1962

⁴⁵ *San Francisco Examiner*, October 21, 1962

enforcement personnel have received an exposure and new awareness of the importance of their custodial functions. As Mr. Walter Dunbar, the Director of the Department of Corrections stated at the January 1962 hearings of the subcommittee:

"The point that I want to get at in terms of this prospective is that it has only been in the last 10 years that there have been standards and that there has been any significant start in training . . . and we have very little training at this time. And I think in terms of my framework and experience this is the way you ultimately get results, and the way you make accomplishments through people. I've surveyed recently and I think our training is very sketchy in this State in terms of meeting the need. . . . Jail management or correctional institution management—is a very difficult problem and science . . . At the present time the federal government offers only a correspondence course which is very helpful, but this is a self-study approach and very inadequate. I think the recent State Commission on Peace Officers Training is making a good beginning. They offer 160 hours of training throughout the State; 142 hours of it is required. Only six hours of it is on jail procedures and this is an option course, I found out recently." ⁴⁶

Asked if he thought the State should assist the counties financially to improve their local jails, Mr. Dunbar replied:

"Yes, broadly speaking. One thing is, I think, we at the state level with their co-operation can work out what I would call, in a broad sense, a jail programming service. By this I mean staff specialists who they would ask and want us to meet with to interpret the standards, to keep them up to date, to provide training, guidance and consultation." ⁴⁷

He then went on to re-emphasize his belief that the persons charged with responsibility of the local jails held the key to good jails by stating:

"I have indicated here very strongly that I think there needs to be jail management training and by this, I mean training at the top. . . . We should have training institutes, seminars with our sheriffs and then subsequently with their guidance and leadership, with the personnel who operate the jail in terms of security and in terms of rehabilitation services. . . . I believe very strongly that you get the best results in your laws when they're understood, believed in and people have the skills to apply them." ⁴⁸

In terms of future progress, the subcommittee sees bright promise in a number of developments. First in the responsible and thorough manner in which the California State Sheriffs' Association is attacking the problems of the local jails. With its publication of a *Jail Manual* this past summer, the association has shown that they recognize there is need for information and improvement in local jails and they are

⁴⁶ Hearings, *op cit*, p. 18

⁴⁷ *Ibid.*, p. 18

⁴⁸ *Ibid.*, p. 19

seeking to meet these needs. Whereas a decade ago jails were treated, for the most part, as a minor and unimportant aspect of law enforcement, they now are receiving responsible attention. Sheriffs are exerting many efforts to stir public apathy about jail conditions, have continually pressed county boards of supervisors for more funds and have taken up and extended programs of jail maintenance and supervision, rehabilitation and work furlough. All these efforts are to be lauded by the State's citizens as sincere attempts to improve jails which, 15 years ago, were pronounced among the worst in the nation.

The State Board of Corrections is, with the co-operation of the Department of Public Health, in the process of issuing a new edition of its "Minimum Jail Standards." In the new issue, 10 new areas of standards will be encompassed. It will spell out in greater detail requirements and recommendations, giving reasons and explanations for each of them. These standards will be more meaningful to jail personnel and participation in enforcing them should be improved. Formerly too flexible and permissive in nature, the new standards will leave little room for too much permissive interpretation. Certainly, as a result of subcommittee investigations and hearings, these minimum standards should receive judicial recognition and more thorough application. There is no doubt of the need for them as can be seen by their increased application in the last decade. With their availability, local jailers have a guide for safe, responsible and successful jail management.

In terms of recommendations for further improvements in local jail administration, the subcommittee is most interested in seeing further and complete compliance by city and county officials with these minimum standards. Presently there is a tremendous disparity in the approach and programs in local jails; some facilities and departments far exceed the minimum standards in all respects. They are the leaders in custodianship which a few counties that do not meet the standards should follow. To achieve this enforcement, the subcommittee would recommend the expansion of co-operative personnel training programs for local officers. It would also like to see more attention and effort brought to bear by the Board of Corrections on those counties whose facilities are constantly reported as being substandard. While the subcommittee recognizes the achievements of the board by exercising comity with county officials, the continued abuse and ignoring of state laws on local custodial facilities is a serious matter. Co-operation should be continued with the thought always in mind that it is a two-way street. Financial, educational and informational excuses have all been found lacking with respect to those counties and municipalities whose jails are a disgrace to their citizens. Large, medium, and small counties alike have excellent facilities. The sheriffs, the boards of supervisors, and the citizens in these areas have accepted their responsibilities and have built and now conduct good jails. It is hoped that their example plus the ones of public guilt and bad publicity which will result from the now required annual inspections will result in both further compliance with the minimum standards and the extension of rehabilitation and post-release services to the inmates of local jails. Certainly most substandard counties have but to look to their neighboring counties for an example of good jail administration. Let us encourage them to do so.

APPENDIX

MADERA COUNTY HEALTH DEPARTMENT
MADERA, CALIFORNIA, November 26, 1962

VERNON KILPATRICK, *Chairman*
Subcommittee on Custodial Institutions
Room 4110, State Capitol
Sacramento 11, California

DEAR MR KILPATRICK An inspection was made by this department of the Madera County Jail on November 2, 1962. The following report is submitted in accordance with Section 459 of the California Health and Safety Code.

I. Food Handling Operation

- A. The overall general housekeeping in this area was good. The kitchen personnel wore clean, white, outer garments and appeared to be adequately trained in proper food handling techniques.
- B. The outside of the hood had an accumulation of lint and dust. The inside, however, was clean and in good condition. The screens had been recently cleaned.
- C. The temperature of the hot food being held for serving was 120° F. The importance of the correct temperature (140° F) should be stressed to prevent the growth of food borne disease organisms. This was pointed out to the cook in charge at the time of inspection.
- D. The window where the cooler is installed should have a screen over the opening to prevent the entrance of flies.
- E. The wall behind the cutting block should have some type of nonabsorbent material installed to facilitate proper cleaning.
- F. The lower shelves of the grinding table are badly worn and the layers of plywood are separating. These should be replaced and covered with a nonabsorbent material that can be properly cleaned.
- G. The shelves in the kettle storage area and under the pastry table should be cleaned more thoroughly in hard-to-get places.
- II. The kitchen help restroom should have a vent installed to effectively remove moisture and condensation. When this is done, the area should be scraped, painted and the shower curtain replaced.
- I. The walkin boxes were in good condition and temperature was correct.
- J. There is an opening in the large storeroom where the sewer line goes through the wall. Dirt from the outside was sifting onto ledges in the room. This should be corrected to prevent the entrance of rodents.

- K Both storerooms appeared to be well kept and food was properly stored. There was no entrance of rodent infestation in any portion of this area.

II. Cell Blocks

- A Inspection of this area was made by the undersigned accompanied by Deputy Pearson. The responsibility of the sanitation of the tanks has been delegated to certain deputies which apparently has improved the overall condition of this area greatly. These deputies are to be commended on their diligence and awareness of the sanitary environment in the confinement area.
- B Tank 1 presents the largest problem as far as cleanliness is concerned. This is because of the nature of the operation, in that it is the "drunk" tank. Inmates are sometimes not given mattress covers when admitted because of their condition. However, all inmates at the time of inspection had mattress covers and none had any signs of vomitus or fecal material on them. The soiled covers and blankets were kept in a locker provided for that purpose and not reused until recleaned.
- C All blankets and mattress covers to be issued were clean, however the mattresses themselves were soiled but did not contain any dried or caked vomitus or human wastes. Deputy Pearson stated mattresses that became contaminated by human wastes were thoroughly washed the following day and left to dry before being reused. Each of the restrooms were clean and properly supplied with paper and soap. Some of the tanks had had improvised shower curtains out of blankets. These should be replaced with a plastic-type curtain.
- D The women's area was clean and in good order, however there was an iron and ironing board in one of the cell blocks which was a safety hazard. The connecting plug in the iron was shorting and a piece of charred wood was inserted to hold the connection tight. The ironing board was badly charred because of the short connection. It is strongly recommended that a new iron, cord, and asbestos cover for the board be acquired to replace the existing ones.

Most of the above-mentioned items are minor, however, if these are pointed out at this time, better overall practices could be expected. There appears to be a great improvement over past inspections and the proper delegation of responsibility is probably the largest single item responsible for this.

If there are any questions regarding the above-mentioned items, please feel free to call on us at any time.

Sincerely,

R B ROWE, M D
Acting County Health Officer
By JAMES MANKIN
Director of Sanitation

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COMMITTEE ON JUDICIARY

(January 7, 1963)

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LETTER OF TRANSMITTAL

January 7, 1963

HON JESSE M. UNRUH
*Speaker of the Assembly and
Members of the Assembly
Assembly Chamber, State Capitol
Sacramento, California*

GENTLEMEN

Pursuant to House Resolution No. 361 of the 1961 Regular Legislative Session, the Assembly Interim Committee on Judiciary submits herewith its final report on the following matters: California adoption law, compensation of jurors, salaries and qualifications of members and referees of the Industrial Accident Commission; pretrial conferences, judges' retirement law; salaries of municipal and superior court judges, the interlocutory divorce period; marriage powers of civil officials; and judicial compensation for performance of civil marriages.

To all those who contributed to its deliberations, the committee wishes to express its gratitude.

Respectfully submitted,

BRUCE SUMNER, *Chairman*

GEORGE A. WILLSON, *Vice Chairman*

WILLIAM T. BAGLEY
CLARK L. BRADLEY
JOHN A. BUSTERUD
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ROBERT L. LEGGETT²
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HOWARD J. THELIN
JEROME R. WALDIE³
EDWIN L. Z'BERG⁴

¹ Dissenting from Committee Recommendation 2, page 43, Assemblyman Carrell feels that all members of the Industrial Accident Commission need not be attorneys.

² Dissenting from the committee recommendation on page 48, Assemblyman Leggett agrees with the resolution adopted by the Conference of State Bar Delegates at the 1963 California State Bar Convention in Beverly Hills.

³ Dissenting from the committee recommendation on page 68, Assemblyman Waldie feels that the subject matters of A B 34 and A B 528 (1961 Regular Legislative Session) should receive a favorable recommendation.

⁴ Dissenting from the committee recommendation on page 48, Assemblyman Z'berg agrees with the resolution adopted by the Conference of State Bar Delegates at the 1963 California State Bar Convention in Beverly Hills.

HOUSE RESOLUTION No. 361
(Assembly Journal, June 9, 1961, page 5194)

*Relative to constituting certain standing committees
of the Assembly as interim committees*

Resolved by the Assembly of the State of California as follows:

1. The following standing committees of the Assembly are hereby constituted Assembly interim committees and are authorized and directed to ascertain, study and analyze all facts relating to (1) the subjects and matters assigned to them by this resolution; (2) any subjects or matters referred to them by the Assembly; (3) any subjects or matters related to (1) or (2) which the Committee on Rules shall assign to them upon request of the Assembly or upon its own initiative;

(1) The Committee on Judiciary is assigned the subject matter in the Civil Code, the Code of Civil Procedure and the Probate Code, uncodified laws relating to civil matters, and other matters relating to the civil law and procedure of the State.

ADOPTION LAW

INTRODUCTION

Adoptions basically deal with the alteration of legal status through the transfer of children from one family to another. As such, they involve both the termination and establishment of parental ties and obligations. While the laws of adoption vary considerably among the states, they are all grounded upon the premise that such ties and obligations should not be tampered with unless it is clearly in the child's best interests. There is no place in our adoption law for transferring children merely to obtain pecuniary gain or to satisfy the desire which some may have for parenthood.

In California, the recent years have brought forth a growing dispute as to what adoption procedures most effectively protect the child's interests. During the 1961 Regular Legislative Session, numerous pieces of legislation amending the present adoption law were introduced. Private adoption agencies, the State Department of Social Welfare and various citizens interested in adoption procedures participated in the formulation and discussion of these measures. After extensive hearings, the subject matters of most of the bills were referred to the Assembly Interim Committee on Judiciary so that a more thorough and complete study might be undertaken.

LEGAL AND HISTORICAL BACKGROUND ¹

Although children were undoubtedly transferred from one family to another, adoption as a legal procedure was not recognized at the common law. By 1850, a few American jurisdictions recognized adoptions through a formally executed agreement signed by the natural and adoptive parents. The following year, Massachusetts became the first state to sanction the adoption process through court action. Today, all states recognize some form of adoption proceeding involving judicial sanction of the final adoptive agreement.

The California Legislature first gave statutory recognition to the adoption process in 1869.² By 1872 the law provided that:

The person adopting a child, and the child adopted, and the other persons whose consent is necessary, must appear before the County Judge of the county where the person adopting resides, and the necessary consent must thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted, and treated in all respects as his own lawful child should be treated.³

The judge was required "... to examine all persons appearing before him ..." and, as the statute noted, "... if satisfied that the interests

¹ Much of the following was taken from an article by Dr. Jacobus tenBroek entitled "California's Adoption Law and Programs" It was printed in the April 1955 issue of the *Hastings Law Journal*.

² Stats 1868-70, Ch. 385, p. 530.

³ Stats 1872, Civ. Code, § 226.

of the child will be promoted by the adoption, he must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting."⁴

California thus early recognized that adoption was in the nature of a solemn contract between the parties involved and that such a contract should be safeguarded with judicial approval. This premise survives today in all of California's adoption proceedings.

By 1911, child placements in California were coming from two sources. First, natural parents would place their children with another family, subject to court approval. Secondly, a number of private societies, sponsored by contributions, were receiving destitute or illegitimate children and placing them in other homes. While some of the societies were doing admirable work, abuses were flagrant in others. As the 1908-10 Biennial Report of the State Board of Charities and Corrections stated, at pages 31-32:

There has developed in this State another abuse of children that should rank in its iniquity with the white slave traffic, and that is a traffic in babies. Under the designation of "Maternity Homes," "Lying-in Hospitals," "Baby-Homes," or "Baby Farms," there is in existence a class of institutions that traffic in the illegitimate children of unmarried parents. Women who move many times in good society commit sin, and when compelled to face its consequences retire to the privacy of one of these places, where for an adequate consideration their shame is covered up and they return again to society with a statement that they have been taking the "rest cure."

And what becomes of the babe thus cruelly born into the world and abandoned by the natural parents at its very threshold? It is left with the maternity home to dispose of. It will be used, if possible, to furnish an income to the home where it is born and left, and is frequently used for purposes of blackmail.

In response to this, the Legislature, in 1911, required all agencies and individuals, engaged in child placing, to be licensed by the State Board of Charities and Corrections.⁵ In addition, statutory provision was made whereby a parent could relinquish a child to a licensed institution for adoption placement.⁶

During the years 1927-1932 another landmark was achieved in California adoption law. Prior to 1927, adoptions were granted without an investigation and report concerning the child and the natural and adoptive parents. Further, the consent, required in independent adoptions, was a relatively perfunctory procedure which could be signed before any notary. In 1927 the law was amended to provide for an investigation and report as to the circumstances surrounding the adoption.⁷ In 1931 the law was amended to require the consent to be taken by a representative of the State Department of Social Welfare.⁸

⁴ Stats 1872, Civ Code, § 227

⁵ Stats 1911, Ch 569, p 1087

⁶ Stats 1911, Ch 450, p 899

⁷ Stats 1927, Ch 621, p 1197. In 1939 it was provided that the report could be waived when a licensed adoption agency joined in the adoption petition. Stats 1939, Ch 463, p 1813

⁸ Stats 1931, Ch 1130, p 2402

In 1947 a final major development in California adoption law took place when the Legislature authorized the State Department of Social Welfare to create and regulate county adoption agencies. The agencies were empowered to place relinquished children for adoption and to examine and report on adoption petitions filed in the county where the agency is located.

METHODS OF ADOPTION IN CALIFORNIA

Present California law provides for five methods of adoption.

1. Independent Adoptions

In an independent adoption procedure, the natural parents, if they have custody and have not deserted their child, must themselves place him with the adoptive couple. After a petition for adoption has been filed in court by the prospective adoptive couple, the State Department of Social Welfare, or a licensed county adoption agency, is required to investigate the circumstances surrounding the adoption to determine whether the child is a proper subject for adoption and whether the proposed home is suitable for the child. In addition, the consent of the natural parents to the adoption of their child must be accepted by the department or county agency during the investigatory period.

After the consent is obtained and the investigation completed, the department or county agency files its report with the court, including a recommendation regarding the granting of the adoption petition. The court, after hearing, may either grant or deny the petition.

2. Agency Adoptions

If the natural parents prefer not to place their child for adoption themselves, they may relinquish him to an adoption agency licensed by the State Department of Social Welfare. In these situations, the licensed adoption agency, rather than the natural parents, places the child in an adoptive home. The agency joins in the adoption petition filed by the prospective adoptive parents. The agency report concerning the circumstances surrounding the adoption may be waived by the State Department of Social Welfare. As with independent adoptions, the court, after hearing, may either grant or deny the adoption petition.

3. Stepparent Adoptions

A stepparent adoption occurs when a stepparent files an adoption petition and a natural or adoptive parent retains his or her custody of the child. This procedure differs from an independent adoption in several respects. Although the natural or adoptive parent must consent to the adoption, the consent is taken by the county clerk or a county probation officer. Further, the investigation and report, required when a natural parent retains custody and control of the child, is made by a county probation officer rather than the State Department of Social Welfare or a licensed county adoption agency. After receiving the report and hearing the matter, the court may either grant or deny the adoption petition.

4 Adult Adoptions

A married minor person or an adult person may be adopted by another adult person through an agreement, executed by the parties involved, and their petition which may be approved by the adoption court after hearing. Consent of the parties' respective spouses is required in this procedure. In addition, the adoption court may require an investigation and report from either the county probation officer or the State Department of Social Welfare.

5. Adoption and Legitimation of an Illegitimate Child by His Natural Father

Section 230 of the California Civil Code provides that

The father of an illegitimate child, by (1) publicly acknowledging it as his own, (2) receiving it as such, with the consent of his wife, if he is married, into his family, and (3) otherwise treating it as if it were a legitimate child, thereby *adopts* it as such; (numbers and emphasis added)

Although the section uses the word "adopts," the courts have treated this language as referring to a legitimation process rather than to the adoption process specified in Sections 221-230 of the Civil Code.⁹

CONTROVERSIAL ASPECTS OF CALIFORNIA ADOPTION LAW

Some aspects of our adoption law are rife with controversy. Experts in the field differ considerably in regard to the meaning of certain statutory provisions and case rulings. In addition, there is a growing dispute as to whether certain amendments to the law would not more adequately protect the best interests of the child in an adoption matter. In general, the conflicting contentions center around the following areas:

1 Placement in Independent Adoptions

California law makes it quite clear that, in an independent adoption proceeding, the natural parents must themselves place their child for adoption with the adoptive couple.¹⁰ Failure to do so constitutes a misdemeanor.

While such a provision, on its face, seems clear, the precise meaning of the word "place" has caused trouble. For years the term has befuddled practitioners of the law, doctors, social workers and interested citizens involved in the independent adoption process. Because of its latent ambiguity, appeals have been raised for legislative action to more specifically define the concept.

No one disputes the general statement that natural parents should have and, in fact, do have an inherent right to place their child for adoption. In addition, there is agreement that this right of placement is a peculiarly personal one. If the natural parents choose to delegate it, they must do so to a licensed and trained social agency through a relinquishment procedure.

How do these general principles apply to particular situations? While the term "place" probably does not preclude a third party from ren-

⁹ *Darwin v. Granger*, 174 Cal. App. 2d 63, 344, P. 2d 352 (1959).

¹⁰ Civ. Code, § 224a; Welf. & Inst. Code, § 1620b.

dering legal, medical and even some type of advisory assistance to natural parents, at what point does the one rendering such assistance so control the decision-making process that he is, in reality, the one "placing" the child for adoption? Suppose, for example, that an unwed mother requests her attorney to locate and interview prospective adoptive couples, determine their interest in adopting the child and report back to her. Can he legally do so? Can he recommend to the mother a particular adoptive couple? Must the natural parent know of the prospective adoptive couple through a personal meeting before it can be said that she herself made the placement?

The answer to these questions are, unfortunately, varied.

2 Dual Representation of Parties in Independent Adoptions

In most independent adoptions only one attorney is involved. He is employed by the prospective adoptive couple. Since, however, the natural parents often lack sufficient resources to obtain counsel, the attorney usually finds himself rendering legal advice to both parties to the adoption proceeding.

In the normal case, the attorney's dual representative role creates no serious problems. There is complete agreement as to the transfer of the child and the adoption is consummated smoothly. When a dispute arises between the parties, however, as when the natural mother desires her child back, conflict of interest problems may be created. For this reason, some have suggested that attorneys be precluded from representing both parties to an independent adoption.

Many, on the other hand, have argued that a law precluding dual representation would create more problems than it would solve. Under such a statute, a separate attorney would always be required for the natural mother, even when her interests were not adverse to those of the adoptive couple. In such cases, a fee would be collected, probably from the adoptive parents who pay the adoption expenses, but only cursory legal services would be performed.

In 1955, the American Bar Association Standing Committee on Professional Ethics and Grievances rendered an opinion on Canon 6, which contains the American Bar rule on conflict of interest. The canon forbids a lawyer from representing conflicting interests unless there is "express consent of all concerned, given after a full disclosure of the facts." The committee concluded that the public is a "concerned" party in an adoption proceeding and would have to consent to the dual representation of natural and adoptive parents by one attorney. Since there would be no method of obtaining public consent in these matters, the committee felt that any dual representation in an adoption proceeding would violate Canon 6.¹¹

In 1959, a disciplinary proceeding against an attorney who had, among other things, represented both the natural and adoptive parents in an independent adoption matter, was before the California Supreme Court.¹² There the contention was made that the attorney should be disciplined for such dual representation even though full disclosure had been made and consent obtained from the natural and adoptive

¹¹ Calif. State Bar Journal, July-August 1957, Vol. 32, p. 343-344.

¹² *Arden v. State Bar*, 52 Cal. 2d 310, 341 P. 2d 6 (1959).

parents. The court refused to discipline the attorney on those grounds. It noted in its opinion:

No clear cut rule on the [representation of adverse interests in an adoption proceeding] has been announced. It is not proper to discipline an attorney for a violation of a claimed principle that was and is so highly debatable.

3 Accounting for Disbursements in Adoption Proceedings

One of the most serious charges leveled against independent adoptions involves the amount and nature of disbursements required of or made by the adoptive parents. Testimony before the Assembly Interim Committee on Judiciary revealed that lawyers have charged fees as high as \$800 for independent adoption services, that doctors' fees in such cases have been \$600, and that total disbursements from the adoptive couple have ranged as high as \$2,500.

Questions have been raised as to whether such fees, ostensibly for purely legal and medical services in connection with an independent adoption, do not indicate that lawyers and doctors, in such cases, are intreatly involved in placing children for adoption in violation of the law. Further, although payment by the adoptive couple of the natural mother's legal, medical and certain maintenance expenses are normally considered proper, disbursements of over \$2,000 for an adoption have created suspicion in many minds that the child may have been purchased from the natural mother, rather than placed by her.

To insure that placement of a child is being made in accordance with the law, various groups and individuals have proposed that an accounting of all disbursements incident to the independent adoption proceeding, and the purposes for which they were made, be filed with the adoption court.

Assuming that such an accounting should be made, what sanctions, if any, should be given the court when improper disbursements are found? Some have felt that the court, in such circumstances, should be able to deny the adoption decree. Some have contended that the power to disallow excessive fees and disbursements will sufficiently deter improper charges. Others have argued that disclosure alone, which would subject the unscrupulous to adverse publicity, will preclude unlawful activity.

Should public and private agency adoptions be subject to an accounting requirement? Although all income and expenses of licensed adoption agencies are accountable to the State Department of Social Welfare, some have contended that they should be.

4 Time Periods for Investigation and Reporting in Independent Adoptions

As has been mentioned, an independent adoption proceeding is commenced by the filing of a petition with the adoption court. The petition is invariably filed by the prospective adoptive couple after the child has been informally placed in their home by the natural parent or parents. When the court notifies the State Department of Social Welfare of the pendency of the action, it or a licensed county adoption agency is required, no later than 45 days from the filing of the petition, to commence an investigation of the parties to the adoption. If a serious

question arises concerning the advisability or possibility of the adoption, the results of the investigation must be reported to the court immediately. Otherwise, the report must be submitted within 180 days after filing of the adoption petition unless a court extension is granted.

The system of reporting to the court after the child has been placed in an adoptive couple's home has come under some criticism. Once a child has lived with a prospective adoptive couple long enough to feel himself an integral part of the family unit, serious emotional consequences sometimes follow if the adoption is not consummated.

A complete solution to this problem would seem to require an investigation and report of the circumstances surrounding the adoption prior to placement in the prospective adoptive couple's home. This, however, might well raise more problems than it would solve. What, for example, would be done with an illegitimate child of a destitute mother prior to a report on the adoption petition? In addition, representatives of the State Department of Social Welfare question whether a proper appraisal of the prospective adoption could be made without actually observing the child and adoptive couple living together.

5 Coercive Practices Resulting From the Natural Parents' Right to Refuse to Give or to Revoke Their Consent to an Independent Adoption

Except in cases of desertion or loss of custody, the natural parents must, before a representative of the State Department of Social Welfare or a licensed county adoption agency, consent in writing to the adoption of their child. The consent is taken after the department or agency has been notified of the adoption proceeding which is after the child has been informally placed in the petitioner's home. The consent is revocable only with court approval.

The present system of placement prior to consent raises serious problems of undue pressure and even possible extortion. Suppose, for example, that a natural mother, after allowing her child to be received in the petitioner's home, decides to withhold her consent to the adoption. She is in a position to demand large premiums from the petitioning parents, now adjusted to and loving of their new arrival, for not going through with her plans. The petitioners, on the other hand, have methods of coercion at their disposal. Threats to expose an unmarried woman's circumstances to loved ones or refusal to pay agreed-upon medical costs have, at times, been used to dissuade the mother who desires her child for herself.

While obtaining a mother's consent prior to informal placement¹³ would help eradicate the potential of coercion now existing, it might not serve as a panacea. Such a consent would have to be taken prior to the child's birth or shortly thereafter. Many voice concern over such a procedure on the ground that a mother does not possess the ability to rationally decide a placement question until after she has borne her child and recovered from the emotional consequences of childbirth.

¹³ At least two states, Colorado and Michigan, now have this provision. See Colo. Rev. Stats., Art. 5, § 22-5-3(2) (1960 Supp.), Mich. Comp. Laws, Ch. 10, § 710.12 (1948).

COMMITTEE HEARINGS

During the recent months, the Assembly Interim Committee on Judiciary has devoted considerable time to the study of adoption law. On November 1-2, 1961, the matter was the subject of two-day hearing in San Francisco. Several months later, on January 9-10, 1962, adoption problems were again considered in Los Angeles.

At the hearings, persons from California and other states, all interested and intricately involved in adoption practice, presented their points of view. The following is a summary of the testimony given at those times:

I Placement in Independent Adoptions

A JUDGE BEN KOENIG, *Los Angeles County Superior Court Judge*:

1 The law should spell out that the petitioners and natural parents must meet in an independent adoption.

2 Upon the showing of certain facts, a rebuttable presumption of placement should be created. Such facts might include the receipt of payments which cannot be accounted for as professional fees; the receipt of compensation for establishing a contact between the natural parents and the prospective adoptive parents; the use of advertising to find babies; the employment of social workers, etc., in one's adoption practice; and the handling of a large number of adoption cases within a given period of time.

B DR JACOBUS TENBROEK, *Chairman, State Board of Social Welfare*:

1 The placement statutes should be amended to prohibit such actions as "finding or selecting a prospective adoptive family", "arranging or acting as an intermediary", and, "placing or assisting in placing a child for adoption."

2 Unlicensed persons should be prohibited from receiving compensation for finding or arranging for child placement or for maintaining a list of individuals interested in adopting a child.

3 Violation of the placement statutes should be made a reducible felony.

4 Upon the showing of certain facts, a rebuttable presumption of placement should be created. Such facts might include the receipt of payments which cannot be accounted for as professional fees; the receipt of compensation for establishing a contact between the natural parents and the prospective adoptive parents; the use of advertising to find babies; the employment of social workers, etc., in one's adoption practice; and the handling of a large number of adoption cases within a given period of time.

C CHARLES BURCH, JR., *Chairman, California State Bar Committee on Adoptions*:

1 The placement statutes should make clear that an attorney is not prohibited from assisting in the placement of children for adoption.

D DR ROBERT J McNEIL, *Chairman, California Medical Association Committee on Adoptions:*

1 The law should make clear that a doctor can, if his patient requests him to do so, contact prospective adoptive couples, natural parents or qualified persons in the field in order to find a child for adoption or a couple interested in receiving a child for adoption

2 A study of the prospective adoptive couple's home should be undertaken by the State Department of Social Welfare before an actual placement in that home is made

E DAVID KEENE LEAVITT, *Attorney, Beverly Hills, California:*

1 The placement statutes are reasonably clear and should remain as they are unless someone can more adequately specify the lengths to which an attorney can go in assisting his client in the adoption placement area

2 No felony punishment for violation of the placement statutes should be instituted

F DON SHEARER, *Attorney, Redondo Beach, California:*

1 Attorneys and doctors should be allowed to assist their clients and patients in placing children for adoption

2 Violation of the placement statutes should not be made a felony

G MRS ELDON SCHAFER, *Legislative Cochairman, Adopted Children's Association:*

1 Any person or organization who, without court approval, receives anything of value in connection with a child procurement, placement or a consent in an adoption, should be guilty of a reducible felony

H JOHN WEDEMAYER, *Director of the State Department of Social Welfare:*

1 The placement statutes should provide that no person, except a duly licensed adoption agency, shall request, receive, accept or give anything of value in connection with finding or offering to find a child, or procuring, arranging or holding himself out as able to arrange for the adoption of a child This provision should not prevent payment of maternity-connected medical and hospital fees if the natural mother is unable to pay for them and if the payment of such expenses for the natural mother is not a condition to her giving up the child for adoption

2 The placement statutes should make it unlawful to recruit, solicit or maintain lists of individuals interested in adopting a child

3 Violation of either of the above provisions should be made a reducible felony providing for imprisonment or fine, or both

4 Upon the showing of certain facts, a rebuttable presumption of placement should be created Such facts might include the receipt of payments which cannot be accounted for as professional fees, the receipt of compensation for establishing a contact between the natural parents and the prospective adoptive parents, the use of advertising to find babies, the employment of social workers, etc., in one's adoption practice, and the handling of a large number of adoption cases within a given period of time

I FRANK H SLOSS, *Board of Directors, Children's Home Society of California*

1 The placement statutes should prevent anyone, other than the natural parent, from placing, participating in a placement or acting as an intermediary in bringing an adoption placement about

2 Upon the showing of certain facts, a rebuttable presumption of placement should be created. Such facts might include the receipt of payment which cannot be accounted for as professional fees; the receipt of compensation for establishing a contact between the natural parents and the prospective adopting parents, the use of advertising to find babies, the employment of social workers, etc., in one's adoption practice, and the handling of a large number of adoption cases within a given period of time

3 Violation of the placement statutes, when a rebuttable presumption has been created, should be made a reducible felony

J RICHARD L MAYERS, *Deputy Attorney General, State of California*

1 The placement statutes should preclude anyone, other than the natural parent, from placing, participating in a placement or acting as an intermediary in bringing an adoption placement about

2 The more serious types of adoption placement activities should be made a reducible felony

3 Upon the showing of certain facts, a rebuttable presumption of placement should be created. Such facts might include the receipt of payment which cannot be accounted for as professional fees, the receipt of compensation for establishing a contact between the natural parents and the prospective adopting parents, the use of advertising to find babies, and the employment of social workers, etc., in one's adoption practice

4 The law should specifically make child placement in adoption cases grounds for unprofessional conduct by the California State Bar and the State Board of Medical Examiners

K PHILIP ADAMS, *Attorney, San Francisco, California*

1 The law should make no change in the present definition of placement or the penalty included therein

L CONTRA COSTA COUNTY ADOPTION ADVISORY COMMITTEE

1 A section should be added to the law defining placement as the selection of parents for children, or children for prospective parents, plus the physical transfer of the child for adoption purposes

2 Civil Code Section 224q should be amended to preclude any person or organization, other than a natural parent or licensed adoption agency, from placing any child, aiding or participating in the placement of a child, or rendering advice leading to and resulting in placement of any child by an unlicensed person or organization

II Dual Representation of Parties in Independent Adoptions

A CHARLES BURCH, JR., *Chairman, California State Bar Committee on Adoptions*

1 Under no circumstances should an attorney represent both parties to an adoption. If he is representing the prospective adoptive

parents, he should inform the natural parents of this. He can, however, discuss adoption problems with the natural parents, but not as their attorney. Further, if a conflict develops, such as if the natural parents decline to consent to the adoption, the attorney representing the prospective adoptive parents should find an attorney for the natural parents. The natural parents' attorney fees should be approved by the court and charged to whomever the court deems proper.

The rules of professional conduct should govern an attorney in this area, not legislative action.

B DAVID KEENE LEAVITT, *Attorney, Beverly Hills, California*:

1 Representation of both parties to the adoption by one attorney should be permitted but not encouraged.

C DON SHEARER, *Attorney, Redondo Beach, California*:

1. Representation of both parties to the adoption by one attorney is proper until divergent interests develop in the adoption proceedings. At that time, the attorney should remove himself completely from the case.

D FRANK H SLOSS, *Board of Directors, Children's Home Society of California*:

1 An attorney should be prohibited from representing both parties to the adoption. If it develops that one attorney to the adoption proceeding is collecting a fee for performing no legal services, this situation should be remedied through disciplinary action by the State Bar.

E RICHARD L MAYERS, *Deputy Attorney General, State of California*:

1 A public legal official, such as the county counsel, should be required by legislation to render legal advice and representation to the natural parents who cannot afford their own attorney in adoption proceedings.

F PHILIP ADAMS, *Attorney, San Francisco, California*:

1 No legislation should be passed affecting the right of an attorney to represent both parties in an adoption proceeding. This is a matter for the California State Bar.

III Accounting for Disbursement in Adoption Proceedings

A JUDGE BEN KOENIG, *Los Angeles County Superior Court Judge*:

1 Legislation should be passed allowing the adoption court to approve all attorney and doctor fees incident to an independent agency or stepparent adoption proceeding.

B DR JACOBUS TENBROEK, *Chairman, State Board of Social Welfare*:

1 Legislation should be passed requiring all disbursements incident to an independent or agency adoption proceeding to be reported to the adoption court. The adoption court should be able to approve all attorney fees in such adoption proceedings.

C CHARLES BURCH, JR., *Chairman, California State Bar Committee on Adoptions:*

1 All fees and disbursements incident to an independent or agency adoption proceeding should be reported to the adoption court. Penalties should be provided for if such fees and disbursements are not so reported.

D. DR ROBERT J. MCNEIL, *Chairman, California Medical Association Committee on Adoptions:*

1 All fees and disbursements incident to an independent or agency adoption proceeding should be reported to the adoption court.

E DAVID KEENE LEAVITT, *Attorney, Beverly Hills, California:*

1 All fees incident to an independent or agency adoption proceeding should be reported to the adoption court.

F DON SHEARER, *Attorney, Redondo Beach, California:*

1 Other than in interfamily adoptions, all disbursements incident to an adoption proceeding should be reported to the adoption court.

G MRS ELDON SCHAFER, *Legislative Cochairman, Adopted Children's Association:*

1 An accounting of all disbursements incident to an independent, agency or stepparent adoption proceeding should be made to the adoption court. The adoption court should approve or disapprove all such disbursements. If disbursements are made in connection with procuring a child for adoption, placing a child for adoption, or obtaining a consent to an adoption, and such disbursements are not approved by the adoption court; the court should be able to (1) delay the granting of an adoption decree pending further investigation of the disbursements; or (2) dismiss the adoption petition.

H JOHN WEDEMAYER, *Director, State Department of Social Welfare:*

1 All disbursements incident to an independent adoption proceeding should be reported to the adoption court.

I FRANK SLOSS, *Board of Directors, Children's Home Society of California:*

1 All disbursements incident to an independent or agency adoption proceeding should be reported to the adoption court. The adoption court should have power to approve or disapprove of legal fees incurred in the adoption proceeding. Since medical and hospital fees are necessarily incurred prior to the hearing on the adoption petition, the court should not have power to approve or disapprove of them.

J RICHARD L. MAYERS, *Deputy Attorney General, State of California:*

1 All disbursements incident to an independent adoption proceeding should be reported to the adoption court. Instances of excessive fees should be reported by the court to the appropriate professional organization for possible disciplinary action.

K PHILIP ADAMS, *Attorney, San Francisco, California:*

1 All disbursements incident to an independent or agency adoption proceeding should be reported to the adoption court

IV. Time Periods for Investigation and Reporting in Independent Adoptions

A DR ALBERT J ROSENSTEIN, *Clinical Psychologist, Encino, California:*

1 The law should establish a central organization, staffed with psychiatrists and other professional personnel, to make the adoption investigation and submit a report to the court

B DR. ROBERT J McNEIL, *Chairman, California Medical Association Committee on Adoptions:*

1 A preplacement study of prospective adoptive parents should be undertaken by the State Department of Social Welfare for both independent and agency adoptions

2 The investigation reports required by present law should be referred to a central file in the State Department of Social Welfare to eliminate duplicate adoption investigations

3 An appeal board should be established for individuals rejected as prospective adoptive parents by adoption agencies

C DAVID KEENE LEAVITT, *Attorney, Beverly Hills, California:*

1 No statute should be passed altering the present time periods for processing an adoption petition

D MRS ELDON SCHAFER, *Legislative Cochairman, Adopted Children's Association:*

1 Consideration should be given to the establishment of some type of preplacement investigation in independent adoption proceedings

2 In an independent adoption, the adoption petition should be filed within 15 days after the physical surrender of the child to the petitioners, or within 15 days after the child comes into the State, or, upon application of the petitioners, at whatever additional time the adoption court may allow

3 Provision should be made allowing the State Department of Social Welfare or county adoption agency, at any time prior to a final decree of adoption, to obtain from the petitioners or other sources documentary verification of facts deemed necessary to the investigation of the adoption proceeding

4 While an adoption petition is pending, the petitioners should be required to notify the agency authorized to investigate the adoption of any permanent change of address, and should also give notice to it of the whereabouts of the child if he is removed from his place of residence for more than 30 days

5 A special report should be required from the State Department of Social Welfare or county adoption agency in an independent adoption if no consent has been filed with the court within 60 days from the filing of the petition because (a) the department or county agency refuses to give its consent or to accept the consent of the

natural parents; (b) the natural parents entitled to consent cannot be located, or (c) the natural parents are withholding consent with or without a request for restoration of the child. After the report is received by the court, provisions should be made for a hearing at which the court could (i) allow further investigation of the circumstances surrounding the lack of consent, (ii) adjudicate the care and custody of the child and, if the circumstances warrant it, remove the child from the home of the petitioners or find that the natural parents have abandoned or are unfit parents for the child, (iii) accept the necessary consents in court; (iv) grant the adoption without the consent of the State Department of Social Welfare or county adoption agency if the adoption investigation has been completed; or (v) dismiss the adoption petition.

E JOHN WEDEMAYER, *Director, State Department of Social Welfare:*

1 No statute should be passed altering the present time periods for processing an adoption petition.

F FRANK SLOSS, *Board of Directors, Childrens' Home Society of California:*

1 No statute should be passed altering the present time periods for processing an adoption petition.

G RICHARD L. MAYERS, *Deputy Attorney General, State of California:*

1 No statute should be passed altering the present time periods for processing an adoption petition.

V Coercive Practices Resulting From the Natural Parents' Right to Refuse to Give or to Revoke Their Consent to an Independent Adoption

A MRS. ELDON SCHAFER, *Legislative Cochairman, Adopted Childrens' Association:*

1 The law should provide that the State Department of Social Welfare or county adoption agency can accept a consent in an independent adoption only if there is reason to believe that the consent is given without duress.

B RICHARD L. MAYERS, *Deputy Attorney General, State of California:*

1 The law should specify that the State Department of Social Welfare or county adoption agency cannot take a consent in an independent adoption until a specified time has elapsed after the child's birth.

2 The consent should be taken from the natural parents outside the presence of the attorney who is representing the prospective adoptive parents.

In addition to the more controversial aspects of California adoption law, a number of other related problems were explored at the Judiciary Committee hearings. They included the following.

VI Provision for Sole Jurisdiction in the Adoption Court to Prevent Petitioners From Attempting to Transfer the Child by a Guardianship Proceeding in California or by Instituting Adoption Proceedings in Another State

A. DR JACOBUS TENBROEK, *Chairman, State Board of Social Welfare*:

1. The law should require county clerks to notify the State Department of Social Welfare of any custody action when it involves a child who is the subject of a pending adoption proceeding

B. DAVID KEENE LEAVITT, *Attorney, Beverly Hills, California*:

1. Since parties do not attempt to evade the California adoption law, no statute should be passed giving the court sole jurisdiction in adoption cases

C. MRS ELDON SCHAFER, *Legislative Cockman, Adopted Children's Association*:

1. In an independent adoption proceeding, at any time after the filing of an adoption petition and prior to the granting of a final adoption decree, the adoption court should have sole jurisdiction of all matters pertaining to the care and custody of the child. In this regard, the court, after giving due notice, should be able to proceed with an immediate hearing regarding the care and custody of the child. At such hearing the court should have power to remove the child from the home of the petitioners or find that the natural parents are unfit or have abandoned the child. Upon a finding of unfitness or abandonment, the court should make any plan for the child which it deems to be in the child's best interests

2. A misdemeanor penalty should be provided for anyone who sends or conspires to send a child out of the State of California for adoption proceedings without the prior approval of the State Department of Social Welfare

D. JOHN WEDEMEYER, *Director, State Department of Social Welfare*:

1. The county clerk should be required to notify the State Department of Social Welfare of any custody action involving a child who is the subject of a pending adoption proceeding

E. FRANK SLOSS, *Board of Directors, Children's Home Society of California*:

1. Legislation should be passed giving the adoption court exclusive jurisdiction over all matters relating to the custody or guardianship of a child when he is involved in an adoption proceeding pending before the court

F. RICHARD L. MAYERS, *Deputy Attorney General, State of California*:

1. When an adoption petition has been filed, custody proceedings in other courts should be initiated only after approval by the adoption court

VII Abandonment Actions

A RICHARD L. MAYERS, *Deputy Attorney General, State of California*:

1 Many children, made wards of the juvenile court or given up by their parents, are placed in foster homes for care. If these youngsters have been legally abandoned, they are free for adoption and no parental relinquishment to an adoption agency is necessary.

Who may bring such an abandonment action? Unfortunately, some courts allow only prospective adoptive parents to do so. But since they may never know of the child, it is often left to languish under foster care.

To remedy this situation, legislation should be enacted specifically authorizing legal counsel, upon request of a licensed adoption agency, to initiate abandonment proceedings with respect to foster care children believed by the agency to be adoptable.

VIII Legal Proceedings After Court Passage of the Adoption Petition

A. MRS. ELDON SCHAFER, *Legislative Cochairman, Adopted Children's Association*:

1. Appeal from all orders of the adoption court, except an order of final adoption, should take precedence on the appellate court calendar.

2. The statute of limitations for setting aside an adoption decree on the ground that the proceeding was in some way irregular should be reduced from three years to one year.

IX Birth Certificates in Adoption Proceedings

A PAUL SHIPLEY, *Chief, Bureau of Vital Statistics and Data Processing, State of California*:

1 Present law provides that, after an adoption decree has been granted, a new birth certificate shall be issued showing the adopted child to be the child of the adoptive parents. The new birth certificate is listed under the same file number as the original birth certificate. Copies of birth certificates are issued to any applicant desiring them if the applicant can furnish the adopted child's new name or the file number under which the birth certificate is listed. Thus, a natural parent with knowledge of the file number on the adopted child's original birth certificate could obtain a copy of the new birth certificate issued after the adoption decree is granted. By examining the addresses of the adoptive parents on the newly issued birth certificate, natural parents could conceivably disrupt the new family relationship of the adoptive child by attempting to visit him, harass the adoptive parents, etc. For this reason some have argued that the amended birth certificate should be given a different file number than the original birth certificate.

In my opinion, giving a new file number to amended birth certificates in adoption cases would create many more problems than it would solve. If the committee desires to preclude natural parents from harassing their former children by obtaining the birth certificate file number (a situation which, to my knowledge, has arisen only

once in the past 15 years), I would suggest the following amendment to the Health and Safety Code

105751—Provided further that certified copies of certificates of birth for records amended under provisions of Articles 4, 5, 6 and 7 of Chapter 8 of this Code, shall be issued only when the applicant for the certified copy or inspection of the record is able to furnish information, exclusive of file numbers, adequate for identification and location of the amended record

X. Regulation of Adoption Agencies

A DR JACOBUS TENBROEK, *Chairman, State Board of Social Welfare:*

1 Legislation should be passed enabling the State Department of Social Welfare to administer public adoption agencies on a regional basis, with salaries paid to the employees of these agencies by the State rather than by the county

B DON SHEARER, *Attorney, Redondo Beach, California:*

1 Present law allows county adoption agencies to both place children for adoption and report on independent adoption petitions. Since a conflict of interest is present here, the reporting and placement functions of the county adoption agencies should be separated

XI Miscellaneous Proposals Concerning Adoption Law

A MRS ELDON SCHAFER, *Legislative Cochairman, Adopted Children's Association:*

1 The law should provide that while an adoption petition is pending, the petitioner shall act as guardian ad litem in any suit for injuries to the child by a third party if the injury occurred while the petition was pending. Further, the law should specify that, under these circumstances, only the petitioners can bring such a suit for the child

2. A statute should be enacted requiring a copy of the final adoption decree to be forwarded immediately to the attorney for the petitioners, or, if there is no attorney of record, to the petitioners themselves

3 When a couple petitions in an agency or stepparent adoption, and one of the spouses dies before entry of the final decree, the court should not be permitted to dismiss the adoption petition on these grounds. In independent adoptions, however, the natural parents should have discretion whether to place their child with an individual rather than a married couple. Thus, when one of the petitioning couple dies in an independent adoption proceeding before the final decree, a new petition should be filed and new consents obtained

4 When a petitioning couple in an independent adoption divorce or separate before entry of a final decree, the court should have discretion as to whether or not to order a new adoption petition and the retaking of consents

B RICHARD L. MAYERS, *Deputy Attorney General, State of California*:

1 Where an unmarried mother consents to the adoption of her child, and then marries the natural father before entry of the adoption decree, the law is presently unclear as to whether the natural father's consent is required. The Legislature should determine, in such circumstances, whether the natural father must consent to the adoption.¹⁴

2 A recent amendment to Civil Code Section 226 requires the court, after receiving the adoption report from the State Department of Social Welfare or county adoption agency, to notify the natural parents of the adoption hearing. On its face, this provision would seem to apply to agency as well as independent adoptions. An agency adoption, however, is designed to remove the natural parents from all aspects of the adoption proceeding after they relinquish their child to an adoption agency. Therefore, the law should be clarified.

FINDINGS AND RECOMMENDATIONS

The process of adoption in California involves a number of controversial issues which have been studied by the Assembly Interim Committee on Judiciary. The committee's findings and recommendations will deal with these matters separately.

1. Placement in Independent Adoptions

The Judiciary Committee has devoted more time and effort to the study of placement in independent adoptions than to any other single aspect of its interim activities. The committee's work, resulting in many pages of testimony and background information, has given it a full awareness of the enormous complexity of the placement problem.

The difficult issue in this area relates to the type and degree of assistance that one can lawfully render to natural parents. Until this issue is resolved, a clear placement statute cannot be written, and persons connected with an independent adoption will continue to be confused as to whether many of their activities are sanctioned by law.

Certainty in the law, however, must not take precedence over sound public policy. Although desirous of settling the placement question, the Assembly Interim Committee on Judiciary feels that further study is needed before a responsible solution can be suggested. Therefore, it recommends that its study be continued during future interim periods.

2. Dual Representation of Parties in Independent Adoptions

Natural parents, in independent adoption proceedings, are called upon to make crucial decisions regarding the welfare of their child. They should, therefore, be assured the opportunity of obtaining assistance from impartial legal counsel.

Can such assistance be assured under the present practice of dual representation in California? The Assembly Interim Committee on Judiciary feels that it can. Although the natural parents may use the adoptive couple's attorney, they are not required to do so. Indeed, the

¹⁴ A recent District Court of Appeal case, however, has held that in the above-described situation, a father's consent is not necessary. (*Adoption of Laws*, 201 A.C.A. 554 (1962).)

California State Bar Rules of Professional Conduct require an attorney to disclose his adverse interests in a dual representation situation¹⁵ Being so apprised of the attorney's position, there is nothing to prevent the natural parents, if they desire independent legal advice, from hiring private counsel or consulting a lawyer's reference service

Because it believes that the present law adequately protects a person's right to impartial counsel, the Assembly Interim Committee on Judiciary recommends that the present form of dual representation in independent adoptions not be prohibited

3 Accounting for Disbursements in Adoption Proceedings

As has been mentioned, some have objected to the disbursements required or made in certain independent adoptions The amounts of these disbursements, it is contended, lead one reasonably to suspect that unlawful placement activity and unethical conduct are present

While these assertions have not been conclusively validated, they do indicate that some controls on adoption disbursements should be instituted Accordingly, the Assembly Interim Committee on Judiciary recommends that all payments connected with an independent adoption be reported to the court, and that a copy of the report be forwarded to the State Department of Social Welfare Further, since agency and adult adoptions can conceivably be tainted with illegality or impropriety, the committee recommends that all disbursements in these matters be similarly reported¹⁶

This reporting procedure, it is hoped, will serve two purposes First of all, it will provide the court and State Department of Social Welfare with information relating to unlawful or improper activities in adoption matters Secondly, the possibility of having disbursements divulged should deter the unscrupulous from questionable adoption practices Of course, if reporting alone does not prove a sufficient deterrent, further remedial legislation will be needed

4. Time Periods for Investigation and Reporting in Independent Adoptions

One of the problems with independent adoptions is that many months can elapse between the time a child enters the petitioners' home and the final disposition of the adoption proceedings During this period, familial relationships are begun and often entrenched If the adoption ultimately fails, the breakup of the newly established family is usually traumatic

To rectify this situation, many have felt that procedures should be instituted, at an early stage, to determine whether an independent adoption is or is not likely to be consummated Present law has made some advances in this regard The appropriate investigating agency is required, within 45 days from the filing of the adoption petition, to interview the parties to the adoption proceeding Further, if during the adoption investigation a "serious question" develops concerning the consummation of the adoption, the investigation report must be filed with the court immediately The court, in such circumstances, may call an immediate hearing on the adoption petition

¹⁵ Rules 5, 6 and 7

¹⁶ See Appendix A for the Legislative Counsel's drafts of the proposed legislation

Feeling that more specific provisions are needed to operate conjunctively with those in the present law, the Assembly Interim Committee on Judiciary recommends the following: In an independent adoption, a special report should be required from the State Department of Social Welfare or county adoption agency if no consent has been filed with the court within 90 days from the filing of the adoption petition because (a) the department or county agency fails to give its consent or to accept the consent of the natural parents, (b) the natural parents entitled to consent cannot be located, or (c) the natural parents are withholding consent with or without a request for restoration of the child.

The report should explain the circumstances surrounding the lack of consent. After receiving the report, the court, having given due notice, should be able to call a hearing and take whatever action it deems to be in the child's best interests. Such action might include, but not be necessarily limited to, any of the following: (i) allowing further investigation of the circumstances surrounding the lack of consent or acceptance thereof, (ii) adjudicating the care and custody of the child and, if the circumstances warrant, removing the child from the home of the petitioners or finding that the natural parents are unfit or have abandoned it; (iii) accepting the necessary consents in court; (iv) granting the adoption without the consent of the State Department of Social Welfare or county adoption agency if the adoption investigation has been completed, or (v) dismissing the adoption petition.¹⁷

5 Coercive Practices Resulting From the Natural Parents' Right to Refuse to Give or to Revoke Their Consent to an Independent Adoption

Since the consent in an independent adoption is usually not taken until after the child has been informally placed in the petitioners' home serious questions of undue pressure arise. A natural parent may demand huge sums for giving her consent, the petitioners may threaten to expose an unwed mother's adverse circumstances if her consent is not forthcoming.

These potential dangers can be considerably reduced if the consent, whenever possible, is taken at a relatively early stage of the adoption proceeding. The Assembly Interim Committee on Judiciary has provided for this under Recommendation 4, above.

6 Of the Remaining Adoption Problems Studied by the Assembly Interim Committee on Judiciary, the Following Were Considered as Calling for Affirmative Legislation at This Time:

a. As has been noted, some judges allow only prospective adoptive parents to institute abandonment actions involving foster care children. This seems overly restrictive. If a child has in fact been abandoned, it is in his best interest to be declared as such and thereby become eligible for adoption.

Accordingly, the Assembly Interim Committee on Judiciary recommends that the law specifically authorize legal counsel, upon request of a licensed adoption agency, to institute abandonment actions with

¹⁷ See Appendix B for the Legislative Counsel's draft of the proposed legislation.

respect to foster care children believed by the agency to be adoptable¹⁸

b. A recent amendment to Civil Code Section 226 requires natural parents to be notified of an adoption hearing after an investigation report has been filed with the court. Unfortunately, the amendment is open to dangerous construction. It could be found applicable to agency adoptions which are designed to remove the natural parents from the adoption proceeding after they relinquish their child to an adoption agency.

To insure that the above-mentioned provision of Section 226 is not applied to agency adoptions, the Assembly Interim Committee on Judiciary recommends that it be appropriately amended.¹⁹

c. California law, in conjunction with federal legislation, specifies procedures whereby families may bring foreign-born orphans to this State for purposes of adoption.

In brief, this foreign adoption program operates as follows. After a couple applies to the State Department of Social Welfare, the department conducts a study of the prospective adoptive home. Such a study is to determine whether the couple is eligible to adopt a child under the laws of California. If the couple is eligible, the matter is referred to an international service agency which locates a suitable foreign child for the couple and arranges for its transportation to this country.

Once approved by the United States Attorney General, the foreign child may enter this country for adoption under a nonquota immigrant visa. After the prospective adoptive couple petitions for such a visa, the United States Government Immigration and Naturalization Service investigates the matter. If it is determined that the child is eligible for immigration to the United States and that the petitioning couple is qualified and able to provide for the child, the petition for entrance is approved by the Attorney General.

Thereafter, an adoption petition is filed with the appropriate California court. When granted, the foreign child is adopted.

The investigations conducted by the federal government and State Department of Social Welfare are, in part, duplicative. To the extent that duplication exists, the time and expense necessary to consummate a foreign adoption are increased. Accordingly, the Assembly Interim Committee on Judiciary recommends that the State Department of Social Welfare inquire into the matter and eliminate any duplicative investigatory procedures.

¹⁸ See Appendix C for the Legislative Counsel's draft of the proposed legislation.

¹⁹ See Appendix D for the Legislative Counsel's draft of the proposed legislation.

COMPENSATION OF JURORS

INTRODUCTION

Present California law provides that specific fees be paid civil, criminal and grand jurors in each individual county.¹ Although the fees vary to some degree, jurors are generally compensated for their services at the rate of \$5 per day, meals and lodging, if necessary, and mileage at the rate of 15 cents per mile. Since the required service time may run for weeks, those fulfilling their obligation of jury duty often incur substantial income losses.

At the 1961 Regular Legislative Session, A.B. 493 (O'Connell) was introduced and heard by the Assembly Judiciary Committee. The purpose of the bill was to encourage service on juries, and would have required the employer to assume the cost of jury service by allowing the employee time off for jury duty without loss of pay. Because the question of who should assume the financial burden of jury duty presents a far-reaching policy problem, and a possible constitutional issue, the subject was referred to the Judiciary Committee for interim study.

COMMITTEE HEARING

A hearing on the question of jurors' compensation was held by the Assembly Interim Committee on Judiciary in Sacramento on February 7, 1962. The views of interested citizens and representatives of employer and employee associations were considered at that time.

The following is a summary of the committee hearing. Since most of the testimony was in response to questions submitted to witnesses prior to the hearing, the summary is written in question and answer form.

I Are the Present Statutory Compensation Rates for Jurors Sufficient?

A. GILFORD G. ROWLAND, *Representing the California Conference of Employer Associations:*

It would be impossible to provide a juror's fee which would remove all financial loss in every case, but in my opinion, the juror's fee in California is too low. It should be raised to at least \$10 per day plus mileage for the round trip for each day of jury attendance.

B. THOMAS L. PITTS, *Secretary-Treasurer, California Labor Federation, AFL-CIO:*

The inadequate nature of jury pay as now provided by law speaks for itself. Statutory compensation for municipal and superior court jury duty in California is set at roughly \$5 per day. In November 1961, the average factory worker in this State earned wages of \$2.76 an hour. In an eight-hour day, this amounts to \$22.08. Unless the employer is making up all or part of this differential, the average California manufacturing worker is penalized \$17.08 in wages alone for every day spent in jury service.

¹ Gov. Code, §§ 28101-28158, 72331, Code Civ. Proc., §§ 198, 233, Pen. Code, § 890. See Appendix E for a chart showing compensation rates and length of service for jurors in California.

II Does the Present Law Act to Discourage Those Working on an Hourly or Piece Rate Basis From Serving on Juries? If so, Does This Create Additional Harmful Results, Such as a Hesitation by Such Persons to Register to Vote for Fear of Being Called for Jury Duty?

A GILFORD G ROWLAND, *Representing the California Conference of Employer Associations:*

Present law probably does discourage those working on an hourly or piece rate basis from serving on juries. But I doubt that it discourages these workers any more than it does others who will suffer financial loss from jury service.

In my opinion, the most we can do is to alleviate the financial burden as much as is practical, and then depend upon the patriotic spirit of our citizens to make the resulting sacrifice.

In regard to the additional harmful results caused by jury service, I doubt very much that there are many persons who fail to register to vote because they are fearful of being chosen as a juror. Voting lists are only one of innumerable sources of names for possible jurors, and there is no greater chance of being so selected by being a registered voter than by being listed in the telephone directory, belonging to a lodge, or being listed on the tax rolls or in a city directory.

B THOMAS L PITTS, *Secretary-Treasurer, California Labor Federation, AFL-CIO:*

Legislation requiring employers to assume the wage loss of jury duty goes to the very heart of implementing democratic practices as well as the fair and impartial administration of justice. It is common knowledge that very often people in average or low income circumstances deliberately abstain from registering as voters because they cannot afford to undertake the financial sacrifice involved in jury duty. This, of course, is particularly true where a collective bargaining contract does not provide for full reimbursement by the employer of the differential between jury pay and the individual's normal earnings. The practical effect is to compromise the democratic process by diluting representative government.

It should also be pointed out that this reduction in the potential pool of jurors is in addition to the thousands of low- and middle-income housewives who exclude themselves through nonregistration because normal remuneration for this duty is inadequate to defray expenses incurred in such forms as transportation, meals and babysitter costs.

The net impact of such factors is largely to exclude working people from participating in jury duty, thereby contributing to potential bias in our judicial procedures.

III. To What Extent is the Employee Presently Compensated Through Collective Bargaining Agreements With His Employer for Time Lost Due to Jury Duty?

A GILFORD G ROWLAND, *Representing the California Conference of Employer Associations:*

California Industrial Relations Report No. 21, issued September 1960, by the Division of Labor Statistics and Research of the Depart-

ment of Industrial Relations, states that pay for time lost from work while serving on a jury is provided in contracts covering 30 percent of California's unionized workers²

The most common provision in these contracts is that the worker will be paid the difference between what he receives as a juror and his regular pay. Some contracts contain limitations as to the length of time a worker will be paid while serving on a jury.

A survey of office personnel practices in the San Francisco Bay area, made by the Federated Employers of San Francisco in 1960, revealed that, of 261 establishments surveyed, 87 percent granted time off for jury duty. The length of time was discretionary with the employer in 137 establishments with 19,066 employees. However, 112 of the establishments (42 percent) with 25,688 employees (57 percent of the employees) granted all the time required for jury duty without wage loss.

Inasmuch as there are only a few collective bargaining contracts covering office personnel, the nonorganized workers seem to fare as well or better than organized workers in regard to jury pay provisions.

The fact that time off for jury duty without wage loss is not uncommon is not an argument in favor of a statute compelling all employers to pay their employees for jury duty. Where time off for jury duty is granted either as a result of a contract or voluntary benefit, the employer has an opportunity to determine the cost to him and the effect of such practices upon his business.

B. THOMAS L. PITTS, *Secretary-Treasurer, California Labor Federation, AFL-CIO*:

As pointed out in 1954 by the United States Department of Labor Bulletin, No. 1181:

Jury service is basically a compulsory duty. To protect employees from loss of income while absent from work to serve as jurors, paid jury leave is provided by a number of collective bargaining agreements. Such provisions are akin to those providing pay allowances or bonuses to employees called for short-term military service in that they reduce a worker's financial sacrifice while he fulfills his civic duty.

The bulletin noted that its analysis of 1,736 agreements, covering 6,365,000 workers in 1953, revealed that 317 contracts, or 18 percent, contained provisions guaranteeing workers payment at least equal to their regular earning for time spent in jury service.

Generally, the employer undertook to make up the difference between jury fees and the normal earnings of the worker. The study also found that it was fairly common in industry to pay salaried employees for jury duty service.

In 1958, Department of Labor Bulletin No. 1283 reported that 43.4 percent of all United States factory workers were covered by provisions for jury duty pay.

²It should be noted, however, that while 30 percent of California's unionized workers are covered by collective bargaining agreements providing for jury pay, not all these workers would necessarily receive such pay if called for jury service. A few agreements specify a minimum service requirement that must be met before a worker is eligible for compensation from his employer.

IV Should Employers Be Required to Compensate Their Employees When They Are Called for Jury Duty? If So, Should the Amount and Period of Compensation Have Any Limitation? If Not, Who Should Bear the Wage Loss?

A GILFORD G. ROWLAND, *representing the California Conference of Employer Associations:*

Various groups, especially union organizations, have long advocated that employers be required to compensate their employees for wages lost due to jury service. These proponents argue that jury service is a "right" and that no person should be required to exercise a right without being paid for the financial hardship it may entail. The fallacy in their argument is this: Jury service is not a "right" but a "duty." As stated in 31 Am. Jur. at page 62:

Jury service is not a right or privilege which may be claimed, but is an obligation imposed by law upon those who come within a designated class possessing the required qualifications. *The state has an inherent and indisputable right to the service of citizens as jurors. Jury service is one of the burdens of citizenship, and not merely one of the privileges; it is a duty of all citizens to undertake this burden when called upon to do so, unless they are exempted or entitled to be excused.* (Emphasis added.)

Since jury service is a duty incumbent upon all of us, we are, in the strict sense of the word, deprived of nothing if we are not compensated for exercising that duty. Thus, the issue of jury pay is not analogous to the present requirement that employers compensate their employees for working time lost as a result of voting. Voting, we all know, is a "right" of citizenship.

What, then, is the basis for any jury compensation at all? It is not that a fairer trial will result. There is no showing that higher pay produces a more impartial or rational panel in the jury box. The basis is, I suggest, a feeling that those assisting in our administration of justice should, in all equity, receive some pecuniary satisfaction. But since the benefits of the proper administration of justice accrue to all citizens, its cost should be borne by all citizens through their government, and no selected group, such as employers or anyone else, should be forced in any way to pay more than its allocable share.

As I have mentioned, I believe that juror's compensation should be raised to at least \$10 per day plus mileage for the round trip for each day of attendance. But I propose that this cost, at least as to the increase, be borne by our government—the only entity which represents all of us who benefit from jury service.

B. THOMAS L. PITTS, *Secretary-Treasurer, California Labor Federation, AFL-CIO:*

In view of the implications of this issue for the implementation of democracy and the fair administration of justice, along with the fact that this minor cost item is already widely assumed by employers, we feel that affirmative action by the Legislature is badly needed requiring employers to assume the cost of jury duty.

In regard to a limitation on the amount and period of compensation, it must be assumed that such a limitation, if any, would be considered

only where necessary to prevent certain employer hardship cases. A study by the interim committee of prevailing practices and experiences connected with jury duty pay, particularly in collective bargaining agreements, should be most helpful in making such a determination.

C AUBREY GROSSMAN, *Attorney, Oakland, California:*

In order to make it possible for working men and women to serve on juries, the employer should be required to compensate his employees for time off for jury duty.

Should this proposal prove to be unpalatable, I would suggest an alternative plan. This would be to allocate the present total jurors' fees among those individuals who can, through affidavit, show income loss as a result of jury service.

V. Would a Statute Requiring Employers to Compensate Their Employees for Time off Due to Jury Service Raise a Constitutional Question?

A TERRY L. BAUM, *Deputy Legislative Counsel:*³

You have asked for our opinion regarding the constitutionality of legislation requiring employers to grant employees time off with pay for jury service. After considering the problem, we have determined that the constitutionality of such legislation would be in substantial doubt on the ground of violation of due process.

Time off for voting statutes have been held valid under both the Federal and California Constitutions. Whether the courts would treat a statute requiring employers to pay their employees for time off taken for jury duty in the same manner as they have treated "pay while voting" statutes is difficult to predict. While there is a degree of similarity of fact and in principle between the two situations, there are also a number of distinctions. For example, an employee may be required to spend many days in jury service, whereas the time required for him to vote is a matter of hours. Also, a juror is often compensated by his employer for time served on a jury, which is not true of voting time. Finally, an employee called to serve on a jury is obligated to serve unless excused for some sufficient reason, which is not true in the case of voting.

It might well be that the courts, in weighing the equities, would take the view that the benefits to the public and to the employees involved are not sufficient to justify burdening the employer with a compulsory jury pay provision. In view of this, we can only conclude that the constitutionality of legislation of this nature is at least doubtful.

FINDINGS AND RECOMMENDATIONS

The remuneration for service on grand and trial juries in California is, to say the least, meager. For grand juries the minimal compensation rates do not seem overly burdensome. These jurors are generally salaried individuals who conduct their deliberations during the evening hours. The present pay standards for trial jurors, however, often impose serious financial hardships, especially upon nonsalaried persons.

³ See Appendix F for full opinion.

The Assembly Interim Committee on Judiciary feels that these hardships should be alleviated through an increase in trial jury fees.

By what method and in what amount should the fees of trial jurors be increased? Further exploration is needed to answer the question in detail.⁴ From its study, however, the Assembly Interim Committee on Judiciary recommends that private employers not be disproportionately saddled with jury fee obligations. Jury duty, like other aspects of the administration of justice, is a benefit accruing to all citizens. And all citizens should bear its costs.

⁴ See Appendix G for the estimated cost to the State of assuming jury fee increases.

SALARIES AND QUALIFICATIONS OF MEMBERS AND REFEREES OF THE INDUSTRIAL ACCIDENT COMMISSION

INTRODUCTION

Referees of the Industrial Accident Commission are currently compensated at the annual rate of \$13,332 to \$16,212. Their representatives have long contended that, since referees are in fact judges, their salaries should be equal to members of the bench. A B 1793, 1794 and 1795,¹ designed to accomplish this result, were submitted for interim study.

Present law provides that members of the Industrial Accident Commission shall be appointed by the Governor for a term of four years. Although this commission is a judicial body in nature, there is no requirement that its members be admitted to the practice of law. Some have questioned whether citizens without formal legal training are qualified to exercise the essentially judicial functions of the commission. Accordingly, measures were introduced at the last general session requiring members of the Industrial Accident Commission to have the qualifications of judges of the superior court² or to be assigned from the superior court bench.³ These proposals were also referred to the Assembly Judiciary Committee for interim study. Along with the problem of qualifications is the question of compensation. Members of the Industrial Accident Commission currently receive \$17,365 per year. Some have contended that this figure should be increased.

HISTORY AND DEVELOPMENT OF WORKMEN'S COMPENSATION LAWS

In General

The industrial revolution in the 18th century brought about significant changes. The introduction of power-driven machinery to replace hand labor caused a tremendous increase in the frequency and severity of industrial accidents. Many times the injured employee or the dependents of a deceased employee became public charges.⁴

To rectify this situation, the theory of workmen's compensation was developed. It began in Germany where, as a result of political agitation, Bismarck urged adoption of some legislation to offset the appeal of new socialistic doctrines. His efforts resulted in the passage of a series of measures, culminating in 1884 with the first accident insurance law.⁵

In the last decade of the 19th century, many of the states in America enacted some form of employer's liability law. While these statutes usually applied only to railroad companies, they often abolished the common law and precompensation statutory defenses of contributory

¹ (Willson), 1961 Regular Legislative Session.

² A B 2318 (Bagley), 1961 Regular Legislative Session.

³ A B 3035 (Theilm), 1961 Regular Legislative Session.

⁴ Lange, Frank, *Workmen's Compensation Insurance, Monopoly or Free Competition?*, Richard D. Irwin, Inc., Chicago, 4-6 (1947).

⁵ Compton, Douglas A., *Workmen's Compensation*, Parker, Stone & Bair Co., Los Angeles, 32-33 (1935).

negligence, voluntary assumption of risk and the fellow-servant rule (whereby the employer was not liable for the negligent act of a fellow employee). In spite of this trend of liberalizing recoveries, however, the employee still had to prove fault on the part of his employer in order to obtain relief.⁶

Around the turn of the century, jurisdiction over industrial accident proceedings began to be given to special commissions instead of the courts. Massachusetts was the first state to take action in this regard by creating an industrial accident commission in 1903.⁷ In addition, increased public concern with workmen's injuries caused many states to grant them compensation without regard to fault.⁸

In 1908 Congress passed a commission-type workmen's compensation act. It was, however, of limited scope. Compensation was restricted to one year in duration and contributory negligence remained as a defense.⁹

New York enacted a workmen's compensation law in 1910 and in the following year 10 more states, including California, adopted similar legislation.¹⁰ Generally, these laws granted compensation irrespective of fault. And proceedings were usually required to be instituted before industrial accident commissions.

California

In 1911 the California Legislature passed its first workmen's compensation law, commonly known as the Roseberry Act. Later that year the California Constitution¹¹ was amended, giving the Legislature the power to provide for a compulsory system of workmen's compensation. Compensation was based on the extent of injury, *irrespective* of the fault of either party. In 1918 another amendment¹² to the Constitution extended these benefits by providing for a complete system of compensation, safety regulations, insurance and allied benefits.¹³ An industrial accident commission was created and its three members given the task of administering the law.

Until 1945 no major changes took place. In that year the number of commissioners was increased to seven, with three sitting in San Francisco and three in Los Angeles; the seventh commissioner was appointed as chairman.¹⁴

FUNCTIONS OF REFEREES AND MEMBERS OF THE INDUSTRIAL ACCIDENT COMMISSION

Referees

Referees are judicial officers. Their principal function is the hearing and deciding of compensation claims. They assess the credibility of witnesses, analyze evidence, rule on its admissibility and determine

⁶ Dodd, Walter R., *Administration of Workmen's Compensation*, The Commonwealth Fund, New York, 13-16 (1936).

⁷ Schneider, William R., *Workmen's Compensation Text*, Thomas Law Book Co., St. Louis, Vol. 1 (1941).

⁸ Dodd, *op cit supra* at 27.

⁹ Schneider, *op cit supra*.

¹⁰ Dodd, *op cit supra* at 27.

¹¹ Cal. Const., Art. XX, § 21.

¹² *Ibid.*

¹³ Compton, *op cit supra* at vi-vii.

¹⁴ Testimony of Elton C. Lawless, Chairman of the Industrial Accident Commission, before the Assembly Interim Committee on Judiciary, May 16, 1962.

whether a party has made out his case. The matters referees are concerned with and rule upon do not merely relate to strict compensation law. Often they must deal with ancillary legal questions such as the validity of an employment contract, divorce, marriage or the legitimacy of a dependent child.

After rendering a decision, order or award in a workmen's compensation case, the referee must prepare findings, with reasons therefor, on the matter before him. These are served upon all parties to the action. His adjudications, when adopted by the Industrial Accident Commission, may be converted into a superior court judgment and, as such, are *res judicata*.¹⁵

Quite clearly, referees have duties, powers and responsibilities similar to those possessed by trial court judges.¹⁶ One material difference between them, however, is their salaries. The present annual salaries of municipal and superior court judges are as follows:¹⁷

	<i>Annual Salary</i>
Superior court judges in counties of 100,000 or more population...	\$21,000
Superior court judges in counties of less than 100,000 population...	\$18,900
Municipal court judges in counties of 250,000 or more population...	\$18,900
Municipal court judges in counties of less than 250,000 population...	\$16,800

The present annual salaries of Industrial Accident Commission referees are from \$13,332 to \$16,212. Their salaries are fixed by the State Personnel Board. Those of the judges are fixed by statute.¹⁸ The basis of the salary classification of judges is the assumption that there is a relationship between population and judicial workload. It is significant, therefore, that all but one of the 77 referees¹⁹ sit in counties of more than 250,000 population.

Some of the most eminent judicial officers in this State have made known their position with respect to the judicial responsibilities of Industrial Accident Commission referees. The following are examples of their views:²⁰

¹⁵ But of decisions of administrative officers, they are subject to a trial *de novo* in the superior court.

¹⁶ The powers of the referee include the following:

- (1) to administer oaths,
- (2) to certify to all official acts,
- (3) to issue subpoenas for attendance of witnesses and production of papers, books, accounts or documents,
- (4) to take testimony in any inquiry, investigation, hearing or proceeding,
- (5) to appoint a trustee or guardian ad litem to appear for and represent any minor or incompetent party to a proceeding,
- (6) to order the joinder of any additional party or parties whose presence he deems necessary for the full determination of a matter pending before him,
- (7) to cause a deposition of witnesses residing within or without the State to be taken in the manner prescribed by law,
- (8) to issue all interlocutory orders necessary for a proper and expeditious handling of the case,
- (9) to appoint a disinterested physician to make an examination and report in writing where one of the parties is willing to bear the expense,
- (10) to approve or disapprove a compromise and release agreement,
- (11) to make orders, decisions, or awards in all cases assigned to him.

[Hanna, Warren L., *The Law of Employee Injuries and Workmen's Compensation*, Hanna Legal Publications, Albany, Calif., 8 (1953).]

¹⁷ See this committee's report titled "Salaries of Municipal and Superior Court Judges," *infra*.

¹⁸ *Ibid.*

¹⁹ Only 77 out of the authorized number of 84 positions are currently filled.

²⁰ Written presentation on behalf of the Referees, Industrial Accident Commission before the Assembly Interim Committee on Judiciary, May 16, 1962, Appendix I, at 37.

Justice John W. Shenk, former Associate Justice of the California Supreme Court.

"I have always thought that [the referees'] classification should be in proportion to [their] responsibilities. I can compare them no more appropriately than with the work of the superior court or municipal court."

Justice Parker Wood, Presiding Justice, Second District Court of Appeal.

"I can state with certainty that the work of a referee of the Industrial Accident Commission is judicial work that is comparable to that of trial courts such as the superior court and the municipal court."

Justice Paul Peek, Associate Justice, California Supreme Court.

"[T]he work of a referee is comparable in every particular to that of a trial judge."

Justice Raymond E. Peters, Associate Justice of the California Supreme Court.

"[E]very phase of [a referee's] work is comparable to that of a trial judge."

Members of the Commission

The seven members of the Industrial Accident Commission are appointed by the Governor for four-year terms. The chairman of the commission acts as its administrative officer.

The commission has the power to hear any workmen's compensation case and to issue the original decision. However, "the volume of cases long ago reached such a point as to make panel²¹ attention to more than a selected fraction of the cases an impossibility."²² Its major function is, therefore, to act like an appellate court and review the decisions of the referees. Thus, it accepts, modifies, rejects or orders reconsideration²³ of all adjudications of referees in workmen's compensation matters.²⁴

The commission, however, is not merely limited to hearing an industrial accident case or reviewing a referee's decision. It has, in addition, the "power and authority to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it by the Labor Code."²⁵ The members may issue writs or summons, warrants of commitment and of attachment and all necessary processes in proceedings for contempt. They may administer oaths, issue subpoenas and certify to all official acts.

Moreover, the commission has discretionary power regarding any of the following:²⁶ (1) approval of compromise and release agreements, (2) allowance of lump sum computation of industrial accident awards, (3) reassignment of death benefits, (4) issuance and discharge of attachments, (5) issuance of certified copies of awards, (6) issuance

²¹ There are three members on each of the two panels. Panel I is in San Francisco and Panel II in Los Angeles.

²² Hanna, *op. cit. supra* at 5.

²³ Action on a petition for reconsideration is a condition precedent for judicial review.

²⁴ Secs. 10550 and 10851 of the *Rules of Practice and Procedure* of the Industrial Accident Commission, which *Rules* were adopted pursuant to the authority granted in Labor Code § 5307, reserve unto the commissioners the subjects of reconsideration, contempt, discipline, recommendations for prosecution and other matters of like import.

²⁵ Hanna, *op. cit. supra* at 5.

²⁶ *Id.*, at 6.

of stays of executions; and (7) authorization of autopsies. Commission action in these areas will not be disturbed by an appellate court unless there is a clear showing of abuse.

Aside from its adjudicatory responsibilities, the commission members are charged with adoption and revision of the Industrial Accident Commission's *Rules of Practice and Procedure*²⁷

COMMITTEE HEARING

Questions concerning referees and members of the Industrial Accident Commission were considered by the Assembly Interim Committee on Judiciary at a hearing in Sacramento on May 16, 1962. The views of a cross-section of parties, all involved in industrial accident proceedings, were heard at that time. The following is a summary of their remarks:

1. What Should Be the Compensation of Referees of the Industrial Accident Commission?

A GORDON A FLEURY, *Representative, Conference of Referees, Industrial Accident Commission*:

The Industrial Accident Commission is a court, not an administrative agency. It has, for example, the power to appoint trustees and guardians, to imprison for contempt and to reform insurance or employment contracts. Such questions as whether a contract of employment is valid and whether death was due to accident, murder or suicide are litigated before it.

Within this structure, the referees are independent judicial officers. They do all the trial work and make all the trial decisions. Unlike other hearing officers, their evaluation of the evidence is final. A judgment of a referee, when it becomes final, is binding on courts elsewhere, whereas the decisions of other hearing officers are subject to trial *de novo* in the superior court.

Members of the judiciary and the California State Bar have long recognized that the activities of the Industrial Accident Commission referees are judicial in nature. These activities are similarly regarded by the California Legislature which, in 1951, amended Labor Code Section 123 to require that "the salaries of the referees shall be fixed by the State Personnel Board for a class of positions *which perform judicial functions*" (emphasis added).

The State Personnel Board, however, has not followed this legislative mandate. It has continued to structure the salary schedules of Industrial Accident Commission referees as though they were mere administrative positions. The result is that referees receive salaries ranging from \$13,332 to \$16,212 a year. Clearly these amounts should be raised. Since their duties are similar, the Industrial Accident Commission referees' salaries should be raised to equal those of superior court judges in our most populous counties. This would require an annual salary of \$21,000.

The reasons for the State Personnel Board's policy regarding salaries of Industrial Accident Commission referees are probably twofold. First of all, as has been mentioned, they have misinterpreted the

²⁷ The Rules are adopted or revised at the commission's quarterly meetings.

legislative directive of classifying referees as judicial officers. Secondly, they have relied upon their so-called rule of "compaction" to deny referees deserved salary increases. Compaction is a Personnel Board policy which provides that an employee's salary shall not exceed that of his supervisor, that there should be an "appropriate differential" between the two. The board has held that this policy must be adhered to unless there are "compelling" reasons to make an exception.

In this area, compelling reasons certainly exist. In the first place, the requirements for Industrial Accident Commission referees are more rigid than for the commission members themselves. Referees must be attorneys, admitted to practice in California for at least five years, while commission members need not even be lawyers. Further, there is in no sense a supervisor-employee relationship between commission members and referees. The referees do all the trial work in a workmen's compensation matter, they render their decisions independently, subject to no review prior to issuance.

The salary schedules established by the State Personnel Board have not only rendered injustice to present Industrial Accident Commission referees, they have also deterred new men from accepting referee's positions.²⁵

B DAVID I LIPPETT, *Representative, Conference of Referees, Industrial Accident Commission*.

An Industrial Accident Commission referee must possess a high degree of judicial competence. He must satisfactorily pass a written examination covering workmen's compensation law and procedure, California evidence and court procedure, and medical, physiological and anatomical terminology relating to cases of industrial injuries.

Once assuming his position, the responsibilities of a referee are enormous. He must continually deal with intricate legal questions and often grants awards ranging from \$100,000 to \$300,000.

Given this background, it seems clear that the salaries of referees should be raised to equal those of superior court judges in our most populous counties. This will do justice to the referees and attract qualified men to the field.

C KELVIN D SHARP, *Acting Executive Officer, State Personnel Board*.

The State Personnel Board has complied with the mandate of the Legislature in establishing salaries for Industrial Accident Commission referees. It was the intent of the Legislature, in Labor Code Section 123, to grant the referees some type of salary increase, but not necessarily to give them the same salary as judges. I base my analysis of this legislative intent on having worked closely with the 1951 amendment to Section 123.

Since 1951, the Personnel Board has placed a premium on the salaries of Industrial Accident Commission referees. Their salaries are now within one step of the head of the Office of Administrative Procedure. They are 20 percent greater than the salaries of other referees and hearing officers. The referees are on a parity with the highest level

²⁵ See Appendix H for figures purporting to show that the present salary structure for Industrial Accident Commission referees is seriously hampering recruitment of qualified personnel.

of administrative advisors in state service. This would include the advisors to such officers as the State Controller, the Director of the Department of Finance, and the Director of the Department of Education. In addition, their compensation is similar to that given chief counsels in such state departments as the Department of Employment and the Franchise Tax Board.

Contrary to the remarks of Mr. Lippert, the Personnel Board has found an adequate supply of qualified individuals for the position of referee. In addition, an examination of our statistics shows that the present salary level seems to be high enough to retain the referees, all of whom are appointed for life. Since January 1, 1960, we have had only three resignations. Two of these men were referees for approximately five years and the other resigned after one year of service.

D. WARREN L. HANNA, *Representative, California State Bar Association*:

In general, I would favor upgrading the salaries of both referees and members of the Industrial Accident Commission, with the salaries of commissioners being higher because of their added responsibilities as an appellate body.

2 What Should Be the Qualifications of Members of the Industrial Accident Commission?

A. HAZEN L. MATTHEWS, *Legislative Representative, California State Bar Association*:

Present law allows laymen to serve as members of the Industrial Accident Commission. Feeling that the qualifications of commission members should be strengthened, the California State Bar recommends approval of A. B. 2844.²⁰ This bill requires that members of the Industrial Accident Commission be admitted to the practice of law for at least five years immediately preceding their appointment.

B. WARREN L. HANNA, *Representative, California State Bar Association*:

Members of the Industrial Accident Commission should have the same qualifications as superior court judges. I support my position on the following grounds:

First of all, Industrial Accident Commission members have the same functions, powers and duties within their field as do superior court judges. The problems involved have the same legal complexity. The total value of their awards exceed the judgments rendered by an equal number of superior court judges. Where a \$2,000 to \$10,000 award by the commission may be granted in one day, a superior court judgment for an equal amount would involve a week of litigation.

The Industrial Accident Commission is a glaring example of poor appellate structure. The referees must be more qualified than the members. Referees must have been admitted to the State Bar for five years, while members do not even have to be familiar with workmen's compensation law. Basically, the members act as an appellate body for the referees, and the purpose of an appeals body is to correct the errors made by those who handle cases at the trial level. Our most able ju-

²⁰ (Bagley) 1961 Regular Legislative Session.

dicial talent should be placed on our highest tribunals. Their competence should exceed that of those who try the cases. Otherwise, how can errors be corrected? I think it is the height of absurdity to find the reverse of this in our commission setup.

One final argument should be mentioned. Too frequently, members of the commission have been selected on the basis of their bias for one side or the other rather than on the basis of objectivity. Appointments have been political rather than based on competence. Requiring that members have the qualifications of superior court judges would not cure all these problems, but it would certainly be a step in the right direction.

C ELTON C LAWLESS, *Chairman, Industrial Accident Commission*:

Some have suggested that the Governor be required to appoint only attorneys as members of the Industrial Accident Commission. While I am not opposed to the idea that a certain percentage of commission members be lawyers, I do not think they all should be. It is wise, in my opinion, to have lay persons on the commission who can present practical answers to some of the problems we face.

In the past, appointments to the commission have been within the Governor's discretion. He has wisely selected both attorneys and lay persons to fill these positions. I see no reason to alter this policy through legislative action.

3 Should Members of the Industrial Accident Commission Be Superior Court Judges?

A MORT L. CLOPTON, *Representative, California Manufacturers Association*:

To the extent that it can review questions of fact and reverse a referee if it feels the preponderance of evidence is against his decision, the Industrial Accident Commission exercises more judicial power than an appellate department of the Superior Court, the District Court of Appeals or the Supreme Court. Thus, within its jurisdiction, the commission seems to be the most powerful court we know of. Accordingly, to fulfill these duties, commission members must be competent in all areas of the civil law.

There is a tendency on the part of the appointing power to select only highly qualified people for the superior court bench. Thus, if superior court judges were utilized as Industrial Accident Commission members, the level of competency of such members would necessarily be raised. In addition, superior court appointments are generally not made on the basis of political affiliation. Use of these judges as commission members would, therefore, remove the position from the arena of politics. Such a result could only improve the administration of justice.

A B 3035³⁰ contains the essential idea behind my proposal. Under its provisions, superior court judges would be assigned to the commission for a period of time and then returned to the superior court bench.

B ELTON C LAWLESS, *Chairman, Industrial Accident Commission*:

I do not think that members of the Industrial Accident Commission should be superior court judges. The original concept of workmen's

³⁰ (Thelin) 1961 Regular Legislative Session.

compensation is entirely different from the concept of law as administered in the superior courts. The former is based upon liability without fault. Negligence is not a factor, and the common law rules of contributory negligence and assumption of risk do not apply. In addition, the commission is not bound by statutory rules of evidence or procedure.

The Workmen's Compensation Act was passed to avoid delays and technicalities of the law. The State Constitution provides that workmen's compensation cases shall be tried in an expeditious, inexpensive manner. Thus, we have no costly and time-consuming juries. Superior court judges are not oriented to this type procedure.

4 What Should Be the Compensation of Members of the Industrial Accident Commission?

A. WARREN L. HANNA, *Representative, California State Bar Association*:

In general, I favor upgrading the salaries of both referees and members of the Industrial Accident Commission, with the salaries of the commissioners being higher because of their added responsibilities as an appellate body.

B. MORT L. CLOPTON, *Representative, California Manufacturers Association*:

In my opinion, Industrial Accident Commission members should receive the salary of a superior court judge in our most populous counties. This would be \$21,000 per year.

C. ELTON C. LAWLESS, *Chairman, Industrial Accident Commission*:

I think the salaries of Industrial Accident Commission members should be raised to at least equal those of members of the Public Utilities Commission. This would involve an annual increase from \$17,365 to \$20,948. In addition to more adequately compensating the Industrial Accident Commission members, such an augmentation would pave the way for needed salary increases for the referees.

5 How Should Members of the Industrial Accident Commission Be Selected?

A. WARREN L. HANNA, *Representative, California State Bar Association*:

Having the Judicial Council or State Personnel Board appoint Industrial Accident Commission members might be a step in improving the operation of the commission. I would also favor having commission members appointed from the ranks of referees.

B. ELTON C. LAWLESS, *Chairman, Industrial Accident Commission*:

As I have indicated, the selection of members of the Industrial Accident Commission should remain in the hands of the Governor. Since the Governor appoints not only the Industrial Accident Commission members, but also many other commissioners, as well as judges of our courts, I see no need for a change in the present law.

6 What Should Be the Length of Service of Members of the Industrial Accident Commission?

A WARREN L HANNA, *Representative, California State Bar Association*.

The present term for members of the Industrial Accident Commission is four years I would favor increasing it.

B MORT L CLOPTON, *Representative, California Manufacturers Association*:

I think the four year term for Industrial Accident Commission members should be retained Judges find themselves leaning toward one side or the other after hearing cases in a specific area over a long period of time Due to the narrow specialization of workmen's compensation law, this tendency would be more prevalent in the case of the commission

C ELTON C LAWLESS, *Chairman, Industrial Accident Commission*:

The term of service of Industrial Accident Commission members should be extended from four to six years It requires at least two years to become thoroughly familiar with the position

FINDINGS AND RECOMMENDATIONS

During its interim study, the Assembly Judiciary Committee considered a variety of matters relating to the Industrial Accident Commission Those areas where the committee feels that affirmative action is presently needed are dealt with below

1 What Should Be the Compensation of Referees of the Industrial Accident Commission?

The Assembly Interim Committee on Judiciary has concluded from its study that the duties and responsibilities of Industrial Accident Commission referees are similar to those of trial court judges Unfortunately, however, the salary differential between referees and trial judges is considerable

Accordingly, the committee recommends that the State Personnel Board re-evaluate its salary schedules for referees, taking cognizance of the fact that they perform essentially judicial functions

2. What Should Be the Qualifications of Members of the Industrial Accident Commission?

Although the Industrial Accident Commission serves as a type of appellate court, its members need not be attorneys Incongruously, Industrial Accident Commission referees, who act like trial court judges, must be members of the California Bar and admitted to practice for a period of five years We know of no other judicial system where the trial court judges need be more qualified than the appellate court judges

To rectify this situation, the Assembly Interim Committee on Judiciary recommends that, as vacancies occur on the Industrial Accident Commission, members appointed thereto be attorneys, admitted to practice in California for at least five years immediately preceding their appointment³¹

³¹ See Appendix I for the Legislative Counsel's draft of the proposed legislation

3 What Should Be the Compensation of Members of the Industrial Accident Commission?

Currently, members of the Industrial Accident Commission receive \$17,365 per year. They hold positions of extreme importance. Almost every employee in this State must ultimately look to them for redress in the event of industrial injury.

The Assembly Interim Committee on Judiciary has concluded that the current salaries paid Industrial Accident Commission members are not commensurate with their responsibilities. Their present compensation is considerably below that received by members of the Public Utilities Commission. Yet both bodies perform essentially similar judicial functions.

Accordingly, the committee recommends that the commission members' salaries be increased to \$20,947.92 per year, the amount now received by those serving on the Public Utilities Commission.⁸²

⁸² See Appendix J for the Legislative Counsel's draft of the proposed legislation.

PRETRIAL CONFERENCES

INTRODUCTION

As a step toward modernizing trial procedure in California, the 1949 General Session of the Legislature directed the Judicial Council to study whether the adoption of a pretrial system would improve our administration of justice. Committees of the council and California State Bar Association considered the problem for several years. In 1954, after extensive research and study, they recommended that pretrial be adopted.¹

During the 1955 Regular Session, the Legislature enacted Section 575 of the Code of Civil Procedure, whereby the Judicial Council was delegated power to establish rules governing pretrial conferences. Thereafter, the council provided for a mandatory pretrial conference in nearly all civil cases in superior courts, effective as of January 1, 1957.

Soon after the adoption of these rules, however, rumblings of discontent were heard. Members of various local bar associations, after experience with mandatory pretrial, felt that the procedure should be operated on a discretionary basis. The Judicial Council disagreed.

During the 1961 General Session of the Legislature, a bill was introduced which provided that pretrial conferences would be held on order of the court or on application of any party to the proceeding. Failing passage, the subject matter of the measure was referred to the Assembly Judiciary Committee for interim study.²

DEVELOPMENT OF THE PRETRIAL CONFERENCE

When a legal dispute proceeds to trial, the parties are required to submit to the court, and to each other, a series of written pleadings. At least theoretically, the pleadings serve to frame the scope of the controversy and the conflicting contentions surrounding it.

Unfortunately, theory and practice in this area have been rather far apart. Both the plaintiff and defendant's pleadings, in order to guard against unknown issues which may be raised at the trial, are often too broad to adequately apprise each other of the legal theories which will be relied upon.

In the past, this lack of specificity created serious problems. Needless hours of research and expense were often devoted to matters which never arose during trial. On the other hand, when all conceivable issues were not explored, a party could find himself unprepared to refute the contentions of his opponent. More effective methods of defining issues in a lawsuit seemed to be called for.

In addition, matters which could have been agreed upon outside of court, such as limitation of witnesses and correction of defective pleadings, were consuming valuable trial time. With court calendars becoming seriously overcrowded, some procedure for limiting the length of a lawsuit was needed.

¹ Fifteenth Biennial Report of the Judicial Council, 1954, pp. 13-22.

² A.B. 1745 (Z'berg), 1961 Regular Legislative Session.

It was against this background that the pretrial conference developed. First adopted in the City of Detroit in 1929, it soon spread to Cleveland, Boston and other metropolitan areas. In 1938, the pretrial conference, on a discretionary basis, was made part of the Federal Rules of Civil Procedure.³ Its growth has been steady since that time.

PRETRIAL IN OPERATION⁴

Wherever it has been adopted, the pretrial conference serves as a device to bring the attorneys before a judge prior to trial. In general, the conference is held informally in the judge's chambers. When pretrial is operated in its intended manner, the case at issue is fully discussed, an effort is made to define the real issues involved, the possibility of settlement is considered, defective pleadings are corrected, the number of expert witnesses is limited by agreement and admissions of fact are secured to avoid unnecessary proof. In addition, completion of discovery proceedings is ordered, physical examinations and the time limits therefor are agreed upon, the right of trial by jury and any demand therefor are ascertained, the length of the trial is estimated and a trial date is set.

After the conference, the judge prepares and causes to be served on each attorney a pretrial conference order. In general, the order contains a statement of the matters admitted or agreed upon by the parties, the legal or factual issues remaining in dispute and the rulings made by the pretrial conference judge. For obvious reasons, no mention of the settlement discussions is included. When filed, the order becomes a part of the record of the case and, where inconsistent with the pleadings, usually controls the subsequent course of the trial.⁵

The principal objectives of the conference, quite clearly, are (1) to reduce the trial to a determination of the basic factual and legal issues actually in dispute, (2) to eliminate the necessity of formal proof of facts or documents about which there is, or should be, no question between the parties; and (3) to encourage out of court settlements.

PRETRIAL IN CALIFORNIA—THE HEARINGS

As has been mentioned, pretrial conferences in California are mandatory in nearly all civil cases in superior courts.⁶ The only actions not subject to pretrial requirements are (1) cases where the estimated trial time is two hours or less; and (2) appeals from a justice or small claims court requiring a trial *de novo*.

As the Assembly Interim Committee on Judiciary explored this area, it found both bench and bar in general agreement that the pretrial conference has a vital place in our administration of justice. The basic issue in contention relates to the method of determining which lawsuits should be subject to pretrial requirements. On this point divergent views appear. Generally speaking, the California State Bar Association has favored less stringent procedures for determining when a pretrial

³ Fed. R. Civ. P. 16.

⁴ Much of the material in this section was taken from pages 13-22 of the Fifteenth Biennial Report of the Judicial Council, published in 1954.

⁵ The California pretrial rules follow this general framework. For specific provisions, see Code Civ. Proc., § 575, Rules for the Superior Courts, Rules 208-220.

⁶ See Appendix K for a chart showing the status of pretrial in other jurisdictions.

conference should be held, while the Judicial Council has adopted a more restrictive approach

Hearings on this subject were held by the committee in Monterey on September 26, 1961. At that time, opposing arguments were presented by Mr Jackson C Davis, attorney from Oakland, and Judge John Shea, Judge of the Superior Court of Orange County. The following is a summary of their remarks:

A JACKSON C DAVIS, Attorney, Oakland, California:

The pretrial conference was established to encourage settlement, eliminate surprise and narrow the issues. Has it done so in all cases? During the last six months, only 12 percent of the pretrial conferences in San Francisco County resulted in settlements. The element of surprise has, in general, been eliminated by the liberalized scope of our discovery proceedings. Finally, a group of leading Bay area law firms estimates that the issues are substantially narrowed in only 10 percent of their pretrial litigation.

Clearly, pretrial is useful in only 10 to 20 percent of all cases. Thus, it should not be forced on parties in those situations where it will not work. The California State Bar Association has recognized this fact. As a result, it has at each of its last three conferences, passed resolutions favoring discretionary pretrial.

The success of the pretrial conference varies with the individual case and the individual area. For example, I think you will find that a larger percentage of settlements result from pretrial conferences in our more populated communities. There the attorneys are not familiar with each other; they act at arm's length, and pretrial is the first real opportunity they have to get together and discuss a settlement. On the other hand, in a smaller area, the attorneys see each other three times a day at coffee, and they have tried the case several times before going to court. They do not need further help.

The mandatory pretrial conference that is unproductive results in a needless waste of the client's money. Assuming that the average attorney fee for a conference is about \$100, I estimate that the unproductive pretrial conferences in San Francisco County during the last six months cost clients an unnecessary \$166,220. I have come up with a six-month figure of \$144,800 in Alameda County.

Another disastrous result of mandatory pretrial should be mentioned. With the increase in litigation and procedural aspects of trial preparation, most attorneys find themselves overburdened with work. If they are forced to participate in fruitless pretrial conferences, their clients are the ones who ultimately suffer.

Some have argued that the pretrial conference will die out completely if made discretionary with the judge or parties. I think not, for two reasons. First of all, in Alameda and certain other counties, we have a settlement calendar where, if both sides stipulate, they come before the judge and discuss settlement. Here is a discretionary-type pretrial in operation and it has been very successful.

Secondly, discretionary pretrial will work because attorneys, having been exposed to pretrial conferences for the past four and one-half years, recognize that it is valuable in certain cases. They will, in those cases, take advantage of it.

B JUDGE JOHN SHEA, *Judge of the Superior Court, Orange County*.

We have all heard, especially in the past several years, heated opposition to the California pretrial system. These opponents, however, have never argued that pretrial is not a good procedure. All they have said, in essence, is that some judges and lawyers have not taken the time to make pretrial work properly.

The issue, then, is how to make our system operate more effectively. One proposal, as suggested by A B 1745,¹ is to make the pretrial conference dependent upon a court order or application of any party to the case. Clearly, this is no panacea. First of all, the lawyer who is unwilling to properly prepare for pretrial would seldom request it. Secondly, if it is known that a particular judge is not amenable to the theory of pretrial, no request for a conference would ever be submitted to him, nor would he order such a conference.

For pretrial to be effective, judges and lawyers must be convinced of its value. We must, therefore, put our efforts to this end.

I will concede that there are cases where the purposes of pretrial have been accomplished by the lawyers themselves, before any conference takes place. Some effective method for ferreting out these instances needs to be devised. The Judicial Council is eager to explore any possibilities in this regard.

FINDINGS AND RECOMMENDATIONS

As has been mentioned, pretrial conferences are presently governed by court rules promulgated by the Judicial Council. If mandatory pretrial is to be changed, it can be done by an amendment to these rules. In lieu of this approach, the Legislature can alter pretrial procedures by statute.

Committees of the State Bar and Judicial Council have been meeting for many months in an attempt to reconcile their pretrial differences. At this point, the following seem clear. Both organizations agree that there are cases where pretrial is neither necessary nor beneficial. In addition, a majority in these bodies feel that, if possible, the pretrial conference problem should be solved by an amendment to the rules of court rather than by statutory change.

The Assembly Interim Committee on Judiciary agrees with the approach of the Bar and Judicial Council and encourages them to continue negotiations. If, however, agreement is not reached within a reasonable time, the committee recommends that legislative action then be considered.

¹ (Z'berg) 1961 Regular Legislative Session

JUDGES' RETIREMENT LAW

INTRODUCTION

At the 1961 General Session of the Legislature, numerous bills were introduced affecting judges' retirement provisions. Most of them had the effect of liberalizing the qualifications for retirement benefits. Before any of these matters were heard by the Assembly Judiciary Committee, the Conference of California Judges was consulted. The conference, speaking through its president, Justice Murray Draper, opposed a number of the legislative proposals on the ground that, without further study, their drain on the Judges' Retirement Fund could not be determined. With this in mind, the Legislature referred the subject matters of most of the retirement bills to the Assembly Interim Committee on Judiciary for study.

HISTORY OF JUDGES' RETIREMENT PROVISIONS

Every state in its early history was confronted with the problem of retiring the older members of its judiciary. Faced with the normal reluctance of man to admit the toll which time exacts upon mind and body and lacking statutory authority for removing elderly members of the bench, many jurisdictions found themselves plagued with relatively old and inefficient judges who acted as an unnecessary weight on the state's judicial process.

To alleviate this problem, judicial retirement plans were instituted. Seventeen years ago only 23 states provided such plans for their judges. Today, however, every jurisdiction in the country offers some form of judicial retirement allowance. While some of the programs are still rudimentary, all act to remove old blood from the judicial system and to attract young, qualified men to it. Among the 50 states, 60 percent now have specific judicial retirement programs, 25 percent have code sections dealing with retirement provisions for certain classes of judges or courts, and the remaining states include judges within the provisions of a public employees' retirement system.¹

California officially inaugurated a judicial retirement plan in 1930 with the adoption of Article IV, Section 22a of the State Constitution. It reads, in part:

The Legislature shall have power to provide for the payment of retirement salaries to employees of the State who shall qualify therefor by service in the work of the State as provided by law.²

Under this authority, the first judges' retirement law was enacted in 1937.³ The law has since been amended several times to expand its provisions.

¹ Winters, Alice Ann, *Judicial Retirement and Pension Plans*, American Judicature Society, Chicago, Illinois, 1961.

² The right of the Legislature to establish a judicial retirement system was made even more specific in 1934 with the passage of Article VI, § 26, of the Constitution. It provides, in part, that "The Legislature shall provide by general law for the retirement, with reasonable retirement allowance, of justices and judges for age or disability."

³ Stats 1937, Ch 770, p 2204; Stats 1937, Ch 771, p 2206.

PRESENT CALIFORNIA LAW ⁴

California's judicial retirement plan applies to judges of the Supreme Court, district courts of appeal, superior courts and municipal courts. Under it, judges can be retired for either service or disability.

1 Eligibility Requirements for Service Retirement

The minimum retirement age under present law ranges from 60 to 70 years. In addition, a judge is required to have spent a specific time in judicial service before he is eligible for retirement benefits. For example, a judge can retire at age 70 if he has 10 years of judicial service within the 15 years immediately preceding the date of his retirement. He can retire at age 60 with an aggregate of 20 years of judicial service.

Judicial service credit is granted for service in any one or more state courts including service in a court not within the provisions of the retirement plan, such as a justice court, provided the judge pays into the Judges' Retirement Fund sufficient back contributions for such years of credited service. Similar provisions are present for service as a "constitutional or public legal officer", a term which has been specifically defined by statute to include such offices as district attorney, public defender, legislative counsel, commissioner of corporations or any deputy thereunder.

The liberal credit provisions allowed judges who have formerly served as "constitutional or public legal officers" have seriously drained the resources of the Judges' Retirement Fund. Although judges utilizing these tack-on provisions are required to contribute to the Judges' Retirement Fund an amount equal to that sum which they would have contributed had they been judges during the years for which they receive service credit, the amounts paid to such judges in retirement benefits far exceed their contributions. Because of this drain, an amendment to the Judges' Retirement Law was passed at the 1962 First Extraordinary Session of the California Legislature. It provides that in the future, credit provisions for prior nonjudicial service will be allowed only for service as an "elected state constitutional officer".⁵ Judges who assumed their official duties on or before the effective date of the amendment, however, are not affected by its provisions.

2 Eligibility Requirements for Disability Retirement

Any judge, after giving his consent and receiving approval from the Governor and Chief Justice of the Supreme Court, may be declared permanently disabled and thereby retired. Further, a judge may be involuntarily retired for disability by proceedings instituted by the Commission on Judicial Qualifications.

3 Retirement Contributions

In order to insure sufficient financial resources to pay out judges' retirement benefits, the law has established the Judges' Retirement

⁴The Judges' Retirement Law is contained in Deering's California Codes, Gov. Code, §§ 75000 through 75109. Because a summary of all the nuances of judges' retirement law would unduly prolong this report, only its general provisions are herein set out.

⁵Gov. Code, § 75030.5 defines "elected state constitutional officer" to mean "the holder of the office of Member of the Senate or Assembly, Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, Superintendent of Public Instruction, or member of the State Board of Equalization."

Fund Prior to the 1962 First Extraordinary Session of the Legislature, the law required judges, falling under the Judges' Retirement Law, to contribute 2½ percent of their monthly salaries to the retirement fund. This total was matched by the State. Because the contributions have not proved sufficient to cover disbursements of the fund, the Legislature, at its recent session, increased the amounts, for both the judges and the State, to 4 percent.⁶

4 Retirement Benefits

Judges retiring for either service or disability are eligible for an allowance equal to one-half of the current salary of the judicial office from which they retired. If a judge is eligible for retirement, but dies before actual retirement, his surviving spouse receives 50 percent of the retirement allowance to which he was entitled. In addition, retiring judges can elect optional pension plans which provide for their families after they die.

Any judge, eligible for retirement for service or disability, is entitled to additional benefits if he (1) retires prior to attaining the age of 70 years, or (2) was a judge on September 18, 1959 and retires within five years of such date or within two years after reaching retirement eligibility. Such judges are entitled to receive a retirement allowance amounting to 65 percent of the current salary of the judicial office from which they retired. Judges falling under these provisions who receive credit for 20 or more years of judicial service are entitled to a 75 percent retirement allowance.

If a judge, qualifying under the benefits described in the above paragraph, dies in office, his widow receives one-half of his 65 percent or 75 percent retirement allowance. If he dies after retirement, his widow receives one-half of the allowance he was receiving.

If a judge, eligible for retirement for service or disability, dies before his actual retirement and no widow survives him, a benefit, based upon a percentage of his income is paid to his heirs.

Finally, provision is made for a judge with a specified amount of service who dies in office and has not yet become eligible for judges' retirement benefits. His surviving spouse is entitled to a percentage of his income.

COMMITTEE HEARING

A hearing on the entire matter of judges' retirement benefits was held by the Assembly Interim Committee on Judiciary on September 2, 1961 in Monterey. The hearing took place during the conventions of the California State Bar and Conference of California Judges. Testifying before the committee as a representative of the Conference of Judges was Judge Thomas M. Caldecott, Judge of the Alameda County Superior Court.

Judge Caldecott noted that, although the retirement provisions are generally sound and equitable, the prospective financial solvency of the Judges' Retirement Fund seemed to be in jeopardy. The liberal credit provisions for nonjudicial service as a "constitutional or public legal officer," as well as the insufficiency of the 2½ percent contribution re-

⁶Gov. Code, § 75101

quirement to the retirement fund, had created a situation where disbursements were exceeding income

To cure this problem, the conference proposed two amendments to the Judges' Retirement Law. First of all, credit provisions for non-judicial service were to be limited to "state constitutional officers." Secondly, contributions to the Judges' Retirement Fund, by both the judges and the State, were to be increased.

As has been mentioned, the California Legislature, at its 1962 First Extraordinary Session, adopted the suggestions of the conference. The Legislature, for future judges, limited retirement credit for nonjudicial service to "state constitutional officers." Further, it increased the contributions by the judges and State to the retirement fund to 4 percent.

FINDINGS AND RECOMMENDATIONS

Since the Assembly Interim Committee on Judiciary recommended passage of the judicial retirement measures which were adopted by the 1962 First Extraordinary Session of the Legislature, it makes no recommendation for further legislation at this time.

SALARIES OF MUNICIPAL AND SUPERIOR COURT JUDGES

INTRODUCTION

The California Constitution specifies that each county shall have a superior court and that each judicial district with a population of more than 40,000 inhabitants shall have a municipal court. Present law staggers the salaries of judges of these courts on a county population basis. Superior court judges in counties with a population of 100,000 or more receive an annual salary of \$21,000; the judges in smaller counties are paid \$18,900 per year. Municipal court judges in counties having a population of 250,000 or more receive \$18,900, while the annual salary of such judges in smaller counties is \$16,800¹.

The cost of this compensation for superior court judges is allocated between the county and the State. Municipal court judges are paid by their respective counties.

California is one of the minority of jurisdictions which staggers the salaries of judges in major trial courts on a population basis. Some have questioned whether population is an equitable or logical criterion upon which to base the compensation of our judges. Accordingly, the subject was scheduled for interim study by the Judiciary Committee.

COMMITTEE HEARING

A hearing was held on this matter in Monterey on September 2, 1962. There, the Conference of California Judges took the position that the salaries of our superior and municipal court judges should continue to be staggered upon a county population basis. In support of this conclusion, they submitted the following reasons:

1 At present, judges in many smaller counties, especially those in the superior court, have only enough work to keep them busy on a part-time basis. It would be unfair and inequitable to pay these individuals the same salary as a "full-time" judge. Municipal courts, which are established on a population rather than a geographical basis, probably do not have as many "part-time" judges. Nevertheless, the residents, and thus the workload, in these judicial districts vary enough that standardization of municipal court salaries would be similarly inequitable.

2 Larger counties, often swamped with judicial business, rely quite heavily on the judges in smaller areas with less responsibilities to assist them. During assignment, a judge is given a salary equal to that paid to a judge permanently sitting in the position to which he was assigned. If judicial salaries were standardized, these judges would

¹ The salaries specified in § 62602 of the Gov. Code were increased 5 percent by § 2, Item 275 of the 1960 Budget Bill (Stats. 1961, Ch. 11, p. 20). This increase was continued through the 1961-62 fiscal year by § 4 of the 1961 Budget Bill (Stats. 1961, Ch. 888, p. 2364). Continuation through the 1962-63 fiscal period was provided by § 4 of the 1962 Budget Bill (Stats. 1962, Second Extraordinary Session, Ch. 1).

hesitate to accept assignment as they would receive no additional net compensation.²

3 If judicial salaries were standardized, the lower superior and municipal court salaries would probably be raised. This would be an expense to be borne by either the counties or the State.

4 There are, it is true, only approximately nine states that have staggered the salaries of their major trial court judges upon a population basis.³ In the majority of other jurisdictions, however, where such salaries are standardized, the work loads of the judges receiving identical salaries are fairly equivalent.

FINDINGS AND RECOMMENDATIONS

Ideally, the compensation of judges should be based upon their responsibilities and the degree to which they possess those subjective qualities which make a competent jurist.

Such a method of compensation is, of course, impractical. Necessity dictates that objective criteria be applied, on a group basis, to members of the different courts.

Since judges in densely populated communities seem to have heavier workloads than those in more rural areas, the standard of county population is a fair basis for determining the compensation of superior and municipal court judges. No other standard considered by the Assembly Interim Committee on Judiciary seemed as satisfactory as the present one. Therefore, the committee recommends that no change be made in the present law.

² It should be noted, however, that judges have now no authority to refuse to accept judicial assignments provided they are assigned to a court of like or higher jurisdiction (Cal Const., Art. VI, § 1a; Gov. Code, § 68548).

³ See Appendix L for those jurisdictions which stagger the salaries of major trial court judges on a population basis.

THE INTERLOCUTORY DIVORCE PERIOD

INTRODUCTION

Under their constitutional authority to protect the health and welfare of their citizens, states have, for many years, played a prominent role in specifying the legal conditions surrounding marital relationships. Legislation, quite properly, has dealt with both establishing the marital contract and terminating it through divorce proceedings.

Because disruption of marital ties affects not only the spouses involved, but their children as well, the law has attempted to guard against hasty and ill-considered divorce actions. In this regard, California has, for some time, required a one-year waiting period between an interlocutory and final decree of divorce.

The recent years have brought growing criticism of the interlocutory procedure. Opponents have contended that the waiting period does not fulfill its purported function of fostering dispassionate consideration between husband and wife of their marital problems.

During the 1961 Regular Legislative Session, a bill was introduced to reduce the interlocutory period in California from one year to three months.¹ Failing passage in the Legislature, the subject matter of the measure was assigned to the Assembly Judiciary Committee for interim study.

DEVELOPMENT OF THE INTERLOCUTORY PERIOD

Prior to 1897, a divorce decree, after the time for appeal had expired, left the former spouses free to assume new marital relationships at once. The effect of this form of decree, many argued, encouraged impetuous couples to view a termination of their marriage as the only panacea for domestic difficulties.

In 1897, the Legislature attempted to force rational and prolonged consideration of domestic problems by removing the opportunity for quick remarriage. The law was amended to provide that a marriage contracted by either spouse, other than remarriage, within one year of the divorce judgment was illegal and void.

Five years later, however, a decision by the California Supreme Court destroyed the effectiveness of the 1897 statute. In *Estate of Wood*,² the court interpreted the statute to apply only to marriages in California which took place within one year after a California divorce. Thus, marriages which were validly consummated by the laws of another jurisdiction, even though within one year of a California divorce, would have to be recognized as valid by the California courts.

Faced with an almost nugatory provision on the statute books, the California Legislature acted in 1903. In order to preserve a waiting period before spouses could enter new marital relationships, the Legislature established the interlocutory decree of divorce and provided that

¹ A.B. 207 (Willson).

² 137 Cal. 129, 63 P. 900 (1902).

a final divorce could not be granted until one year thereafter.³ The law as amended in 1903 remains substantially unchanged today.⁴

PRESENT LAW

The California interlocutory decree is, in effect, but a step to obtaining a divorce. It determines whether a spouse is entitled, on legal grounds, to sever the marital relationship. Although issues of custody, support and property rights are often determined by the interlocutory decree, the marital dissolution itself does not take place until the waiting period has expired and a final divorce decree has been entered.

The divorce court, on motion of either party, or on its own motion, may render the final decree one year after an interlocutory divorce has been granted. Unless facts occur subsequent to the interlocutory decree showing fraud, mistake or a reconciliation by the parties, they have a mandatory right to the final decree. A reconciliation occurs when the innocent spouse unconditionally forgives the guilty party and they resume marital relations.

COMMITTEE HEARINGS

In order to determine the efficacy of California's present interlocutory procedure, the Assembly Interim Committee on Judiciary held two hearings on this matter during the interim period. Testimony was received from legal practitioners, academicians and interested citizens, representing a cross section of knowledge and practical experience in this area.

Preliminary committee investigation indicated that there are, in general, four different types of divorce waiting periods utilized in the United States.⁵ In addition, it was learned that these periods can conceivably operate in a number of ways to foster objective consideration of marital difficulties. In order to determine the comparative merits of the California waiting period and the effects of its operation, a series of questions were presented to each witness prior to the committee hearings. The witnesses devoted the major part of their testimony to commenting on these questions.

The following is a summary of those comments.

I Does the California Waiting Period Discourage a Spouse From Seeking a Divorce Unless He Has Sound Reasons Therefor?

A. DR. JUDSON T. LANDIS, *Professor of Family Sociology, University of California:*

As the interlocutory period presently functions, it does not have any deterrent effect. When most people file for divorce, they do not realize they will have to wait a year before their right to obtain a divorce matures. As far as they are concerned, the interlocutory decree is a final divorce.

B. JUDGE RAYMOND J. SHERWIN, *Judge of the Solano County Superior Court:*

The fact that we have the interlocutory period does discourage some persons from divorce.

³ Stats 1903, Ch. 158, p. 174; Stats 1903, Ch. 67, pp. 75, 76.

⁴ Civ. Code, §§ 61, 131 and 132.

⁵ The various waiting periods are outlined in detail in Appendix M.

C JUDGE ROGER ALTON PFAFF, *Judge of the Los Angeles County Conciliation Court*:

No person can accurately say whether or not the interlocutory period discourages the filing of a divorce action. We have no statistics on this subject. However, it is my belief that the knowledge that one cannot get a "quickie" divorce in California does discourage a spouse, who at the time may think he wants a divorce, from actually instituting such legal proceedings.

II Do Divorces Have Adverse Effects On the Children Involved? If So, Does a Waiting Period Prolong This Unhealthy Condition?

A DR. JUDSON T. LANDIS, *Professor of Family Sociology, University of California*:

My studies seem to show that an equal number of children are damaged, in about the same ways and to about the same degree, in unhappy marriages which are not terminated by divorce as they are in unhappy marriages terminated by divorce. Unhappy marriages destroy children, it is not just the divorce.

One study showed that children in chronically unhappy homes were happier after the marriage was terminated, which indicated that an interlocutory period, shorter than one year, would be advisable. However, in the same study, I found that there were about as many children of divorced parents who considered their home to have been happy until the divorce. For this group of children, the knowledge of divorce was traumatic and they needed a rather lengthy period to become reconciled to the idea of marital dissolution.

Considering everything, I believe the 12-month interlocutory period tends to protect children more than a shorter period would. A quick divorce and remarriage may put the child into another unhappy home, sometimes worse than the previous one. If the 12-month interlocutory period is kept in force, many children will be protected from having to go through a series of quick parental marriages and breakups. They will, at least, be allowed time for readjustment during the interlocutory period.

B JUDGE RAYMOND J. SHERWIN, *Judge of the Solano County Superior Court*:

I am substantially in agreement with the remarks of Professor Landis.

Some have suggested that we establish different interlocutory time periods depending upon whether or not the spouses involved have children. With such a suggestion I cannot agree. Even where there are no children, the parties need a year to cool off before they remarry. A split procedure would also encourage couples not to have children.

C JUDGE ROGER ALTON PFAFF, *Judge of the Los Angeles County Conciliation Court*:

In practically every case a divorce has an adverse effect upon the minor children involved. A few startling statistics point up this fact. Seventy-five percent of the young people in our juvenile halls are from broken homes; over one-half of our prison inmates have similar family backgrounds.

Contrary to what some extreme "free will" psychologists advocate, a child wants and needs security and ordered discipline. When divorce strikes and shatters the family unit, the child is filled with a lost feeling. Altering California's present interlocutory period would, in no way, correct these psychological effects of broken homes.

D. PROFESSOR JAMES A. PETERSON, *Professor of Sociology, University of Southern California*

I think the harmful effects of divorce on a young adolescent would be lessened by a shorter interlocutory period. For this age youngster, a long interlocutory period is apt to raise both anxiety and aggression toward his parents. If one or both of the parents date before the final decree, the young adolescent seems to have grave moral concern about such behavior. The young adolescent is in a stage of regression where he is disorganizing his childhood integration so that he can move into a more mature stage. A continued state of ambiguity, such as the lengthy interlocutory period, would not seem to be the most advantageous social situation for him.

Children in middle childhood are rather harshly dealt with in terms of any separation. They will continue to fancy that their father is coming home to stay during any interlocutory period and even after the final decree.

For the very young child, the length of the interlocutory period would seem to make little difference. His life has revolved rather extensively around the mother and, in almost all cases, it will continue to do so.

III Does the California Interlocutory Period Prevent Hasty Marriages to Other Persons?

A. DR. JUDSON T. LANDIS, *Professor of Family Sociology, University of California*:

The interlocutory period does serve the function of preventing hasty remarriages. Such a function is an important one for studies show that divorced people have a higher marriage rate than single parties of the same age. Often people remarry just to show the other party that they can get remarried. With the emotional disturbance accompanying the severing of an unsuccessful first marriage still on their minds, they enter a second marriage without carefully considering what made the first one go wrong. Statistics clearly show the results of this sorry situation. The divorce rate rapidly increases in direct proportion to the number of prior divorces of each spouse.

B. JUDGE RAYMOND J. SHERWIN, *Judge of the Solano County Superior Court*:

I also believe the interlocutory year discourages hasty remarriages.

C. JUDGE ROGER ALTON PFAFF, *Judge of the Los Angeles County Conciliation Court*:

The interlocutory period serves another important purpose. In the overwhelming percentage of cases, couples refrain from remarriage until their divorce is final. A shorter waiting period in California would permit hasty and ill-considered remarriages.

D. DR JAMES A PETERSON, *Professor of Sociology, University of Southern California:*

A number of previous witnesses seem to feel that the California interlocutory period serves the function of preventing hasty and ill-considered remarriages. I think the weight of evidence and expert opinion is on the other side.

Harriet F. Pilpel and Theodora Zavim, attorneys and authors, have studied this matter. They conclude that unless the divorcee was impelled by the fact that one of the spouses wanted to marry someone else, divorcees tend to be cautious about rushing into marriage again. Having just extricated themselves from an unhappy situation, they are not anxious to plunge into another misery unless they are very sure about their second choice.

Apart from a study by Professor Wilham J. Goode, Professor of Sociology at Columbia University, there is little statistical material to bear on this point. Goode interviewed a group of individuals who had been divorced for approximately 26 months. He found that only about one-half of them had remarried, and of these "some had just remarried." My observations from my own cases would be congruent with both the statistics of Goode and the conclusions of Pilpel and Zavim. Thus, I think that on the basis of case material, the longer waiting period is not necessary to prevent hasty remarriages.

IV. Does the California Waiting Period Foster Reconciliation? Could Reconciliation Be More Effectively Attained by Altering Our Interlocutory and Conciliation Court Proceedings?

A. DR JUDSON T. LANDIS, *Professor of Family Sociology, University of California:*

Our interlocutory period, as it now functions, does not foster reconciliation. Generally, no machinery has been established so that the period can be used in a positive way to encourage reconciliation. The philosophy seems to be that if people wait long enough, they will decide against divorce.

In spite of the fact that nothing is done to foster reconciliation, some reconciliations do occur. Of 139,000 interlocutory decrees granted in 20 California counties between 1956 and 1960, about 14 percent were dismissed. A survey indicates, however, that approximately 85 percent of these dismissals occurred *before* the interlocutory decree. This demonstrates that the great majority of reconciliations do not occur during the interlocutory year.⁶

I favor establishing a mandatory conciliation procedure in all California divorce cases. At present, conciliation proceedings in California are mandatory only if one of the spouses petitions for such before the divorce action is filed.⁷ At the divorce hearing, accusations are made in public, the property settlement is usually consummated, custody of the children is determined and all the terms of the divorce are established. After such an experience, spouses often are psychologically unable to reconcile. Reconciliation, therefore, should always be attempted before the divorce hearing takes place.

⁶ This survey is presented in Appendix N.

⁷ Code of Civ. Proc., §§ 1760-1772. Reconciliation procedures are in effect in other jurisdictions throughout the United States. They are summarized in Appendix O.

Accordingly, I would suggest a waiting period between the filing of the divorce and the granting of an interlocutory decree, during which time reconciliation would be attempted.

Ideally, after filing, all couples should be screened by a group of trained counselors. The screening committee would determine which marriages might profit by counseling and which marriages would not. The latter group would also receive counseling toward making a better second marriage.

I feel that we should also retain a waiting period after the interlocutory divorce decree to prevent hasty remarriages should reconciliation be unavailing.

B. JUDGE RAYMOND J. SHEERWIN, Judge of the Solano County Superior Court:

Our interlocutory period provides time for the application of conciliation procedures. Of course, if no such procedures are available, the simple passage of time does not serve to assist in reconciling the parties.

The advantage of reconciliation procedures of some kind is illustrated by the record in Los Angeles County. There, conciliation proceedings are almost always held before the interlocutory decree, and the record in that county demonstrates the success of this approach. There were approximately 27,000 divorce complaints filed in Los Angeles County last year, approximately 4,000 of these complaints resulted in petitions for the matter to be heard in the conciliation court. Of this number, more than one-half of the couples who sought the aid of the conciliation court and its staff of professionally trained marriage counselors were reconciled. Of the number reconciled, three-fourths were still living together a year later.

As to amendments to the law, I agree substantially with the procedure suggested by Dr. Landis—mandatory reconciliation provisions before the interlocutory decree and retention of a waiting period after the decree to prevent hasty remarriages.

C. JUDGE ROGER ALTON PFAFF, Judge of the Los Angeles County Conciliation Court:

The interlocutory period, as it presently functions, does foster reconciliation. It allows the parties, in a relatively calm atmosphere, objectively to consider and resolve their domestic difficulties. Such an atmosphere is not present when the marriage is finally terminated. At that time, the parties feel that their separation is irrevocable.

Some have suggested that reconciliations can be more effectively encouraged by altering our interlocutory procedure. One proposal is to run the one-year period from the filing of the complaint to the time when a final decree could be entered. Under this type of law, if the hearing of the divorce action were before the expiration of the waiting period, you would have an interlocutory period for the remaining time. If the hearing occurred after the waiting period, the judgment would be final when entered. I cannot agree with this approach. There is no harm in making couples wait a year after the divorce hearing before they can remarry.

It has also been suggested that a cooling-off period be instituted to run from the filing of the complaint to the time when the divorce action

could first be heard by the court. Under such a proposal, no adversary court proceedings could be initiated by either party during this period. There is considerable controversy in the United States concerning the efficacy of cooling-off periods. Illinois provides for one at the option of the plaintiff, but, according to my information, the law does not have the support of attorneys there and various devices are used to circumvent its provisions.⁸

The feasibility of cooling-off periods is open to doubt. A family cannot be put in a deep freeze. It is essential that there be some temporary orders made when a couple separates, and this is practically imperative where minor children are involved. A family has to be supported whether the father and mother are living together or separately, and it is difficult for me to see how you could avoid some application to a court for temporary orders regarding custody, support and all of the other problems involved in *pendente lite* proceedings.

Along with our present interlocutory period, the California conciliation courts have had remarkable success in fostering reconciliations. The fact that the law permits alternative conciliation court procedures, however, leaves something to be desired. Legislation delineating a specific conciliation procedure, binding upon all conciliation courts, would unquestionably be a step forward.

The question of whether conciliation court procedures should be mandatory or discretionary presents a difficult issue. The basic problem with mandatory conciliation is obtaining a sufficient staff to satisfy the need for counseling services. It may be feasible in certain smaller, more integrated communities, where the demand for counselors is not so great, to provide for the mandatory appearance of couples with minor children under 16 years of age. Further, it might be beneficial to allow the superior court in any county of the state, if counseling services were available, to make mandatory the appearance for conciliation procedures of people in certain categories, such as couples with children 14 years of age and under.

D. DR. JAMES A. PETERSON, *Professor of Sociology, University of Southern California:*

From a consideration of what we know statistically and from those who deal more intimately with the problems of divorce, we must conclude that the length of the interlocutory period is irrelevant to the possibility of reconciliation during that time.

The assumption underlying our interlocutory decree, that couples have acted impetuously or because of pride, and that a lengthy waiting period will restore perspective so that a reconciliation is possible, is not valid. Professor William J. Goode, Professor of Sociology at Columbia University, studied 425 women involved in divorce cases. He found that the median interval between the beginning of serious consideration of divorce and filing of suit was one year. This seems to indicate that the divorce process has been a slow and gradual one for the majority of couples, with ample time for discussion and exploration of possible alternatives. While there is time for discussion before the divorce com-

⁸ The Legislative Counsel's opinion on the constitutionality of such a law in California is presented in Appendix F.

plaint is filed, only 32 percent of the parties in Goode's study used this period for the amelioration of their conflicts

Goode's statistics also show that any anxiety over the anticipated effects of the divorce on the children does not hasten or slow down movement in the divorce process

A good deal of thinking and observation has been done regarding the impact of the interlocutory hearing on the chances for reconciliation. Experts agree that the divorce hearing, where parties wrangle over questions of property and support, vitiates any possibility of reconciliation during the interlocutory period. Reconciliation, therefore, should be attempted before this time.

I would establish a six-month period between the filing of the complaint and a final hearing granting or denying the divorce. During this time, the couple involved would be required to meet with a marriage counselor who would conduct a thorough and constructive series of interviews with them. He would investigate the problems of the parents, the feelings of their children and advise all concerned as to the possible avenues for reconciling their situation. In addition, if the couple were separated, he would arrange a temporary order for financial care.

Even though a reconciliation were not effected, the six-month wait would serve as a trial period during which the spouses and their children would have maximum assistance in facing the sense of failure, the guilt, the loneliness and the anxiety accompanying the crisis of divorce. In addition, the proposed investigation and interviews could help both husband and wife avoid a hasty second marriage in which the same mistakes might be repeated.

For this procedure to be effective, the present conciliation staffs in California would have to be increased.

V. Miscellaneous Recommendations

A. JOHN SHELTON, *Representative, Parents Without Partners:*

Our organization, a group composed of divorcees with children, desires to convert divorce actions from their present adversary nature to an administrative and counseling type procedure which relies upon the skills of psychologists, family counselors and social workers.

The initial step is to make it mandatory that a person with children desiring a divorce in California first consult with an institution, as yet to be created, which we have tentatively named the "Family Commission." The commission would investigate the circumstances causing disharmony in the family and would consult with the parents, their children and any relevant parties. It would have the power to issue temporary orders during the investigation period providing for financial and domiciliary arrangements. One of the commission's major purposes would be to represent the interests of the children, an area which is overlooked in present divorce proceedings. By virtue of its quasi-judicial nature, the commission would be able to utilize the authority of the law to make the parties give serious consideration to their marital problems and seek a mature solution.

A commissioner would be required to study the situation in each potential divorce action and submit a recommendation as to the best

solution to the problem within a minimum of 180 days and a maximum of one year. After the commissioner has submitted his recommendation, either party could file for divorce, regardless of the findings, but no divorce could be filed prior to the investigation by the commission.

If a divorce were subsequently granted, the interlocutory period should be reduced to six months.

Where the parties contemplating divorce do not have children, the family commission plan should be discretionary. If, however, individuals did not take advantage of the commission procedure, and a divorce were granted, we would favor retaining a one-year interlocutory period for them.

To the extent that the financial circumstances of the parties permit, the costs of the commission's investigation should be borne by the parents involved. However, general tax revenues would have to be used to offset the expense where it is determined that the parties could afford to pay only a partial cost of the investigation.

B HOMER H BELL, *Attorney, Monrovia, California*:

I oppose the interlocutory period for the following reasons:

1 A divorce is not a sudden thing with most couples. In general, they make many attempts at reconciliation and do a great deal of thinking about their marriage before finally filing their action.⁹ Consequently, the additional interlocutory year, in many cases, does not serve the purpose of allowing the divorced couple to initially contemplate the possibility of becoming reconciled.

2 Several legal complexities also result from the interlocutory period. Many people find other romantic attachments during this time, but are prevented from getting married. Consequently, they live in adultery.

3 Many couples think the interlocutory decree is the final divorce and thus contract bigamous marriages. Others go to Nevada or Mexico after a California interlocutory judgment, obtain a worthless divorce and then marry someone else, thereby making themselves guilty of bigamy. If the husband obtains a better financial settlement in the second decree, he violates the California decree in reliance thereon and the parties find themselves in court disputing over support matters.

4 In a number of cases, the wife becomes pregnant by someone other than her husband during the interlocutory year. As a result, the real father's name cannot be put on the birth certificate until after the interlocutory period—if he then decides to marry the mother.

5 Present California law provides that if a couple unconditionally reconciles during the interlocutory year, and such reconciliation ultimately fails, the parties must commence their divorce action again. Considering the fact that it takes approximately six months to get a divorce action before the court and another year before the divorce is final, this provision imposes an unreasonable burden upon the parties.

I recommend that a law be passed making it more difficult to get married in the first place rather than making it more difficult to get divorced and marry a second time.

⁹For a chart showing, in selected counties, the number of days elapsing between physical separation and filing of the divorce complaint, see Appendix Q.

C. JUDGE ROGER ALTON PFAFF, *Judge of the Los Angeles County Conciliation Court:*

An argument that has been raised against the interlocutory year is that it creates numerous situations where wives become pregnant by men other than their husbands during the waiting period. We have no statistics on this subject. However, it has been our observation that a woman who will become pregnant by someone other than her spouse is not governed by the existence or nonexistence of a final decree. Usually, in fact, the pregnancy occurs prior to the divorce complaint or interlocutory judgment. Indeed, in many instances, this is the cause of the complaint for divorce.

Another argument against the interlocutory period is that temporary reconciliations force couples to commence their divorce actions all over again. Nothing could be further from the truth. The law provides that divorce actions do not have to be reinstituted where reconciliation is only conditional. Final decrees are continually being granted in Los Angeles County upon a showing of such facts.

Before finishing, I should like to make one final recommendation regarding divorce law. In divorce actions, the parties often have to wait a year to a year and one-half before they can get into court. After their hearing, they have to wait another year before the divorce becomes final. For this reason, I think contested divorce actions should be given priority on the court calendar. I do not know whether this could be done under court rules. Legislation might be needed.

FINDINGS AND RECOMMENDATIONS

The California law has provided two basic methods of encouraging spouses to seriously and objectively consider their marital difficulties. First of all, a one-year waiting period has been established between the interlocutory and final decrees of divorce. Secondly, in order to foster attempts at reconciliation during the waiting period, conciliation courts have been authorized for all counties in the State.

Can these procedures be improved to operate in a more salutary manner? As these findings and recommendations will show, the answer of the Assembly Interim Committee on Judiciary is in the affirmative.

1 The Interlocutory Waiting Period

a It has become clear, from the Judiciary Committee's interim hearings, that there is considerable controversy as to the efficacy of California's one-year interlocutory period. Cogent and well-reasoned arguments have been made for retaining the period, shortening it or abolishing it altogether.

Despite its intensive study, the Assembly Interim Committee on Judiciary is not prepared to submit a final recommendation on this subject. In view of the intricate legal complexities and far-reaching policy problems involved, it recommends that the matter be studied further.

b When our interlocutory provision was adopted in 1903, it was possible for parties to file their divorce pleadings and almost immediately proceed to an interlocutory hearing, after which the waiting period began to run. In recent years, however, the population explosion in California has virtually swamped our courts with legal controversies.

Now the opportunity for an interlocutory hearing immediately after the pleadings are filed is almost unknown. Crowded court calendars, especially in heavily populated areas, necessitate a wait of many months before the divorce action can be brought to trial. The result, of course, is that parties desiring a divorce in this State are confronted with a waiting period considerably longer than one year.

Such an extended waiting period was never intended by the Legislature. Therefore, where crowded court calendars preclude the interlocutory year from operating in its intended form, the Assembly Interim Committee on Judiciary recommends that some action be taken. One possibility would be to run the waiting period from some stage of the divorce pleadings rather than from the interlocutory decree.

2. Reconciliation in Divorce Proceedings

A vital aspect of the interlocutory procedure is that it allows time for serious constructive attempts at reconciliation. If such attempts are not made, the purpose of the waiting period is, in large respect, vitiated.

In counties where conciliation courts have been established, admirable work has been done in providing an atmosphere where spouses can realistically settle their domestic difficulties. In addition, some individual judges have assumed responsibility for encouraging reconciliations between parties contemplating a divorce.

The Assembly Interim Committee on Judiciary commends the steps that have been taken in this area. Further, it encourages full use throughout the State of the reconciliation procedures which existing law provides.

MARRIAGE POWERS OF CIVIL OFFICIALS

INTRODUCTION

Present California law permits only judges and religious officials to solemnize marriages¹ At the last regular legislative session, the Assembly Judiciary Committee was confronted with several proposals to allow other secular officials, such as county clerks, their deputies and certain court commissioners, to conduct the marriage ceremony Because of the important policy questions involved, these measures were included in the Judiciary Committee's interim study.

COMMITTEE HEARING

As the committee explored this problem at a hearing in Sacramento on February 7, 1962, it found the policy contentions fairly clear cut. On the one hand, some contend that increased secular certification of marriages will destroy the solemnity which properly attaches to that occasion Opposed to this view are those who argue that allowing more civil officials to solemnize marriages will help to free judges from the task, and thus alleviate some of the congestion that plagues our modern courts²

FINDINGS AND RECOMMENDATIONS

From its studies, the Assembly Interim Committee on Judiciary has found that judges rarely, if ever, neglect their court duties to perform civil marriages A recent amendment to the Penal Code,³ precluding judges from receiving anything of value for marital solemnizations, has effectively removed this temptation.

The policy of judicial performance of civil marriages seems a highly desirable one. The unique nature of the office adds dignity and a note of solemnity to the occasion, thereby impressing upon the parties that their marriage is not to be taken lightly.

Couples desiring a civil marriage are, no doubt, inconvenienced when impending judicial duties prevent a judge from performing the ceremony. To remove this inconvenience, however, would diminish the solemnity which now attaches to the marital union. Such a result does not seem to be in the public interest. Therefore, the Assembly Interim Committee on Judiciary recommends that performance of civil marriages remain restricted to judges

¹ Civ. Code, § 70.

² To determine how the various states have resolved this issue, see Appendix B, containing the marital solemnization laws of all other jurisdictions in the United States.

³ Pen. Code, § 94 5.

JUDICIAL COMPENSATION FOR PERFORMANCE OF CIVIL MARRIAGES

INTRODUCTION AND HISTORY

In the past, California law permitted a judge to perform a civil marriage at any time and to accept a gratuity therefor. During 1957-58, the abuses of this privilege were brought to light through an investigation by the Joint Judiciary Committee on the Administration of Justice. The committee found that a handful of municipal and superior court judges were conducting a flourishing marriage business in their courts, were charging a \$5-\$15 fee per marriage, were grossing as high as \$10,000 a year for their services and, at times, were slighting other judicial duties to solemnize marriages. The committee concluded:

The [marriage] practice has sometimes seriously interfered with and prolonged trial of cases, has resulted in a lessening of respect for the courts, caused resentment and humiliation on the part of many couples who were caught unprepared to pay the judge's unexpected request for \$10 or \$15, and has resulted in some employees being more interested in serving as a judge's runner than doing their jobs¹

At the 1959 General Session, legislation was passed prohibiting a judge, other than a judge of a justice court,² from accepting anything of value for performing a civil marriage except when the marriage is performed during legal holidays and weekends³

INTERIM STUDY

During the 1961 General Session, two bills relating to a judge's right to compensation for performing civil marriages were introduced. Their subject matters were ultimately referred for interim study. The first would allow judges to receive a gratuity for performing marriages during the week days, after 6 p m and before 8 a m.⁴ The second would allow retired judges, not on assignment, to accept gratuities for solemnizing marriages.⁵

Proponents of the proposals make the following contention. That the objection to allowing judges to receive gratuities for solemnizing marriages lies in the fact that it pre-empts a large amount of their valuable working time and thus adds to our already overcrowded court calendars. Further, that this objection is not applicable to the proposals in question for they do not involve a judge during his working hours.

¹ Partial Report of the Joint Judiciary Committee on Administration of Justice, *The California Judiciary*, California State Senate, 1959, p. 29.

² The reason for not including justice court judges in the marital fee prohibition seems to be twofold. First of all, the calendars in justice courts are, generally, not crowded enough to suffer when judges perform civil marriages. Secondly, it was felt that justice court judges should be allowed some opportunity to augment their relatively low salary schedules.

³ Pen Code, § 94.5.

⁴ A B 84 (Cameron), 1961 Regular Legislative Session.

⁵ A B 628 (Grant), 1961 Regular Legislative Session.

It should be noted, however, that another argument has been used in voicing objection to these measures. Some have contended that the performance of civil marriages should be *gratis* professional service in the public interest, and that the receipt of gratuities for solemnizing marriages can only tend to lessen respect for the courts. This position has been challenged, however, by those who note that present law allows judges to receive gratuities for marital solemnizations on holidays and weekends.

A final argument advanced in favor of the proposals is that there is a demand for civil marriage ceremonies during the week days, and that judges will be more likely to satisfy this demand if they are allowed to accept gratuities for their services in this regard.

FINDINGS AND RECOMMENDATIONS

As has been noted, the proposals expanding the rights of judges to levy fees for performing civil marriages would probably not interfere with their court duties. The proposals would, however, tend to make solemnizations of civil marriage fee-charging activities.

Judges can now charge fees for solemnizing marriages on legal holidays and weekends. While not expressing an opinion on the propriety of this policy, the Assembly Interim Committee on Judiciary has concluded that the policy should not be extended. Feeling that gratuitous marital solemnizations are in the highest tradition of public service, the committee recommends that the present law remain unchanged.

APPENDIX A

*An act to add Section 224r to the Civil Code,
relating to adoptions*

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

SECTION 1 Section 224r is added to the Civil Code, to read

224r The petitioners in an adoption proceeding shall file with the court a full accounting report of all disbursements of anything of value made or contracted to be made by them or on their behalf in connection with the birth of the child, any other expenses of the mother, or the adoption. The accounting report shall be verified under oath and shall be submitted in duplicate to the court on or before the date set by the court for the hearing on the adoption petition, unless an extension of time is granted by the courts.

The accounting report shall be itemized in detail and shall show the services which were received by the petitioners, the mother, the child, or any other person for whom payment was made. The report shall also include the dates of each payment, the names and addresses of each attorney, doctor, hospital, or other person or organization who received any funds, or participated in any way in the handling of such funds, either directly or indirectly.

Immediately upon receipt of the accounting report, the clerk of the court shall send a copy of the report to the State Department of Social Welfare.

The provisions of this section shall not apply to an adoption by a stepparent where one parent retains custody and control of the child.

APPENDIX B

An act to amend Section 226 of the Civil Code, relating to adoptions

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

SECTION 1 Section 226 of the Civil Code is amended to read

226 Any person desiring to adopt a child may for that purpose petition the superior court of the county in which the petitioner resides and the clerk of the court shall immediately notify the State Department of Social Welfare at Sacramento in writing of the pendency of the action and of any subsequent action taken. In all cases in which consent is required, except in the case of an adoption by a stepparent where one natural or adoptive parent retains his or her custody and control of the child, unless an agency licensed by the State Department of Social Welfare to find homes for children and place children in homes for adoption joins in the petition for adoption, the petition shall contain an allegation that the petitioners will file promptly with the department or the county adoption agency information required by the department in the investigation of the proposed adoption. The department or county adoption agency shall interview the parties to the adoption as soon as possible and in any event within 45 days after the filing of the adoption petition. The consent of the natural parent or parents to the adoption by the petitioners must be signed in the presence of an agent of the State Department of Social Welfare or of a licensed county adoption agency on a form prescribed by such department and filed with the clerk of the superior court, in the county of the petitioner's residence.

Such consent, when reciting that the person giving it is entitled to the sole custody of the minor child, shall, when duly acknowledged before such agent, be prima facie evidence of the right of the person making it to the sole custody of the child and such person's sole right to consent.

In all cases of adoption in which no agency licensed to place children for adoption is a party, except in the case of an adoption by a stepparent where one natural or adoptive parent retains his or her custody and control of the said child, it shall be the duty of the Department of Social Welfare or of the licensed county adoption agency to accept the consent of the natural parents to the adoption of the child by the petitioners and to ascertain whether the child is a proper subject for adoption and whether the proposed home is suitable for the child, prior to filing its report with the court.

In all cases in which the consent of the natural parent or parents is not necessary and an agency licensed to place children for adoption is not a party to the petition, the State Department of Social Welfare or the licensed county adoption agency shall, prior to the hearing of the petition, file its consent to the adoption with the clerk of the superior court of the county in which the petition is filed. Such consent shall not be given by the Department of Social Welfare or the licensed county adoption agency unless the child's welfare will be promoted by the adoption.

Except in the case of the adoption of a child by a stepparent where one natural or adoptive parent retains his or her custody and control of the child, it shall be the duty of the Department of Social Welfare or of the licensed county adoption agency to submit to the court a full report of the facts disclosed by its inquiry with a recommendation regarding the granting of the petition within 180 days after the filing of the petition. In those cases in which the investigation establishes that there is a serious question concerning the suitability of the petitioners or the care provided the child or the availability of the consent to adoption the report shall be filed immediately. The court may allow such additional time for the filing of said reports as in its discretion it may see fit, after at least five days' notice to the petitioner or petitioners and opportunity for such petitioner or petitioners to be heard with respect to the request for additional time. The report required of the Department of Social Welfare or of the licensed county adoption agency may be waived by the department in all cases in which an agency, licensed by the Department of Social Welfare to place children in homes for adoption, is a party or joins in the petition for adoption. Such waiver may be issued by the department at any time, either before or after the filing of the petition for adoption.

Whenever any report or findings are submitted to the court by the Department of Social Welfare or by a licensed county adoption agency under any provision of this section, a copy of such report or findings, whether favorable or unfavorable, shall be given to the attorney for the petitioner in the proceedings, if the petitioner has an attorney of record or to the petitioner.

If the findings of the State Department of Social Welfare or the county adoption agency are that the home of the petitioners is not suitable for the child or that the required consents are not available and it recommends that the petition be denied, or if the petitioners desire to withdraw the petition, and it recommends that the petition be denied, the county clerk upon receipt of the report of the State Department of Social Welfare or the county adoption agency shall immediately refer it to the superior court for review.

Upon receipt of such reports the court shall set a date for a hearing of the petition and shall give reasonable notice of such hearing to the agency, the petitioners, and the natural parents, as provided in Section 1200 of the Probate Code.

The department or county agency shall appear to represent the child.

In case of an adoption of a child by a stepparent where one natural or adoptive parent retains his or her custody and control of said child, the consent of either or both parents must be signed in the presence of a county clerk or probation officer of any county of this State on a form prescribed by the State Department of Social Welfare and the county clerk or probation officer before whom such consent is signed shall immediately file said consent with the clerk of the superior court of the county where the petition is filed and said clerk shall immediately file a certified copy of such consent to adoption with the State Department of Social Welfare.

If the father or mother of a child to be adopted is outside the State of California at the time of signing consent, his or her consent may be signed before a notary or other person authorized to perform notarial

acts, and in such case the consent of the Department of Social Welfare or of a licensed county adoption agency will also be necessary, but such consent shall not be necessary where the adoption is by a stepparent and one natural parent retains custody and control of the child.

A parent who is a minor shall have the right to sign a consent for the adoption of his or her child and such consent shall not be subject to revocation by reason of such minority.

If for a period of 180 days from the date of filing the petition, or upon the expiration of any extension of said period granted by the court, the Department of Social Welfare or the licensed county adoption agency fails or refuses to accept the consent of the natural parent or parents to the adoption, or if said department or agency fails or refuses to file or to give its consent to an adoption in those cases where its consent is required by this chapter, either the natural parent or parents or the petitioner may appeal from such failure or refusal to the superior court of the county in which the petition is filed. In which event the clerk shall immediately notify the Department of Social Welfare of such appeal and the department or agency shall within 10 days file a report of its findings and the reasons for its failure or refusal or consent to the adoption or to accept the consent of the natural parent. After the filing of said findings, the court may, if it deems that the welfare of the child will be promoted by said adoption, allow the signing of the consent by the natural parent or parents in open court, or if the appeal be from the refusal of said department or agency to consent thereto, grant the petition without such consent.

In an independent adoption, a special report is required from the State Department of Social Welfare or a licensed county adoption agency if the required consent of the department or agency or natural parent or parents has not been filed with the court within 90 days from the filing of the adoption petition because: (a) the department or county agency fails to give its consent or to accept the consent of the natural parents; (b) the natural parents entitled to consent cannot be located; or (c) the natural parents are withholding consent with or without a request for restoration of the child. The report must be filed with the court at the end of the 90-day period unless the court, for good cause, grants an extension, in which case the report must be filed at the end of the extension period. The report must explain the circumstances surrounding the lack of consent or acceptance thereof.

After receiving the report, the court shall set a date for a hearing on the special report and shall give reasonable notice of such hearing to the department or county agency and the parties to the adoption, as provided in Section 1200 of the Probate Code.

At the hearing, the court shall take whatever action it deems to be in the best interests of the person to be adopted. Such action may include, but is not necessarily limited to, any of the following: (a) allowing further investigation of the circumstances surrounding the lack of consent or acceptance thereof; (b) adjudicating the care and custody of the child and, if the circumstances warrant, removing the child from the home of the petitioners or finding that the natural parents have abandoned it or finding unfitness under Section 231; (c) accepting the necessary consents in court; (d) granting the adoption without the consent of the department or county agency if the adoption investigation has been completed; or (e) dismissing the adoption petition.

APPENDIX C

An act to amend Section 232 of the Civil Code, relating to custody and control of children

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

SECTION 1 Section 232 of the Civil Code is amended to read:

232 An action may be brought for the purpose of having any person under the age of 21 years declared free from the custody and control of either or both of his parents when such person comes within any of the following descriptions:

(a) Who has been left by either or both of his parents in the care and custody of another without any provision for his support, or without communication from either or both of his parents, for the period of one year with the intent on the part of such parent or parents to abandon such person. Such failure to provide, or such failure to communicate for the period of one year, shall be presumptive evidence of the intent to abandon. Such person shall be deemed and called a person abandoned by the parent or parents abandoning him. If in the opinion of the court the evidence indicates that either or both parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by such parent or parents.

When any person under the age of 21 years has been left by either or both of his parents in the care and custody of another without any provision for his support, or without communication from either or both of his parents for the period of six months, the petition provided for in Section 233 may be filed with respect to such person. The jurisdiction of the court extends to such person as fully as if such conditions had existed for a period of one year but no order or judgment freeing such person from the custody and control of either or both of his parents shall be made until such conditions of nonsupport or noncommunication shall have existed for a period of at least one year.

The fact that a child is in a foster care home, licensed under subdivision (a) of Section 1620 of the Welfare and Institutions Code, shall not prevent legal counsel, upon request of a licensed adoption agency, from instituting, under this subdivision, an action to declare such child free from the custody and control of his parents. When the requesting agency is a licensed county adoption agency, the county counsel may institute such action upon request of such agency.

(b) Who has been cruelly treated or neglected by either or both of his parents, if such person has been a dependent child of the juvenile court, and such parent or parents deprived of his custody because of such cruel treatment or neglect, for the period of one year continuously immediately prior to the filing of a petition praying that he be declared free from the custody and control of such cruel or neglectful parent or parents.

(c) Whose parent or parents are habitually intemperate, or morally depraved, if such person has been a dependent child of the juvenile court, and the parent or parents deprived of his custody because of such

intemperance, or moral depravity, for the period of one year continuously immediately prior to the filing of the petition praying that he be declared free from the custody and control of such habitually intemperate or morally depraved parent or parents

(d) Whose parent or parents are deprived of their civil rights due to the conviction of a felony, if the felony of which such parent or parents were convicted is of such nature as to prove the unfitness of such parent or parents to have the future custody and control of the child, or if any term of sentence of such parent or parents is of such length that the child will be deprived of a normal home for a period of years.

(e) Whose parent or parents have, in a divorce action, been found to have committed adultery and been divorced on that ground, if the court finds that the future welfare of the child will be promoted by an order depriving such parent or parents of the control and custody of the child.

(f) Whose parent or parents have been declared by a court of competent jurisdiction to be feeble-minded or insane, if the State Director of Mental Hygiene and the superintendent of the state hospital of which, if any, such parent or parents are inmates or patients certify that such parent or parents so declared to be feeble-minded or insane will not be capable of supporting or controlling the child in a proper manner.

APPENDIX D

An act to amend Section 226 of the Civil Code, relating to adoptions

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

SECTION 1 Section 226 of the Civil Code is amended to read

226 Any person desiring to adopt a child may for that purpose petition the superior court of the county in which the petitioner resides and the clerk of the court shall immediately notify the State Department of Social Welfare at Sacramento in writing of the pendency of the action and of any subsequent action taken. In all cases in which consent is required, except in the case of an adoption by a stepparent where one natural or adoptive parent retains his or her custody and control of the child, unless an agency licensed by the State Department of Social Welfare to find homes for children and place children in homes for adoption joins in the petition for adoption, the petition shall contain an allegation that the petitioners will file promptly with the department or the county adoption agency information required by the department in the investigation of the proposed adoption. The department or county adoption agency shall interview the parties to the adoption as soon as possible and in any event within 45 days after the filing of the adoption petition. The consent of the natural parent or parents to the adoption by the petitioners must be signed in the presence of an agent of the State Department of Social Welfare or of a licensed county adoption agency on a form prescribed by such department and filed with the clerk of the superior court, in the county of the petitioner's residence.

Such consent, when reciting that the person giving it is entitled to the sole custody of the minor child, shall, when duly acknowledged before such agent, be prima facie evidence of the right of the person making it to the sole custody of the child and such person's sole right to consent.

In all cases of adoption in which no agency licensed to place children for adoption is a party, except in the case of an adoption by a stepparent where one natural or adoptive parent retains his or her custody and control of the said child, it shall be the duty of the Department of Social Welfare or of the licensed county adoption agency to accept the consent of the natural parents to the adoption of the child by the petitioners and to ascertain whether the child is a proper subject for adoption and whether the proposed home is suitable for the child, prior to filing its report with the court.

In all cases in which the consent of the natural parent or parents is not necessary and an agency licensed to place children for adoption is not a party to the petition, the State Department of Social Welfare or the licensed county adoption agency shall, prior to the hearing of the petition, file its consent to the adoption with the clerk of the superior court of the county in which the petition is filed. Such consent shall not be given by the Department of Social Welfare or the licensed county

adoption agency unless the child's welfare will be promoted by the adoption

Except in the case of the adoption of a child by a stepparent where one natural or adoptive parent retains his or her custody and control of the child, it shall be the duty of the Department of Social Welfare or of the licensed county adoption agency to submit to the court a full report of the facts disclosed by its inquiry with a recommendation regarding the granting of the petition within 180 days after the filing of the petition. In those cases in which the investigation establishes that there is a serious question concerning the suitability of the petitioners or the care provided the child or the availability of the consent to adoption the report shall be filed immediately. The court may allow such additional time for the filing of said reports as in its discretion it may see fit, after at least five days' notice to the petitioner or petitioners and opportunity for such petitioner or petitioners to be heard with respect to the request for additional time. The report required of the Department of Social Welfare or of the licensed county adoption agency may be waived by the department in all cases in which an agency, licensed by the Department of Social Welfare to place children in homes for adoption, is a party or joins in the petition for adoption. Such waiver may be issued by the department at any time, either before or after the filing of the petition for adoption.

Whenever any report or findings are submitted to the court by the Department of Social Welfare or by a licensed county adoption agency under any provision of this section, a copy of such report or findings, whether favorable or unfavorable, shall be given to the attorney for the petitioner in the proceedings, if the petitioner has an attorney of record, or to the petitioner.

If the findings of the State Department of Social Welfare or the county adoption agency are that the home of the petitioners is not suitable for the child or that the required consents are not available and it recommends that the petition be denied, or if the petitioners desire to withdraw the petition, and it recommends that the petition be denied, the county clerk upon receipt of the report of the State Department of Social Welfare or the county adoption agency shall immediately refer it to the superior court for review.

Upon receipt of such reports the court shall set a date for a hearing of the petition and shall give reasonable notice of such hearing to the agency, the petitioners, and the natural parents, as provided in Section 1200 of the Probate Code; *provided, that notice of the hearing on the petition shall not be given to the natural parents in a case in which an agency, licensed by the Department of Social Welfare to place children in homes for adoption, is a party or joins in the petition for adoption.*

The department or county agency shall appear to represent the child.

In case of an adoption of a child by a stepparent where one natural or adoptive parent retains his or her custody and control of said child, the consent of either or both parents must be signed in the presence of a county clerk or probation officer of any county of this State on a form prescribed by the State Department of Social Welfare and the county clerk or probation officer before whom such consent is signed shall immediately file said consent with the clerk of the superior court of the county where the petition is filed and said clerk shall immedi-

ately file a certified copy of such consent to adoption with the State Department of Social Welfare

If the father or mother of a child to be adopted is outside the State of California at the time of signing consent, his or her consent may be signed before a notary or other person authorized to perform notarial acts, and in such case the consent of the Department of Social Welfare or of a licensed county adoption agency will also be necessary, but such consent shall not be necessary where the adoption is by a stepparent and one natural parent retains custody and control of the child

A parent who is a minor shall have the right to sign a consent for the adoption of his or her child and such consent shall not be subject to revocation by reason of such minority

If for a period of 180 days from the date of filing the petition, or upon the expiration of any extension of said period granted by the court, the Department of Social Welfare or the licensed county adoption agency fails or refuses to accept the consent of the natural parent or parents to the adoption, or if said department or agency fails or refuses to file or to give its consent to an adoption in those cases where its consent is required by this chapter, either the natural parent or parents or the petitioner may appeal from such failure or refusal to the superior court of the county in which the petition is filed, in which event the clerk shall immediately notify the Department of Social Welfare of such appeal and the department or agency shall within 10 days file a report of its findings and the reasons for its failure or refusal or consent to the adoption or to accept the consent of the natural parent. After the filing of said findings, the court may, if it deems that the welfare of the child will be promoted by said adoption, allow the signing of the consent by the natural parent or parents in open court, or if the appeal be from the refusal of said department or agency to consent thereto, grant the petition without such consent

APPENDIX E **COMPENSATION OF JURORS IN CALIFORNIA**

County	COMPENSATION RATES*				LENGTH OF SERVICE†	
	Grand jury	Superior courts	Municipal courts	Justice courts	Civil	Criminal
Los Angeles	6	1	1			
San Diego	1	1	1			
Alameda	1	1	1		14 1/2 appearances (2)	16 appearances (2)
San Francisco	4	3	3		20 days	20 days
Orange	2	2	1			
Santa Clara	1	1	1			
San Bernardino	1	1	1		9 days	7 days
Sacramento	1	1	1			
San Mateo	2	1	1		(4)	(4)
Contra Costa	4	4	3		3 to 1 days	1 to 4 days
Fresno	1	1	1		7 days	7 days
Riverside	3	2	1		3 days	3 days
Kern	4	1	1			
San Joaquin	2	2	1			
Ventura	1	1	1			
Monterey	1	1	1			
Santa Barbara	3	3	3		7-10 days	7-10 days
Tulare	1	1	1			
Stanislaus	1	1	1		12 days	12 days
Sonoma	2	4	1		4 days	4 days
Marin	2	1	1			
Solano	1	1	1		(4)	(4)
Humboldt	1	1	1			
Merced	1	1	1		1 day	1 day
Santa Cruz	1	1	1			
Butte	5	6	1			
San Luis Obispo	1	1	1			
Imperial	1	1	1			
Napa	1	1	1			
Yolo	1	2	1			
Shasta	3	2	2		20 days	20 days (4)
Placer	7	7	1		68 days	70 days
Mendocino	4	3	1		4 days	4 days
Kings	4	3	1		3 days	3 days
Madera	3	1	1		3 days	2 days
Yuba	4	1		1		
Sutter	1	1		2		
Siskiyou	2	2		1		
El Dorado	3	3		1	5 days	5 days
Tehama	1	1		1		
Nevada	5	3		1	3-8 days	3-8 days
Del Norte	1	1		1	2-3 days	2-3 days
Glenn	1	1		1	5 days	5 days
San Benito	3	3		1		
Tuolumne	5	5		1		
Lake	1	1		1	4 days maximum	4 days maximum
Laassen	1	3		1		
Colusa	3	3		1		
Inyo	3	3		2		
Plumas	1	1		1		
Calaveras	2	2		2		
Amador	3	3		2	8 days maximum	3 days maximum
Tuinity	1	2		2		
Modoc	2	2		2		
Mariposa	5	3		2	6-9 days	6-9 days
Sierra	1	1		1		
Mono	1	2		1		
Alpine	5			1		

* Numbers refer to footnotes which begin below

† Footnotes begin on next page

Footnotes COMPENSATION RATES

Grand Jury:

- 1 Five dollars (\$5) a day for each day's attendance as a juror, and fifteen cents (\$0.15) a mile, in going only, for each mile actually traveled in attending meetings of the grand jury
- 2 Between five dollars (\$5) a day and sixteen cents (\$0.16) a mile, in going only, and five dollars (\$5) a day and twenty cents (\$0.20) a mile, in going only, for each mile actually traveled in attending meetings of the grand jury
- 3 Between six dollars (\$6) a day and six dollars (\$6) a day and thirty-five cents (\$0.35) a mile, in going only, for each mile actually traveled in attending meetings of the grand jury

COMPENSATION OF JURORS IN CALIFORNIA

Footnotes: COMPENSATION RATES—Continued

Grand Jury.—Continued

- 4 Six dollars and fifty cents (\$6 50) a day for each day's attendance as a juror, and fifteen cents (\$0 15) a mile, in going only, for each mile actually traveled in attending meetings of the grand jury
- 5 Between seven dollars (\$7) a day and seven dollars (\$7) a day and thirty cents (\$0 30) a mile, in going only, for each mile actually traveled in attending meetings of the grand jury
- 6 Ten dollars (\$10) a day for each day's attendance as a juror, and mileage, at the rate of fifteen cents (\$0 15) a mile, for each mile actually traveled in attending meetings of the grand jury
- 7 Three dollars (\$3) for the first day's attendance, and six dollars (\$6) thereafter, and twenty cents (\$0 20) a mile, in going only, for each mile actually traveled in attending meetings of the grand jury, mileage to be allowed but once during any one session of the grand jury

Superior Court:

- 1 Five dollars (\$5) a day for each day's attendance as a juror, and fifteen cents (\$0 15) a mile, in going only, for each mile actually traveled in attending court as a juror
- 2 Between five dollars (\$5) a day and sixteen cents (\$0 16) a mile, in going only, and five dollars (\$5) a day and twenty-five cents (\$0 25) a mile, in going only, for each mile actually traveled in attending court as a juror
- 3 Between six dollars (\$6) a day and six dollars (\$6) a day and mileage, at the rate of fifteen cents (\$0 15) a mile, for each mile actually traveled in attending court as a juror
- 4 Six dollars and fifty cents (\$6 50) a day for each day's attendance as a juror, and fifteen cents (\$0 15) a mile, in going only, for each mile actually traveled in attending court as a juror
- 5 Between seven dollars (\$7) a day and seven dollars (\$7) a day and mileage, at the rate of ten cents (\$0 10) a mile, for each mile actually traveled in attending court as a juror
- 6 Three dollars (\$3) for the first day's attendance, and seven dollars (\$7) thereafter, and fifteen cents (\$0 15) a mile, in going only, for each mile actually traveled in attending court as a juror
- 7 Three dollars (\$3) for the first day's attendance, and six dollars (\$6) thereafter, and twenty cents (\$0 20) a mile, in going only, for each mile actually traveled in attending court as a juror, mileage to be allowed but once during any one session of the court

Municipal Court:

- 1 Five dollars (\$5) a day for each day's attendance as a juror, and fifteen cents (\$0 15) a mile, in going only, for each mile actually traveled in attending court as a juror
- 2 Between five dollars (\$5) a day and sixteen cents (\$0 16) a mile, in going only, and five dollars (\$5) a day and twenty-five cents (\$0 25) a mile, in going only, for each mile actually traveled in attending court as a juror
- 3 Between six dollars (\$6) a day and six dollars (\$6) a day and mileage, at the rate of ten cents (\$0 10) a mile, for each mile actually traveled in attending court as a juror

Justice Court:

- 1 Five dollars (\$5) a day for each day's attendance as a juror, and fifteen cents (\$0 15) a mile, in going only, for each mile actually traveled in attending court as a juror
- 2 Between five dollars (\$5) a day and sixteen cents (\$0 16) a mile, in going only, and five dollars (\$5) a day and twenty-five cents (\$0 25) a mile, in going only, for each mile actually traveled in attending court as a juror
- 3 Between six dollars (\$6) a day and six dollars (\$6) a day and mileage, at the rate of ten cents (\$0 10) a mile, for each mile actually traveled in attending court as a juror

Footnotes. LENGTH OF SERVICE

Several county clerks have reported that grand jurors generally incur no loss of wages during grand jury meetings because they are selected from salaried workers and most of their meetings are held at night.

⁽¹⁾ The days listed under "Length of Service" refer to the average number of days a juror actually serves on the jury during the year. The figures, with one exception, do not include appearances for jury service which, in some cases, involve loss of working time.

In California, all civil, criminal and grand jurors can be kept on a jury list for a maximum of one year. The charts, however, have required only substantial compliance with this law.

⁽²⁾ The jury commissioner states that, in general, an appearance involved the loss of wages for the entire day.

⁽³⁾ The county clerk reports that jury service is not requested of anyone who is not compensated by his employer for such service.

⁽⁴⁾ The county clerk reports that, in general, their jurors incur no loss of wages during jury service because they are drawn from government installations such as Mare Island Naval Shipyard and Travis Air Force Base, which pay their regular salary during this period.

⁽⁵⁾ The county clerk reports that the length of service is 10 days in the Justice Court.

APPENDIX F

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, January 5, 1962

*Honorable Bruce Sumner
1016 North Broadway
Santa Ana, California*

A.B. 493, 1961 Session—Time Off for Jury Duty—No. 1273

DEAR MR SUMNER You have asked whether there is any constitutional objection to Assembly Bill No 493 of the 1961 Regular Session, which would have added Section 228 to the Labor Code, to read

“All employees shall be allowed time off for service on juries without loss of pay. However, the amount of the fee, if any, received by the employees for any such jury service may be deducted from the amount of wages otherwise payable hereunder.”

Opinion

The validity of such legislation has never, to our knowledge, been determined by any court in this country. However, in our opinion there is substantial doubt about its constitutionality.

Analysis

Neither the courts of this State nor those of other jurisdictions have had occasion to consider the question of whether the Legislature may validly require an employer to pay his employees for time off taken for jury duty. The question, therefore, is one of first impression.

In several instances the courts have considered the closely analogous question of whether legislation requiring an employer to pay his employees for time off taken to vote was a proper exercise of legislative power. While there are decisions to the contrary, the Supreme Court of the United States, as well as two courts in this State, have upheld the statute involved.

The principal objection raised in the ‘time off for voting’ cases was that the statute violated the due process clauses of the Federal and State Constitutions, in that it constituted an improper exercise of the State’s police power by arbitrarily depriving an employer of his property. It seems probable that if any objection were raised against the statute under consideration, it would be the same.

In the Supreme Court case mentioned above, *Day-Brite Lighting v Missouri* (1951), 342 U S 421, the court answered the objection raised, as follows:

“The only semblance of substance in the constitutional objection to Missouri’s law is that the employer must pay wages for a period in which the employee performs no services. Of course many forms of regulation reduce the net return of the enterprise; yet that

gives rise to no constitutional infirmity (Citing cases) Most regulations of business necessarily impose financial burdens on the enterprise for which no compensation is paid Those are part of the costs of our civilization Extreme cases are conjured up where an employer is required to pay wages for a period that has no relation to the legitimate end These cases can await decision as and when they arise The present law has no such infirmity. It is designed to eliminate any penalty for exercising the right of suffrage and to remove a practical obstacle to getting out the vote. The public welfare is a broad and inclusive concept The moral, social, economic, and physical well-being of the community is one part of it, the political well-being, another The police power which is adequate to fix the financial burden for one is adequate for the other The judgment of the legislature that time out for voting should cost the employee nothing may be a debatable one. It is indeed conceded by the opposition to be such But if our recent cases mean anything, they leave debatable issues as respects business, economic, and social affairs to legislative decision."

On the basis of its statement quoted above, it is difficult to escape the conclusion that the court did rely to some extent on the fact that the public benefit involved in allowing employees time off with pay to vote outweighed the comparatively slight burden imposed on their employers In other words, the court did weigh the equities of the case.

The two California decisions regarding the same point were both rendered in appellate departments of superior courts The cases involved were *Ballarini v Schlage Lock Co* (1950), 100 Cal App. 2d Supp 859, and *Brenne v International Harvester Co* (1956), 142 Cal App 2d Supp 874

In both of the cases last cited, the courts sustained the constitutionality of the statute, then Section 5699 of the Elections Code, on familiar principles respecting the power of the Legislature The court, in the *Ballarini* case, quoting from *Justesen's Food Stores v City of Tulare*, 43 Cal App 2d 616, stated

"A legislative body, in exercise of its police power, has a broad discretion to determine the measures necessary for protection of public interests The determination of a need for a mode of exercising the power is for the legislative body and courts will not hold enactments invalid unless they are palpably unreasonable, arbitrary or capricious, having no tendency to promote the public welfare, safety, morals, or general welfare Every presumption is in favor of reasonableness of the law and its validity

"A court is not concerned with the wisdom or policy of the law and cannot substitute its judgment for that of a legislative body If different minds might differ as to reasonableness of the regulation, the law must be upheld "

The court further stated that any law that has for its purpose the insuring of a full and free performance of the right of elective franchise is in the public interest and tends to promote the general welfare of all of the citizens of the State, and that such a law would be a proper

exercise of the State's police power. This same reasoning was used as the basis of the decision in the *Benane* case, *supra*.

Whether the courts would regard a statute requiring employers to pay their employees for time off taken for jury duty in the same manner as they treated "pay while voting" statutes is difficult to predict. While there is a degree of similarity of fact and in principle between the two situations, there are also a number of distinctions. For example, an employee may be required to spend many days in jury service, whereas the time required for him to vote is a matter of hours. Also, a juror is normally compensated by the county for time served on a jury, which is not true of voting time. Finally, an employee called to serve on a jury is obligated to serve unless excused for some sufficient reason, which is not true in the case of voting. It might well be that the courts in weighing the equities might take the view that the benefits involved to the public and to the employees involved would not be sufficient to justify the imposition of such a burden on employers by requiring them to pay for "jury time." In view of this, we can only conclude that the constitutionality of the bill in question is at least doubtful.

Very truly yours,

A. C. MORRISON
Legislative Counsel

By TERRY L. BAUM
Deputy Legislative Counsel

APPENDIX G

ESTIMATED ANNUAL COST TO THE STATE OF CALIFORNIA FOR PAYMENT OF A \$5 00 INCREASE IN JURORS' FEES ¹

Municipal and Superior Court Criminal Juries

Number of sworn criminal juries, municipal courts.....	6,184
Number of sworn criminal juries, superior courts.....	2,477
Total for 1959-1960.....	8,661
Total number of persons, 1 day ($12 \times 8,661$).....	103,932
Cost per day at \$5 fee ($5 \times 103,932$).....	\$519,660
Average number of days per jury.....	3
Estimated annual cost.....	\$1,558,980

Municipal and Superior Court Civil Juries

Number of sworn civil juries, municipal courts.....	432
Number of sworn civil juries, superior courts.....	4,074
Total for 1959-1960.....	4,506
Total number of persons, 1 day ($12 \times 4,506$).....	54,072
Cost per day at \$5 fee ($5 \times 54,072$).....	\$270,360
Average number of days per jury.....	3
Estimated annual cost.....	\$811,080
TOTAL ESTIMATED ANNUAL COST.....	\$2,370,060

¹ This chart was prepared by the Judiciary Committee staff with the assistance of the California Legislative Analyst. Due to a lack of available data, the chart does not take into consideration justice court jurors and grand jurors. The chart assumes that the number of jurors in every trial is 12, and does not account for those persons who, although ultimately excused from jury duty, receive some compensation for being present during the jury selection process. At best, then, the chart is but a rough approximation of the cost of increased jury fees.

The number of sworn juries in criminal and civil cases for both municipal and superior courts, 1959-1960, is found in Tables A-10 and A-22 of the 18th Biennial Report of the Judicial Council, published in 1961. The estimated length of jury trials is derived from a report by the Assembly Ways and Means Committee, published in 1961, and entitled "A Standard for Determining California's Need for Superior Court Judges."

APPENDIX H

May 12, 1960

*Mr Gordon A Fleury
Attorney at Law
926 J Building
Sacramento 14, Calif*

Dear Gordon

We have tried to make an analysis of the referees' list dated June 25, 1957. We believe that the following clearly demonstrates that the present salary of the Referees of the Industrial Accident Commission is seriously hampering the recruitment of qualified personnel.

It appears that of the first 30 men on the open list, 17 were in private practice of law and 13 were in civil service. Of the 17 men in private practice, 14 have declined to accept appointment as Referees of the Industrial Accident Commission, and 3 have accepted such appointments. Further, of these 17 in private practice, 9 are attorneys who specialize in Workmen's Compensation practice. The only one of these nine who accepted appointment was an attorney who was employed by an insurance company. The eight who were in private practice either individually or with law firms, refused appointments.

Of the 13 attorneys in civil service among the first 30 men on the open list, 1 has been appointed as a commissioner, 4 have refused to accept appointment as referees, and 8 have accepted appointments, but one of those has since resigned to enter private practice.

We have no exact information as to the ages of the attorneys who refused to accept appointment as referees. However, we are acquainted with most of the men, and it is our belief that those men who have refused appointment have averaged between 38 and 40 years of age. Of the three attorneys in private practice who accepted appointments, two are possibly somewhat past 50 and one (who had been working for an insurance company) is probably under 40.

Sincerely yours,

/s/ SHERMAN GRANCELL
Chairman Referees' Committee

APPENDIX I

An act to add Section 112.1 to the Labor Code, relating to the Industrial Accident Commission

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

SECTION 1 Section 112.1 is added to the Labor Code, to read:

112.1. No person shall be eligible for appointment as a member of the commission unless he has the qualifications required of a judge of the superior court, as provided in Section 23 of Article VI of the Constitution.

This section shall not apply to any commissioner holding office at the effective date of this section until the expiration of the term for which he has been appointed and is then serving.

APPENDIX J

An act to amend Section 11557 of, and to add Section 11550.8 to, the Government Code, relating to salaries of public officers

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

SECTION 1 Section 11550.8 is added to the Government Code, to read

11550.8 An annual salary of twenty thousand nine hundred forty-seven dollars and ninety-two cents (\$20,947.92) shall be paid to each of the following:

(a) Each member of the Industrial Accident Commission

SEC. 2 Section 11557 of said code is amended to read

11557 An annual salary of fifteen thousand dollars (\$15,000) shall be paid to each of the following

(a) Director of Veterans Affairs

(b) Real Estate Commissioner

(c) Savings and Loan Commissioner

(d) Commissioner of Corporations

~~(e) Each member of the Industrial Accident Commission~~

~~+(f)~~ (e) Director of Professional and Vocational Standards

~~+(g)~~ (f) State Fire Marshal

APPENDIX K

STATUS OF THE PRETRIAL CONFERENCE IN THE UNITED STATES ¹

A pretrial conference is held, within the discretion of the judge.	A pretrial conference is held, on motion of either party or within the discretion of the judge	A pretrial conference is held, at the discretion of the judge, only after either party has requested such a conference	Within their discretion, local courts may provide for a pretrial conference by court rule. Some courts have a mandatory pretrial conference, with others, pretrial conferences are discretionary	A pretrial conference is mandatory	A pretrial conference is not held
Federal courts Alaska Arizona Arkansas California Delaware Georgia Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Mexico New York North Carolina North Dakota Ohio Oklahoma Oregon Rhode Island South Dakota Tennessee Texas Utah Vermont Virginia Washington West Virginia Wisconsin Wyoming	Alabama Florida Georgia Indiana Iowa Kentucky North Carolina Wyoming	North Dakota	Colorado Connecticut Delaware Florida Georgia Illinois Indiana Iowa Kansas Kentucky Louisiana Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Mexico New York North Carolina North Dakota Ohio Oklahoma Oregon Rhode Island South Dakota Tennessee Texas Utah Vermont Virginia Washington West Virginia Wisconsin Wyoming	Arizona California Connecticut Florida Georgia Illinois Indiana Iowa Kansas Kentucky Louisiana Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Mexico New York North Carolina North Dakota Ohio Oklahoma Oregon Rhode Island South Dakota Tennessee Texas Utah Vermont Virginia Washington West Virginia Wisconsin Wyoming	Mississippi South Carolina Tennessee

¹ This chart applies to some, if not all civil trial courts in each of the states.

APPENDIX L

JURISDICTIONS WHICH STAGGER THE SALARIES OF MAJOR TRIAL COURT JUDGES ON A POPULATION BASIS

<i>State</i>	<i>Salary range</i>
Alabama -----	\$10,000- \$14,000
Arkansas -----	12,000- 13,800
Florida -----	13,500- 20,000
Illinois -----	16,000- 25,000
Indiana -----	10,000- 18,000
Minnesota -----	14,500- 16,000
Missouri -----	16,000- 19,000
Pennsylvania -----	21,500- 27,500
West Virginia -----	10,200- 18,200

APPENDIX M

State	Waiting period provisions in divorce laws	Provisions prohibiting remarriage after final divorce ^{(1)*}
Alabama	None	60 days
Alaska	30 days ⁽²⁾	None
Arizona	20 days ⁽²⁾	1 year
Arkansas	30 days ⁽²⁾	None
California	12 months ⁽⁴⁾	None
Colorado	90 days ⁽⁵⁾	None
Connecticut	90 days ⁽⁶⁾	None
Delaware	3 months ⁽⁴⁾	None
District of Columbia	6 months ⁽⁴⁾	None
Florida	20 days ⁽²⁾	None
Georgia	None	(7)
Hawaii	(9)	None
Idaho	None	None
Illinois	60 days ⁽²⁾	None
Indiana	60 days ⁽⁵⁾	(10)
Iowa	60 days ⁽⁵⁾	1 year
Kansas	60 days ⁽¹¹⁾	6 months
Kentucky	None	None
Louisiana	None	(12)
Maine	None	None
Maryland	None	None
Massachusetts	6 months ⁽⁴⁾	2 years ⁽¹³⁾
Michigan	(14)	(13)
Minnesota	None	6 months
Mississippi	None	(15)
Missouri	None	None
Montana	None	None
Nebraska	6 months ⁽¹⁾	None
Nevada	None	None
New Hampshire	(16)	None
New Jersey	3 months ⁽⁴⁾	None
New Mexico	None	None
New York	5 months ⁽⁴⁾	(18)
North Carolina	None	None
North Dakota	None	(14)
Ohio	None	None
Oklahoma	6 months ⁽¹⁾	(20)
Oregon	None	6 months
Pennsylvania	None	(7)
Rhode Island	6 months ⁽⁴⁾	None
South Carolina	3 months ⁽²⁾	None
South Dakota	60 days ⁽²¹⁾	(22)
Tennessee	None	(19)
Texas	60 days ⁽¹¹⁾	12 months ⁽²³⁾
Utah	90 days ⁽¹¹⁾ and 3 months ⁽¹⁾	(24)
Vermont	6 months ⁽⁴⁾	2 years ⁽¹⁸⁾
Virginia	None	(18)
Washington	90 days ⁽²¹⁾	None
West Virginia	None	1 year ⁽²⁵⁾
Wisconsin	60 days ⁽⁵⁾ and 12 months ⁽⁴⁾	(26)
Wyoming	None	None

* Footnotes begin below

FOOTNOTES

- ⁽¹⁾ The great majority of these statutes permit the divorcing spouse to remarry
- ⁽²⁾ The period during which a final decree cannot be entered runs from the filing of the complaint
- ⁽³⁾ The period during which a final decree cannot be entered runs from the service of summons
- ⁽⁴⁾ The period during which a final decree cannot be entered runs from the hearing at which the right to divorce is first granted
- ⁽⁵⁾ The waiting period runs between the service of summons and the trial
- ⁽⁶⁾ The waiting period runs between the return date on the complaint and the trial
- ⁽⁷⁾ When a divorce is granted on grounds of adultery, the guilty party may not remarry his or her accomplice during the life of the innocent party
- ⁽⁸⁾ The decree becomes final on the date fixed therein, which is usually upon entry
- ⁽⁹⁾ In no event can the decree become final more than one month after entry
- ⁽¹⁰⁾ A waiting period at the plaintiff's discretion, runs between the filing of a writ of habeas corpus and the filing of the complaint
- ⁽¹¹⁾ When a divorce is obtained by default on notice by publication only, the decree must restrict the guilty party's right to remarry for a period of two years
- ⁽¹²⁾ The waiting period runs between the filing of the complaint and the trial
- ⁽¹³⁾ The wife may not remarry for 10 months after a divorce. When a divorce is granted on grounds of adultery, the guilty party may not remarry his or her accomplice
- ⁽¹⁴⁾ Remarriage by the guilty party is prohibited for two years after the interlocutory decree while the innocent party is living

FOOTNOTES—Continued

- (14) A 60-day waiting period runs between the filing of the complaint and trial, a longer period of 6 months applies when dependent children under 18 are involved
- (15) The court may provide that the party against whom the divorce is granted shall not marry again within such time as shall be fixed by the court, not to exceed two years from the time the decree is granted
- (16) The court, in its discretion, may prohibit the remarriage of the guilty party when the divorce is granted because of adultery
- (17) The decree becomes final on the last day of the term in which the case is heard. If due cause is shown, the decree becomes final immediately
- (18) Applies to the guilty party and only while the innocent party is living, unless the court granting the divorce grants permission to remarry after the elapse of three years from the interlocutory decree after proof of uniformly good conduct
- (19) At the discretion of the court
- (20) Remarriage is prohibited during the life of the other party for six months after the entry of the interlocutory divorce decree
- (21) The waiting period runs between the service and filing of the summons and complaint and the trial
- (22) When a divorce is granted on grounds of adultery, the guilty party may not remarry during the life of the innocent party
- (23) Applies when a divorce is granted on grounds of cruelty
- (24) Remarriage is prohibited for one month after the interlocutory decree
- (25) Applies to the guilty party only and is at the court's discretion
- (26) Remarriage is prohibited for one year after the interlocutory decree

APPENDIX N DIVORCE STATISTICS FOR THE YEARS 1956-1961

County	Divorces filed	Interdictory decrees granted	Final decrees granted	Dismissals		Dismissal month after interdictory decree												
				Before interdictory decree	After interdictory decree	Months					Years							
						3	6	9	12		1	2	3	4	5			
Colusa.....	160	111	62	9	3													
Del Norte.....	352	233	147	10	0													
Fresno.....	8,964	4,676	3,740	729	197	29	32	31	12		39							
Inyo.....	184	144	133	22	3													
Kern.....	6,702	4,065	3,183	46	579	309	127	81	53		2							
Kings.....	603	451	315	46	4													
Lassen.....	500	206	140	17	4	1												
Los Angeles.....	143,570	104,335	88,571	14,330	1,365													
Madura.....	700			53	10													
Mariposa.....	903	30	13	10	10													
Placer.....	904	739	467	64	12	1	4	2	2		1	1						
Plumas.....	252	167	95	13	4													
Riverdale.....	5,692	4,063	2,915		*51													
San Francisco.....	17,498	13,062	12,872	*182	*51	*6	*12	*6	*10									
San Joaquin.....	1,277	1,063	713	131		1	1	2	1		7	3						
Sierra.....	1,27	17	13	2														
Solano.....	3,469	1,127	1,104	473	10													
Sutter.....	549	354	197	63	10													
Tehama.....	4,630	2,371	1,563	343	52													
Yuba.....	684	371	283	46	6													

Statistics available for 1958-1960 only

* Statistics calculated on a fiscal year basis

* County Clerk of San Francisco County estimates that in that county slightly more than 90 percent of the dismissals occur before the interdictory decree

* Includes statistics for filings only within the calendar years 1956-1960

* Approximation only by the Solano County Clerk's office

COMMENT: These statistics show that approximately 85 percent of the divorce action dismissals in California occur prior to entry of the interdictory decree

APPENDIX O

RECONCILIATION PROCEDURES THROUGHOUT THE UNITED STATES

California. In California, there are two ways in which the jurisdiction of the conciliation court may be invoked. A petition may be filed by either spouse or both spouses, prior to or after a divorce complaint has been filed. Also, whenever there are minor children involved in a divorce action, the superior court may, within its discretion, transfer the case to the conciliation court.

Washington; Family Court, King County. King County has a family court patterned after the Los Angeles Conciliation Court. It uses the same forms, conciliation agreement and system of professional marriage counselors.

Statistics for the Washington court over the past five years are encouraging. Of the couples presenting themselves for conciliation before the divorce action is commenced, 50 percent have been reconciled. Of the reconciliations attempted after the divorce action has begun, 21 percent were successful.

Ohio; Court of Common Pleas, Lucas County. In all divorce actions where children under 14 years of age are involved, the professional marriage counseling service of the court is offered the parties with the hope that a reconciliation will be entered. Marriage counseling is discretionary with the court in all other divorce actions. In 1960, of the 2,139 divorce actions filed, 1,386 cases were assigned for counseling.

Figures indicate that reconciliations are effected under this procedure. In Lucas County in 1960, the percentage of dismissals in divorce actions was in excess of 41 percent while the national average was only 30 percent. Ohio jurists feel that professional counseling may explain some of this difference.

Requests can also be made for prelitigation counseling. Figures show that 62 percent of these cases end in reconciliation.

The Lucas County domestic relations staff is comprised of four marriage counselors, three graduate students of social work and a department supervisor. The cost of operating this division of the court is about \$75,000 per year.

The family court has had almost 100 percent co-operation from the local bar associations. Most of the prelitigation referrals for marriage counseling come from members of the bar. Further, a high percentage of referrals in those litigated cases which are not within the mandatory referral aspect of the statute are instigated by bar members.

Milwaukee, Wisconsin. Wisconsin law encourages reconciliation by the parties to a divorce. The code provides for two successive waiting periods, the first running for 60 days between the filing of the complaint and trial, and the second running for 12 months from the interlocutory to the final decree. During the 60-day period, intensive conciliation efforts are made by the family court commissioners through-

out the state. They must be served with a copy of the summons, which includes the addresses of the parties. The parties must consult with these commissioners.

In Milwaukee, three family court commissioners, a director and nine assistants within the conciliation department of the court direct the conciliation activities.

At the temporary hearing for alimony presided over by a court commissioner, if there are children under 18 years of age involved, the couple must appear at the conciliation department for the purpose of exploring the matter of conciliation. This effort occurs after the initial attempt at conciliation by the counselor. As a further safeguard, no action goes to trial until this condition is met. The parties may also be referred to as a guidance clinic, clergyman, child welfare agency or other such community resource.

This conciliation process precludes all further divorce proceedings until it has been completed.

Michigan; Washtenaw Circuit Court. Marriage counseling is compulsory on both parties to a divorce action when minor children are involved. At the time of the service of the summons, the plaintiff must give notice to the opposite party requiring the latter, within 10 days of such service, to apply for an appointment with the marriage counselor to discuss the possibility of reconciliation. The plaintiff must also apply for a like appointment within said 10 days. The marriage counselor reports in writing to the circuit judge within 20 days after his appointment with the plaintiff. The court then communicates the contents of this report to the attorneys for the parties.

It is the policy of the court in divorce and separate maintenance cases, where minor children are not involved, to recommend that the parties make a sincere effort at reconciliation. Accordingly, upon request of either party, the court also refers said party to the marriage counselor, who counsels with the party and reports back to the court.

Statistics show that this reconciliation procedure has been successful in Michigan. During 1958 and 1959, there were reconciliations in approximately 68 percent of the divorce actions filed where there was counseling. The percentages of success was even higher in predivorce cases.

Local court rules also provide that the court may retain control over the parties after a final decree of divorce has been entered where the custody of minor children was involved. When one of the parties anticipates another marriage, he may be directed by the court to consult the marriage counselor. It is hoped he will be counseled against entering another marriage where it would not be in his best interest.

APPENDIX P

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, December 6, 1961

Honorable Bruce Sumner
1016 North Broadway
Santa Ana, California

Divorce, Separate Maintenance, Annulment—No. 1010

Dear Mr. Sumner

Question

You have presented the following questions

1 Would a statute requiring each prospective plaintiff in a divorce, separate maintenance, or annulment action to file a statement of intention to commence the action, such statement to precede the filing of the complaint by 60 days, conflict with the State or Federal Constitutions? (This statute contemplates that the judge, upon receiving the statement, could invite the parties to confer informally with him, so as to explore the possibilities of reconciliation)

2 Would your answer be different if the statute made it mandatory that the parties go to a reconciliation counselor during this waiting period?

3 Would your answer be different if the waiting period occurred between the filing of the complaint and any further prosecution of the action?

4 What if an attempt at reconciliation by both parties was mandatory during this period?

In this connection you refer us to *People ex rel Christiansen v Connell* (Ill), 118 N E 2d 262 and the statutes dealt with therein

Opinion

It appears to us that these proposals would all be held constitutional, except that we are doubtful about the validity of these proposals as applied to some or all annulments (we assume that it is not contemplated that these provisions will be applied where the marriage is in fact void, as distinguished from voidable) Also, on the strength of the *Christiansen* case there is some doubt about the constitutionality of that portion of the first proposal that relates to the function of the judge, but it would seem that if this were modified to be similar to California's conciliation court in that attendance could be required and short-term orders could be issued, the objection of the court in the *Christiansen* case would be overcome

Analysis

We note at the outset that there is very little judicial authority in this field As for the *Christiansen* case, the statute under consideration

required that a written statement of intention to file a complaint in an action for divorce, annulment or separate maintenance be filed not less than 60 days nor more than one year before the filing of such complaint. The court could, by order, waive this requirement where immediate action is necessary to protect the interests of anyone who could be affected by the decree in the action. The judge was authorized during the period after filing the notice of intention and before filing the complaint to call in the parties to confer with him on a voluntary basis. The Illinois Supreme Court held this statute to be unconstitutional. The decision was based chiefly on the following provision of the Illinois Constitution (Art. II, Sec. 19):

"Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation, he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay."

The statute was held to deny the prompt justice required by this provision. As indicated by a subsequent case in the same court, it is only a compulsory waiting period before jurisdiction can attach that, in the view of the Illinois court, is objectionable (*People ex rel. Dotu v. Connell* (Ill.) 137 N.E. 2d 849). The court also commented (at p. 269):

"There is even less to be said in support of the requirement of a mandatory waiting period before the filing of a complaint for separate maintenance or the annulment of a marriage. It is difficult to see how any public policy could be served by deferring the filing of a complaint for the annulment of a marriage which is absolutely void, or the institution of a suit for maintenance and support by a wife who is living separate and apart from her husband without fault on her part."

Another ground of decision in the case was that the mediating function, with attendance voluntary and no decision to be made by the judge, was not one properly conferred on the judiciary. The requirement of separation of powers was violated.

The case has only limited interest in California because we do not have a provision in our Constitution like that in the Illinois Constitution relating to prompt justice. The remark about annulment and separate maintenance does seem to us to have relevance in California, as indicated below.

In discussing your questions we keep in mind two pertinent general considerations: first, the strong presumption of constitutionality that attaches to statutes; second, the very strong interest that the State has in preserving marriage (16 Cal. Jur. 2d "Divorce and Separation" Sec. 5).

We see no requirement of promptness of judicial action that is violated by any of these proposals. The principal issue that does occur to us is whether any of these proposals might be deemed arbitrary and capricious in particular applications. We assume that it is not contemplated that any of these procedures will be applied when the marriage is void and a declaration of nullity is sought, e.g., where the marriage is

incestuous A marriage is voidable on these grounds (1) one party under age of consent, and no cohabitation after age of consent reached; (2) bigamy (where not void); (3) unsound mind of party at time of marriage, unless reason subsequently returns and is followed by cohabitation; (4) consent obtained by fraud unless, with knowledge of fraud, there is cohabitation; (5) consent obtained by force, unless there is subsequent cohabitation; (6) impotency at time of marriage which is continuing and appears incurable It appears to us that a statute designed to encourage reconciliation might well be deemed arbitrary and capricious as applied to some or all of these cases, e g, encouragement of reconciliation where consent was obtained by force

We cannot agree with the suggestion in the *Christiansen* case that no public policy is served by requiring a cooling-off period or attempts at reconciliation in a separate maintenance action It is a policy of this State to prevent separation, to encourage the parties to a marriage to live together, and to encourage reconciliation of married persons who have become estranged

As stated above, the Illinois court found mediation, without authority to require attendance or issue binding order, not a proper judicial function This is certainly not incontrovertible A court could well find persuasive the analogy that the Illinois court rejected—that this is very similar to a pretrial hearing In any event, the objection of the Illinois court is rather limited and would be overcome, in our opinion, if attendance could be required and binding short-term orders could be issued, as under our conciliation court law

Very truly yours,

A C MORRISON
Legislative Counsel

By Terry L Baum
Deputy Legislative Counsel

APPENDIX Q

AVERAGE NUMBER OF DAYS ELAPSING BETWEEN PHYSICAL SEPARATION AND FILING OF DIVORCE COMPLAINT *

County	1956	1957	1958	1959	1960
Imperial -----	251	186	154	263	42
Kern -----	12	14	10	29	9
Orange -----	60	127	58	88	66
San Bernardino -----	120	150	165	120	150
San Luis Obispo -----	178	185	226	316	178
Santa Barbara -----	255	231	138	132	219
Overall -----	146	149	126	158	111

* The above figures are reported from each county on the basis of 50 divorce actions for each year, selected at random.

COMMENT: Presently, the parties to a divorce action have a considerable wait between their initial separation and the granting of a final decree. Considering six representative California counties, the average time between physical separation and filing of the complaint is approximately 4½ months. The further period between filing and entry of the interlocutory decree varies from county to county. In Sacramento County, which is above average in size, this period is approximately four months in default actions (over 90 percent of the divorce actions throughout the State are default cases). Add the interlocutory year to the above two periods and the average overall wait is approximately 20 months from separation to the final decree.

APPENDIX R

State	Religious officials	Judges	Justices of peace	Mayors	Notaries	Any person if marital duties acted in good faith	Parties may enter common law marriages
Alabama.....	X	X	X				X
Alaska.....	X	X					X
Arizona.....	X	X	X				
Arkansas (1) *	X	X	X	X			
California.....	X	X	X				
Colorado.....	X	X	X				X
Connecticut.....	X	X	X				
Delaware.....	X			X			
District of Columbia.....							
Florida.....	X	X			X		X
Georgia.....	X	X	X			X	X
Hawaii (2)	X	X		X		X	X
Idaho.....	X	X	X				
Illinois (3)	X	X	X	X		X	
Indiana.....	X	X	X	X			X
Iowa.....	X	X	X				X
Kansas.....	X	X	X				
Kentucky.....	X	X	X				
Louisiana.....	X	X	X		X		
Maine.....	X		X				
Maryland.....	X		X				
Massachusetts.....	X		X				
Michigan.....	X	X	X				
Minnesota (4)	X	X	X			X	
Mississippi (4)	X	X	X			X	
Missouri.....	X	X	X				
Montana.....	X	X	X	X			X
Nebraska.....	X	X	X				
Nevada.....	X	X	X			X	
New Hampshire.....	X		X	X			
New Jersey.....	X	X	X	X			
New Mexico.....	X	X	X	X			
New York (4)	X	X	X	X			
North Carolina.....	X	X	X				
North Dakota.....	X	X	X	X			
Ohio.....	X	X	X	X			X
Oklahoma.....	X	X	X				X
Oregon.....	X	X	X	X			X
Pennsylvania (5)	X	X	X				X
Rhode Island (5)	X	X	X				X
South Carolina (5)	X	X	X	X			
South Dakota.....	X	X	X				
Tennessee (4)	X	X	X				X
Texas.....	X	X	X				
Utah.....	X	X	X	X			
Vermont.....	X	X	X				
Virginia (10)	X	X	X			X	
Washington.....	X	X	X				
West Virginia.....	X	X	X				
Wisconsin.....	X	X	X				
Wyoming (11)	X	X	X				

* Footnotes begin below

FOOTNOTES

Not all jurisdictions permitting a class of officials to solemnize marriages permit all officials within that class to do so. Thus, if the chart indicates that judges, for example, can solemnize marriages, this does not necessarily mean that all judges in the state can so solemnize.

¹ The governor can solemnize marriages

² A party authorized by the board of health can solemnize marriages

³ The supervisors of public instruction for the deaf and dumb can solemnize marriages

⁴ A member of the board of supervisors can solemnize marriages

⁵ Recorders and city clerks can solemnize marriages

⁶ Aldermen can solemnize marriages

⁷ Courts clerks can solemnize marriages

⁸ All officials empowered to administer oaths can solemnize marriages. These include judges, clerks of courts, commissioners of deeds, notary publics, court masters, court referees, reorganization commissioners and security commissioners

⁹ The governor, the speaker of the house of representatives and the speaker of the senate can solemnize marriages

¹⁰ Any person authorized by the circuit or corporation court can solemnize marriages

¹¹ Court commissioners can solemnize marriages

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ASSEMBLY INTERIM COMMITTEE REPORTS
1961-1963

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NUMBER 2

REPORT OF THE
**ASSEMBLY INTERIM COMMITTEE ON MILITARY
AND VETERANS AFFAIRS**

To the 1963 General Session of the California Legislature
House Resolution No. 361, 1961

MEMBERS OF THE COMMITTEE

MYRON H. FREW, *Chairman*

FRANK LUCKEL, *Vice Chairman*

MONTIVEL A. BURKE

RONALD B. CAMERON

LOUIS FRANCIS

ROBERT MONAGAN

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MARGARET JUVENAL, *Committee Secretary*

Published by the

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OF THE STATE OF CALIFORNIA

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HON. CARLOS BEE
Speaker pro Tempore

HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk

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LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
SACRAMENTO, CALIFORNIA, January 7, 1963

HON. JESSE M. UNRUH
Speaker of the Assembly

MEMBERS OF THE ASSEMBLY
Assembly Chamber, Sacramento, California

GENTLEMEN: Pursuant to House Resolution No. 361, 1961 session of the California Legislature, your Assembly Interim Committee on Military and Veterans Affairs submits its report covering its functions and activities during the 1961-63 interim

Assemblyman Rex M. Cunningham was a member of the committee until he resigned from the Assembly on April 22, 1962.

Respectfully submitted,

MYRON H. FREW, *Chairman*
FRANK LUCKEL, *Vice Chairman*
MONTIVEL A. BURKE
RONALD B. CAMERON
LOUIS FRANCIS
ROBERT MONAGAN
DON MULFORD

REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON MILITARY AND VETERANS AFFAIRS

S.B. 857 RELATING TO THE POSSIBILITY OF ACQUIRING THE CORONA NAVAL HOSPITAL FOR USE AS A STATE VETERANS HOME OR HOSPITAL

INTRODUCTION

On August 14, 1961, the committee met at the University of California campus at Riverside to study the feasibility of acquiring the Corona Naval Hospital as a state veterans home.

SCOPE

S.B. 857 proposed an investigation to determine the advisability of acquiring on behalf of the State the Corona Naval Hospital for use either as a state veterans home or hospital.

The committee conducted an inspection tour of the surplus Corona Naval Hospital in Riverside County as suggested in S.B. 857. Following the inspection the committee convened at the University of California campus at Riverside for a public hearing on the matter.

Representatives of all major veterans' groups in the State presented testimony citing the need for more beds for veterans and told of delays in admittance to hospital facilities in Southern California.

After receiving this testimony the committee unanimously voted to send a telegram urging Congress to consider using the facilities as a new Veterans Administration hospital to provide the additional beds reported to be needed in Southern California.

Colonel Stanley Dunmire, Commandant of the State Veterans Home at Yountville, Napa County, presented a detailed study of costs if the Corona unit were converted to a state facility. In substance, the report indicated somewhat higher operating costs than experienced at the Yountville home would be encountered due to the physical layout and condition of the former naval facility.

Alan Post, Legislative Analyst, sent Chairman Frew a letter which was included in the report. The letter concluded:

"In conclusion, it is our belief that the State would be ill advised to take over this facility for any state purpose. The State's experience with other federal facilities which the State has occupied and used, clearly supports such a pessimistic attitude."

This matter came before the committee again at its hearing on October 16, 1961, in Los Angeles at which representatives of various veterans organizations testified in more detail as to the need for additional beds for veterans in Southern California.

On March 30, 1962, the State Department of Corrections acquired the Corona facility as an institution for the treatment of narcotics addicts. A rehabilitation program was underway at the end of the interim period.

Senator Clair Engle reported to the committee on August 10, 1962, that the federal government plans to spend \$25 million for more hospital beds for veterans in the Southern California area.

FINDINGS

Any discussion of the use of the Corona Naval Hospital as a veterans facility is moot since the hospital is no longer available.

There is an unmet need for hospital beds for veterans, as testimony given the committee indicates. There is evidence that the federal government plans construction which will help meet this need.

RECOMMENDATIONS

The committee at this time cannot recommend further expansion of the State's domiciliary and hospitalization program for veterans. This historically has been a field in which the federal government has been predominate, and rightly so. Further expansion promised in the Veterans Administration's facilities in Southern California, plus generous state and federal social welfare programs looking to the medical needs of all citizens, veterans and nonveterans alike, indicate no need for state action to expand a service which largely duplicates an existing federal service.

**A.B. 2344 RELATING TO A FIVE-YEAR CALL FOR
BIDS FOR LIFE INSURANCE COVERAGE FOR
PURCHASERS OF FARMS AND HOMES
UNDER THE CAL-VET PROGRAM**

INTRODUCTION

The committee met on October 16, 1961, at the State Building in Los Angeles to consider A.B. 2344, which would require the Department of Veterans Affairs to call for bids at five-year intervals for life insurance coverage for the buyers of farms and homes under the Cal-Vet program.

SCOPE

Since 1938 two insurance firms have jointly handled life insurance for purchasers of homes and farms under the Cal-Vet program under a contract negotiated by the Department of Veterans Affairs. They are the Occidental Life Insurance Company of California and California Western States Life.

The author spoke in favor of the bill.

Mr. John Engberg, State Commander of the Disabled American Veterans, spoke in favor of the bill, saying that it was felt that a periodic review of the program would be beneficial. He noted that his organization was not aware of any specific problems now existing in this area.

It was brought out that the Department of Veterans Affairs now has a policy of reviewing the life insurance coverage to assure that it is meeting the needs of those covered at a competitive cost.

FINDINGS

Since the Department of Veterans Affairs is now periodically reviewing life insurance coverage for purchasers of farms and homes under the Cal-Vet program, it was felt that no additional legislation in this field is needed.

RECOMMENDATIONS

No legislation.

A.B. 2731 RELATING TO PLACING A 10-YEAR CUTOFF DATE ON CAL-VET LOANS

INTRODUCTION

On October 16, 1961, the committee met at the State Building in Los Angeles to consider placing a 10-year cutoff date for otherwise qualified veterans to apply for a Cal-Vet farm or home loan.

SCOPE

A.B. 2731 would place a deadline for otherwise qualified veterans to apply for a Cal-Vet farm or home loan. The cutoff date would be 10 years after the discharge, or 10 years after the effective date of the act. There is now no cutoff date.

FINDINGS

There is at present no demonstrated need for a cutoff date for otherwise qualified veterans to apply for a Cal-Vet farm or home loan.

RECOMMENDATIONS

No legislation.

**H.R. 375 RELATING TO SUBJECT OF TEMPORARY
MILITARY LEAVES OF ABSENCE FOR PUBLIC
EMPLOYEES WHO ARE MEMBERS OF
FEDERAL RESERVE COMPONENTS,
NATIONAL GUARD, OR
NAVAL MILITIA**

INTRODUCTION

An opportunity for testimony on this resolution was given at the committee hearing in Los Angeles on October 16, 1961, and the main hearing was held at the State Veterans Home in Yountville on November 7, 1961.

SCOPE

Testimony was received from the State Military Department and from representatives of various veterans organizations concerning the desirability of maintaining the present regulation.

Under current law employees of public agencies in California may take up to 180 days per year of temporary military leave. They can receive their regular salary as a public employee, in addition to whatever military pay received, for up to 30 calendar days of their military duty.

No testimony was presented by those favoring more restrictive state military leave policies.

FINDINGS

The committee heard only one side of the argument in this matter. It received no information which would substantiate any reduction or increase in military leave benefits for public employees

RECOMMENDATIONS

No change in the present regulations is recommended.

A.B. 2915 RELATING TO PROVIDING CAL-VET LOANS TO BUILD BOMB SHELTERS

INTRODUCTION

On October 16, 1961, the committee met in Los Angeles to hear testimony concerning the extension of the Cal-Vet loan program to provide loans to build bomb and fallout shelters. Further consideration of this bill was given at the committee meeting at the California Veterans Home at Yountville on November 7, 1961.

SCOPE

A.B. 2915 would authorize the Department of Veterans Affairs to extend the Cal-Vet home and farm loan program to permit the State to advance loans for the construction of bomb shelters.

Committee Chairman Myron Frew began the hearing by stating:

This bill was heard by this committee during the 1961 session. Lacking exact information on the rapidly changing shelter plans of civil defense officials, the committee referred the bill out for interim hearings. Interest in bomb shelters has been stimulated by the Berlin crisis. However, there still remains considerable confusion about the most efficient way to protect our citizens from threatened nuclear fallout. Some hold the individual family shelter is the best answer and others believe a group shelter system would offer the best protection at the lowest cost to residents of urban areas. The family shelter, with which this bill is concerned, is believed to be more costly and generally less satisfactory.

Mr. Allan K. Jonas, Director of the California Disaster Office, testified in favor of A.B. 2915. He stated in part:

I have read the proposed bill, 2915, and find it worthy of your favorable consideration. Certainly this business of home versus community shelter, and the state and federal plans that are forthcoming, are unavoidably tied in with this consideration. It appears, as you stated in your introductory remarks, that the community shelter has been for some time the answer proposed by the State, and more and more is becoming the policy that the federal government is backing. However, it seems to be years off, since no crash program is contemplated. It would seem that next year's budget for the Department of Defense, now charged with a national shelter policy, may very well include, if Congress goes along, moneys for construction of community shelters. It will be years, however, before more than three square feet per person will be allowed, or available to the majority of our population.

There is this other factor which makes the family shelter worth considering. You can't abandon it because it may be years before the community shelter program may be a reality, and many fami-

hes feel that they would like to take out their individual insurance policy against such a disaster while waiting for the company to institute a group insurance policy of much less cost in two or three years. Also, people who live in rural areas, and I gather that your farm loans would include such people, will find that the family shelter is a more appropriate answer to nuclear fallout than the community shelter, because of the time, perhaps, required to get to such a communal center. Therefore, I see a need, and so does the federal government, for some encouragement of family fallout shelters.

Mr. John Handsaker, Administrative Service Officer in the Department of Veterans Affairs, testified on financing. He said that the department was in no position to discuss the merits of community versus private bomb shelters. He estimated the cost of a family bomb shelter to be about \$2,000. He said that at the end of August 1961, there were 124,243 contract holders. (In June 1962, California voters approved an additional \$250 million for the Cal-Vet program.)

Mr. Stuart Innerst, associated with the Friends Committee on Legislation of Southern California, testified against A B 2915. He stated, in part.

Let me say that our interest in this particular piece of legislation stems primarily from our opposition to the bomb shelter program in general. Because we consider the program unwise we are led to oppose any legislation, including A B. 2915, designed to advance it. We look with favor upon the concern for the safety and protection of veterans and all people against the ravages of nuclear war. As a nation, we profess to believe in the supreme worth of the individual and the need of keeping human values uppermost in our thought and conduct. Throughout the 300 years of their history, Quakers have opposed whatever is harmful to the individual and society, and have sought to minister to human need and suffering. It may seem strange, therefore, that we should question the current program of building bomb shelters which are intended to save human lives. Our reason for doing so is rooted in the conviction that this program tends to defeat the humanitarian aims which it claims to foster.

We therefore advise against the building of air-raid shelters as a wrong approach to our problem. It would only accentuate the shift toward war by increasing suspicion, fear and hostility on which war thrives. We urge that the time, energy and money that might be invested in the erection of bomb shelters be channeled instead into constructive efforts to prevent war.

Further testimony on A B 2915 was presented on November 7, 1961, at the State Veterans Home in Yountville.

Assemblyman Milton Marks, author of A B 2915, testified in favor of the bill. He stated, in part:

The question of a family versus community shelters is not the determining point. Both are necessary. I don't think it is necessary

for this committee or the Legislature or any agency of government to make a final determination that one as against the other should be carried on. Unfortunately, because of the international situation and because of the dangers with which we are faced, I think it will be necessary to have both types of shelter for the protection of citizens.

The reason I put this bill in is that I feel the State of California, when it first established the Cal-Vet program, established a policy whereby it would provide financial assistance on a loan basis to veterans of the State of California for the purchase of homes and in certain instances for reconstruction of homes that they now have. I think that policy has already been established. And so long as that policy has been established, I think that in view of the present world circumstances, that it is a perfectly proper extension of that policy to allow those veterans who feel in their heart that the way in which they can protect their own families is to build shelters for their families to allow those persons to borrow money from the State of California for this purpose. The question of the financial ability of California to carry on this program is one that I cannot give you a complete answer on because I have not been able to obtain complete information on this matter, but I am sure that this information can be obtained.

I think it is imperative to repeat that those of us who are in public life who represent the citizens of California take steps without further delay to provide assistance to the people of California to protect themselves if (and I hope this will never happen) this terrible disaster does fall upon us. And I think this is part of the program. I think we have a vehicle which can be used. I think also that the people of California, if necessary and if there are not adequate funds available, would be willing to provide additional funds for this purpose.

Mr. Carl Halterman, Assistant Manager of the Division of Farm and Home Purchases of the Department of Veterans Affairs, stated in reply to a question of estimated costs of construction of bomb shelters by Assemblyman Louis Francis.

We have considerable study on this point and we have used basically the suggested plans of the National Civil Defense Office—they have a brochure which they pass out to everyone which suggests the type of bomb shelter. We feel that on the basis of cost studies we have made, it would cost approximately \$2,000 for a minimum shelter for three people. And your cost would go up from that point. Now, this is on the basis of a small volume and you know there are all kinds of people at the present time who advertise themselves as bomb shelter experts at various prices. But on the basis of the information we have, we feel that the minimum may be \$2,000 at the moment for a shelter for three people.

FINDINGS

The committee feels that passage of A. B. 2915 is not desirable, since it would deal with only a small part of a much larger problem.

RECOMMENDATIONS

Crisis after crisis has been the story of world politics in recent years. Indications of any lessening of international tensions in the immediate future are slight. This being the case, the committee recommends to the 1963 Legislature that it carefully consider the needs of all Californians for disaster and emergency services, rather than attempting to meet the problem on an individual group, piecemeal basis

A.B. 3070 RELATING TO CONTRACTING WITH QUALIFIED VETERANS ORGANIZATIONS FOR REHABILITATIVE SERVICES FOR HOSPITALIZED VETERANS

INTRODUCTION

On November 7, 1961, the committee met at the State Veterans Home in Yountville to consider A B. 3070.

SCOPE

A.B. 3070 would authorize the Department of Veterans Affairs to contract with qualified organizations of veterans for rehabilitation services to be provided by the latter to veterans confined in hospitals under the jurisdiction of the federal Veterans Administration

It would appropriate \$60,000 from the General Fund to the department for such purposes

Contracts for claim services handled by various veterans organizations were dropped by the department in 1959 at an estimated annual saving of \$400,000 This bill would provide for a partial return to the earlier system of handling claims now handled by the department

No one appeared in support of the bill.

Mr John B. Engberg, State Commander of the Disabled American Veterans, testified. He stated:

There is a legal opinion from the Attorney General of the State of California that the State could not enter into any type of agreement with the veterans organizations to provide claims service counseling in the field of rehabilitation We did not know this at the time, and we put it in as an effort to get a ruling, which we did.

However, at this time the department cannot support A B 3070 on the basis of the ruling of the Attorney General and also because of the fact that the \$60,000, if it were allocated, would not be a sufficient amount to contract with the major veterans organizations which would provide claims services The Disabled American Veterans spends \$48,000 a year alone in California on maintaining our service officers When you remember that there is the American Legion and the Veterans of Foreign Wars who also have claims service officers, \$60,000 would not be an appreciable amount Therefore, we do not desire you to support this particular piece of legislation at this time.

FINDINGS

The matter was taken under submission by the chairman, and due to the Attorney General's ruling and the lack of interest evidenced at the hearing the matter was not pursued further

RECOMMENDATIONS

No legislation.

H.R. 24 RELATING TO "ARMISTICE DAY"

INTRODUCTION

On November 8, 1962, the committee met at the State Building in Los Angeles to receive testimony regarding H R 24.

SCOPE

H R. 24 proposed to memorialize the President and the Congress of the United States to enact necessary legislation to restore the 11th of November as "Armistice Day," rather than the present designation of "Veterans Day."

The author spoke in favor of the bill, as did several members of World War I veterans groups

After the hearing leaders of several other veterans groups expressed their opposition to the bill, asking that no change be made.

FINDINGS

The matter was taken under consideration by the committee. It was felt that the present "Veterans Day" designation of November 11 should continue as a fitting memorial to all the American veterans who served their country in time of national peril

The committee feels that individual veterans groups can mark "Veterans Day" with ceremonies of their own choosing.

RECOMMENDATIONS

No legislation.

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NUMBER 2

**ASSEMBLY INTERIM COMMITTEE ON
NATURAL RESOURCES, PLANNING
AND PUBLIC WORKS**

INTERIM REPORT 1961-1962

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JACK T CASEY, *Vice Chairman*

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November 1962

Published by the
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LETTER OF TRANSMITTAL

STATE CAPITOL, SACRAMENTO, CALIFORNIA
December 1, 1962

HONORABLE JESSE M UNRUH
Speaker of the Assembly
Assembly Chambers, State Capitol
Sacramento, California

Mr. Speaker and Members of the Assembly:

Your Interim Committee on Natural Resources, Planning and Public Works submits herewith the report of its activities during the interim following the close of the 1961 session

Contained herein are the findings and recommendations on the various subjects studied as well as a summary of the testimony received at these hearings.

It is hoped that the information contained herein may aid in reaching conclusions with respect to the problems of mutual interest

Respectfully submitted,

LLOYD W. LOWREY, *Chairman*
JACK T CASEY, *Vice Chairman*

LOU CUSANOVICH
LOUIS FRANCIS

WILLIAM S GRANT
VERNON KILPATRICK
CHARLES W MEYERS

FINDINGS AND RECOMMENDATIONS

ROADSIDE FIRES

Following the committee's first hearing on the subject on controlling roadside fires, the State Division of Highways in many areas exhibited a commendable attempt to eliminate the hazard and co-operated with the local fire districts in solving their problems. This is an example of the policy the committee has attempted to pursue which is to work out problems wherever possible without resorting to additional legislation. We feel this can be accomplished by having all parties concerned participate in public hearings. Better understanding and co-operation may be obtained and thus save the taxpayers large sums of money as well as avoid further cluttering the statutes with legislation which might not be essential in solving the problem.

The committee makes the following recommendations on roadside fires:

1. It is imperative the committee continue to review the roadside fire problem to be assured that the program which has been inaugurated is continued and expanded. With new chemical sprays coming on the market for the particular purpose of plant growth retardation or elimination, the committee should also review the success of the many pilot projects up and down the State with the idea of making more definite recommendations on the use of chemicals in the future.

2. In the areas where the State Division of Forestry assumes the responsibility for elimination of roadside fires, the Divisions of Highways and Forestry should enter into a contract whereby forestry would be reimbursed for the expenses incurred on state highway rights-of-way. The same policy should be pursued where the responsibility for responding to fires is assumed by cities and/or fire districts.

3. All highway mobile equipment should have adequate fire-arresting devices, and the various pieces of equipment should carry adequate fire-extinguishing devices.

FOREST PRACTICE ACT

Good forestry on privately owned lands in California was almost nonexistent until industry sponsored a bill in the 1945 Legislature which became the Forest Practice Act. With but a few minor exceptions there was no effective law to prevent an owner from destroying his land, the watershed and the fishing streams.

The Forest Practice Act was a good start. Its objectives were good. However, it now needs an appraisal of its weaknesses and the parts that have become outmoded with our expanding civilization need legislative action.

Presently the weaknesses of the act lie in three directions:

1. The penalty for violation of the Forest Practice Act is the cancellation of the operator's permit to log. Since the operator has no interest

in the future of the land, he makes a minimum effort at compliance. A law should be devised providing that the landowner share the responsibility for compliance.

2 Rules are not sufficient to be enforceable as a legal instrument. As a result, cumbersome enforcement procedures cause long delays in handling violations and in the meantime, violators disappear.

3. Under the Forest Practice Act, no responsibility is placed on the owners or loggers for the protection of public values in water, fishing and recreation.

Under the Forest Practice Act, a timberland owner may file an affidavit of his intention to convert his land from timberland to range or agricultural land. After such conversion the forest practice rules no longer apply. This is an artifice to escape the forest practice rules and avoid any requirements for reforestation, and it appears there should be some discretion in allowing this privilege.

Large timberland owners are exercising leadership within the industry but visualize no effective way to control the many operators who have no financial interest in future timber production to comply with the regulations under the Forest Practice Act.

The State Division of Forestry operates under a set of laws passed by the Legislature, and the State Forester along with leaders in the industry are securing some improvement in the forest practice rules. Still there is a long way to go to get a set of rules that will provide for a minimum of good forestry.

Those acquainted with the Forest Practice Act agree that remedies should be applied and suggest these items be explored:

1. A form of legislation which would have the landowner share with the operator the responsibility for compliance with the adopted rules.

2. Legislation that would provide for the protection of certain public values should be considered.

3. Place more teeth in the law giving authority for final interpretation of the rules to the State Forester.

4. The timber operator be required to post bond to assure compliance. This bond would be collected only if the operator violated the act and moneys were necessary to correct the violation.

5. The Forest Practice Act be amended to make the alternate plans provision of the act more easily obtained and such amendment should give some power of approval to the local state ranger who is familiar with local silvical requirements.

6. The technical requirements of the act should be simplified both in content and in language to achieve the desired results of continued productivity and hazard reduction.

7. Ambiguous wording in the Forest Practice Act makes it difficult for the Division of Forestry to fix responsibility for rules compliance on the primary part controlling timber operations. The enforcement procedures should be strengthened so that the punishment commensurate with the crime can be applied quickly.

8. There is great need for more assistance in the Attorney General's office so that matters having to do with the Forest Practice Act can be diligently pursued as soon as possible when they are brought to the

Attorney General's attention. Certain personnel should be permanently assigned to this field similar to the procedure that is followed with cases referred to the Attorney General from the Department of Fish and Game.

DIVISION OF FORESTRY

It became apparent as the committee viewed the activities of the Division of Forestry that there is a need for closer co-ordination between state, county and local officials which could probably be corrected by clear-cut plans being established to meet any emergency which might develop. There is particular need for such co-ordination in all areas of great fire hazard.

From testimony received, we would recommend:

- 1 That counties be asked to pass ordinances which would require the inhabitants of our forested areas to assist in a matter of self-preservation. This could be accomplished through requiring all owners of dwellings to clear brush and debris from around their dwellings to a minimum of 120 feet and to have adequate water in containers available on their property to extinguish fires. Most important is that these ordinances, if passed, be regularly checked for compliance.

- 2 Civic organizations could and should launch an educational program in their communities in methods of abating fire hazards.

From testimony presented by Fred Engle, Deputy Director of the Department of Corrections, it was stated that by 1965 we will have over 3,000 inmates actually occupying conservation camps and should have roughly 3,500 more in the process of training for camps at the branch centers. With this amount of manpower available plus the large amount of heavy equipment operated by the Division of Forestry, it appears to the committee that immediate steps should be taken to inaugurate a systematic program of processing firebreaks and fuel elimination in the most hazardous fire areas of the State. Further, after the breaks have been established, annual inspections should be rigorously followed so that subsequent growth will not destroy the value of the strips after they are once established.

The United States Forest Service has an intensive program for constructing fuel breaks through the national forests in California. It is recommended that the Division of Forestry give serious consideration to this type of fuel-break program for the forest lands in California at once.

RECREATIONAL POTENTIAL OF THE KERN RIVER VALLEY

Extensive testimony was heard and great interest exhibited by the people of the area in the recreational potential of the Kern River Valley. Much of the area with the greatest potential is under the jurisdiction of the United States Forest Service, and while there are no definite recommendations which may be made by our committee in areas of federal jurisdiction, we feel it incumbent upon us to report the recommendations of the people who appeared.

Of perhaps the greatest interest to the people of the area is the need to increase the capacity of Lake Isabella to a 110,000-acre-foot-minimum pool in order that its full potential as a recreational area may be utilized. Inasmuch as Lake Isabella is under the jurisdiction of the

United States Corps of Army Engineers, it will be necessary to ask the corps to reanalyze their flood control criteria and increase the capacity of the reservoir in order that it may be used not only as a flood control project but for recreational purposes throughout the year.

The local people are also very interested in establishing a winter sports area adjacent to the Kern River Valley. This area is within traveling distance of the highly populated areas of Southern California, and would offer great potential as a winter sports area.

In order to reach the Kern River Valley, traffic must traverse a winding, narrow two-lane highway. It is recommended that priority be given to construction as soon as possible of an adequate highway between Bakersfield and Lake Isabella. The Division of Highways has included such a highway in their future plans for the area, but the people of the area would like this highway to be given a higher priority. (As of November 1962, the State Highway Commission allocated \$325,000 for acquisition of rights-of-way from Democrat to Lake Isabella.)

BAY AND WATER POLLUTION

Great interest was shown by all people who testified before our subcommittee in securing a federal water pollution research facility to be located in California. As pointed out, California's water problems are unique and therefore there is great need for a federal facility of this kind.

Several recommendations were made to the committee at the various meetings. Among these were:

- 1 That the regional water pollution control boards be given the power to set standards on any proposed sewage disposal plan which is contemplated to be constructed.

- 2 The method of sewage disposal from Mexicali, Mexico, falls far short of that which should be expected from a 20th century city. The witnesses asked that the California Legislature forward a memorial resolution to the United States Congress petitioning its assistance in correcting this sanitation problem.

- 3 The City of Imperial Beach is very concerned about the discharge of raw sewage into the ocean by Tijuana, Mexico, five miles below the border. They ask that a memorial resolution be forwarded to Congress asking for their assistance in this pollution problem.

Among other subjects heard by our Subcommittee on Bay and Water Pollution were Assembly Bills 3056, 3057, 3089 and 3091.

One proponent appeared in support of A B 3056 which would require that a professional engineer certify as to the adequacy of the sewage treatment plant to handle additional sewage brought into the plant by the construction of new subdivisions. While this proposal has merit, the committee makes no recommendation.

A B 3057 declares that the office of member of a regional water pollution control board is not incompatible with the office of any elected city or county officer. It was pointed out that it might be difficult for an elected city or county officer to make recommendations on

the adequacy or need for sewage discharge requirements for the city or county which he serves as an elected official. The committee makes no recommendation.

A B 3089 would add two members to the State Water Pollution Control Board, one being a member of a regional board from the North and one a member of a regional board from the South. The state board acts as an appeal board for the regional boards, and therefore the added members would act as both trial judges and appellate court judges. Therefore the committee makes no recommendation.

A B 3091 would require the reporting of any proposed discharge of untreated sewage or industrial waste, together with treated sewage of industrial waste or storm or flood waters, to the regional water pollution control board. The consensus of opinion was that this matter was adequately covered in Section 13054.1 of the Water Code and no additional legislation is needed.

ROADSIDE FIRES ON STATE HIGHWAY RIGHTS-OF-WAY

ARBUCLE, CALIFORNIA, October 17, 1961

INTRODUCTION

The great incidence of roadside fires on state highway rights-of-way brought requests from numerous fire chiefs' associations for extended fire hazard control by the State Division of Highways. The main concern has been the weed and grass control along the highways and the statewide policy to mow and mulch.

Several surveys have been made by the State Division of Highways to determine where changes of methods could be made which would be compatible and beneficial to the interest of all concerned.

The State Division of Highways fire hazard control program, where it exists, consists in some instances of maintaining a clean strip of ground where, in the division's judgment, there is an apparent need due to flammable vegetation and physiographical conditions which might lead to uncontrolled fires which could do great damage and cause great expense to control. Further, the statewide policy governing road-sides is based on the premise that the best interests of the Division of Highways are assured when a turf is maintained whose purpose, it is argued, is to retain soil, prevent dust and erosion.

It was proposed by the several fire chiefs that the State do advance burning but the proposal does not meet with the approval of the State Division of Highways' officials for the following reasons:

The State Division of Highways does not wish to incur the liability in case adjacent private properties are burned by these fires with resultant damages. They contend that a burned right-of-way is not pleasing to the aesthetic senses. The State spends a large sum of money in maintaining a neat appearance along highways and in keeping with this policy does not desire to do any considerable burning.

SUMMARY OF TESTIMONY

(Complete testimony is on file in the committee chairman's office.)

The Colusa County Fire Chiefs Association became so concerned about the roadside fire problem on state highway rights-of-way that they circulated a petition to 492 fire departments in 43 counties from Fresno north. Out of the 492 kits mailed, they received 117 completed reports at the time of our hearing. The following information was indicated in these reports.

	1960	To Oct 1961
Number of fires reported during the season-----	1,129	840
Number of man-hours each fire-----	705	400
Total number of man-hours for the season-----	28,161	25,270

No cost per man-hour was included because many departments had only volunteer help. The number of paid firemen involved totaled 1,610. The number of volunteer firemen totaled 2,641. The cost of operation from 40 departments reporting out of 117 for 1960 totaled \$71,023.44, for 1961, the cost of operation from 38 departments out of 117 reporting totaled \$66,218.94.

From the above, it is apparent that this is a great cost for the local fire districts to contribute to what they consider a state obligation.

Many of the fire chiefs representing fire districts throughout Northern California voiced objection to the State Division of Highways method of mulching the roadside grasses and weeds. They complained that the mulch often builds up to four inches in thickness which creates a feed bed for cigarettes, matches and hot carbon.

The State Division of Highways voiced objection to the proposal of many of the firemen to grade along the rights-of-way. Their objection was that such grading was unsightly.

Some counties are experimenting with the use of chemicals to retard the growth of roadside weeds and grasses, and one county reported that to treat an eight-foot swath along the roadside for one mile an average application costs around \$25 to \$30 per mile.

Carl Thiele of the Spring Lake Fire Department, Yolo County, reported that his department fell heir to roadside fire prevention through a county noxious weed abatement program. After starting the weed abatement program, they found no fires on county roads which had been treated for weed abatement but continued to have fires on state highways. This was recorded in a letter to the District III office of the Division of Highways in Marysville, and at their request, the department made a survey and found 17 incidents of roadside fires in one district that had approximately 10 miles of state highway. At a rate of \$2 per hour for volunteer firemen, the cost of these fires for labor alone was \$256. Figuring the cost of apparatus at \$50 per alarm, the total cost came to \$1,106 on 10 miles of state highway or an average of \$110.60 per mile to suppress fires on state highways.

The taxpayers within the Spring Lake Fire District were bearing the cost of a state obligation. Compare this with no cost for county roadside fire work in approximately 65 square miles of county and secondary roads since 1957 when they started their weed spraying program.

To spray an eight-foot strip a mile long costs about \$25 per mile which is considerably less than \$110.60 per mile to suppress fires on the state-owned rights-of-way. No erosion was found, and the Yolo County Superintendent of Roads mentioned that the program of weed abatement through chemicals entailed less road grader work on these roadsides.

C. E. Green, Fire Co-ordinator for Solano County, reported on the 36 miles of heavily traveled State Highway 40 in Solano County. Up to October 1961, they reported 243 roadside fires for a total cost of \$8,390 involving 1,111 man-hours at \$3 per hour. Including a cost of \$10 per hour per unit for equipment use, the cost averaged \$233 per mile to suppress these fires.

In 1951, the Solano County Board of Supervisors and five fire districts in Solano County entered into a contract with the State Division

of Highways to control burn state highway roadsides in Solano County for an amount of \$1,000 per year. For the period of nine years up to last year (1960) their fire calls on Highway 40 were at a minimum. In 1961 the Division of Highways went to a rotary mower clearing, and it is believed that this is the biggest reason for the great number of fires this year as this mulching leaves a perfect bed for cigarettes and sparks. Solano County is also noted for its winds in the Suisun Valley which create great problems in fire suppression. Solano County control burned the roadsides for nine years and received no criticism as to erosion.

Over the past 17 years, the Division of Forestry has worked on many different systems and experiments in roadside hazard reduction from discing to sterilization and many other methods. Periodically, as reported by Francis Raymond, State Forester, the Division of Forestry has reviewed these problems with the Division of Highways. They are now working with the Division of Highways on a new survey covering 35,000,000 acres throughout the State.

George Arens, Chief of the Arbnuckle-College City Fire Department, reported that their district which is a very small district had a total of 33 roadside fires up to October 1961, for a total cost of \$1,578, or approximately \$311 per mile to suppress fire on 14 miles of State Highway 99W. He questioned that there would be a problem of erosion if the State Division of Highways were to control burn their right-of-way inasmuch as the railroad has burned their right-of-way parallel to 99W for the past five years and they have made no complaint of erosion.

In response to a question, Kenneth Nellis, attorney for the Division of Highways, stated that there are provisions in the Streets and Highways Code and the Vehicle Code which gives authority to the division to abate any nuisances that exist on the highway right-of-way.

Frank Baxter, maintenance engineer for the Division of Highways, stated that there are approximately 14,000 miles in the state highway system, and only about one-half of that would be subject to the conditions discussed at this hearing, namely, flat, more or less rural highways. One lineal mile equals two roadside miles, and on a four-lane divided highway, each lineal mile equals four roadside miles. In the 7,000 miles involved in this problem, there is considerable divided highway or about 18,000 exposed roadside miles that must be considered.

It is the practice of the division to provide a firebreak in most of these areas, and this firebreak is either placed adjacent to the roadside or at the fuel line. The remaining area of sod is mowed to prevent soil erosion by one of two methods. One is the sicklebar mower which is a rotary mower that leaves a mulch on the road. This growth is kept down to a uniform neat appearance, it takes three to five mowings a year at an annual cost of \$25 to \$30 per acre-mile. In addition, in most counties, the Division of Highways contributed certain funds to the county agricultural commissioner who does weed suppression and control on state highways. Generally, weed control consists of spot burning of noxious weeds. It does not consist of a full roadside treatment for fire suppression. Even with the program as outlined above, there are

still fire, on roadsides, but the division provides a protection that will keep the fire from spreading to adjacent property by reason of the firebreak, mowing and spot burning

The Division of Highways is presently spending quite a sum of money in preventing erosion through reseeding and planting of ground cover material. This is good highway practice because it stabilizes the soil, improves the landscape for the public, and prevents a costly program of replacement after erosion has taken place.

The Division of Highways is opposed to denuding the rights-of-way because of the general appearance, erosion and the cost of replacing the soil.

LIST OF PERSONS TESTIFYING BEFORE COMMITTEE

Arbuckle, October 17, 1961

Arthur Hamblin, Secretary, Colusa County Fire Chiefs' Association
 Marion Brown, Fire Chief, Maxwell Fire District
 Wilbur C. Disney, Agricultural Commissioner, Colusa County
 Carl Thiele, Assistant Chief, Spring Lake Fire Department, Woodland
 C. E. Green, Fire Co-ordinator, Solano County
 Francis Raymond, State Forester, Sacramento
 George Arens, Chief, Arbuckle-College City Fire District
 A. J. Petsche, District Manager, Pacific Gas & Electric Co., Colusa County
 Eldon Landback, Senior Deputy, State Fire Marshal's Office, Sacramento
 Gayle Smith, Division Manager, California Pacific Utilities, Colusa County
 George Payne, Chief, Fan Oaks Fire District
 Wm. Fairfield, Chief, Dixon Fire Protection District
 Herman Hartwig, Chief, Madison Fire District
 Grant Morse, Assistant Forester, United States Forest Service, San Francisco
 Richard Sanborn, Chief, Meridian Fire Department
 Ralph Nissen, Chairman, Williams Fire District Board
 Ken Nellis, Legal Section, Division of Highways, Sacramento
 Frank Baxter, State Maintenance Engineer, Division of Highways

ROADSIDE FIRES ON STATE HIGHWAY RIGHTS-OF-WAY AND OTHER FIRE PROBLEMS

Sacramento, California, February 19, 1962

INTRODUCTION

The purpose of this hearing is to promote public security by eliminating fire hazards which result in great annual financial losses to the people of the State

Sprouting grasses is a maintenance problem on thousands of miles of state, county and private roads and until recently mechanical methods, such as cutting, mowing, bulldozing and discing were the only means used to keep the roadsides clean. But now chemicals have been found that if used correctly will control all types of vegetation. Chemical and spray equipment for forest protection, brush control, fuel- and firebreaks are available and have proved successful and economical.

The problems and operating procedures in regard to contracts for ground and air equipment to aid the Division of Forestry in fighting fires and the continued search for better ways to accomplish the job is a "must" if fires are going to be prevented.

SUMMARY OF TESTIMONY

(Complete testimony is on file in the committee chairman's office.)

Emerson W. Rhyner, Attorney, State Department of Public Works: At the time of the meeting of this committee in Arbuckle on October 17, 1961, the committee requested the Division of Highways to review its operations and see if the roadside fire problem could be overcome. The division has made some changes and is very hopeful that this new program will resolve the problem. This morning we have with us Mr. Tinney and Mr. Bosworth of the division who will describe to you just what the division proposes to do for your consideration.

Edward L. Tinney, Maintenance Engineer, Division of Highways: We are currently revising our policy of roadside fire control to provide treatment on the outside of the paved shoulder making a total of 12 to 16 feet of area virtually fireproofed. Two years ago we were treating approximately 4,000 roadside miles for fire control and the current year we will treat approximately 5,500 roadside miles. This would be 3,500 highway miles that are being considered for treatment. This pattern is subject to change as conditions change and we are able to adjust it in accordance with the needs which occur with the fire season.

Horace N. Bosworth, State Highway Landscape Architect: We have a map prepared to indicate the spread of the program and where the need has been indicated by fire occurrences or by extremely hazardous conditions or by local requests that have been justified with facts. We have extended our mileage treatment program. For a total cost of approximately \$200,000 or an average of \$40 per acre we are sterilizing

six- to eight-foot strips totaling 3,676 miles, two feet of fence line spraying or 486 miles and a blade strip of 1,368 miles making a total of 5,500 roadside miles throughout the State.

In addition we stepped up our roadside cleanup work, not only in picking up and removal of litter but with the use of more burners to clean up ditches. These are specifically for ditch cleaning and not necessarily for fire control although the incidental effect is there. Further, we enter into service contracts with the county agricultural commissioners to control noxious weeds along the highways, and we reimburse the counties or the agencies for the work they have done. This in effect adds to roadside fire control. However, that is complementary to the program and the noxious weed control stands alone by itself.

Carl F. Twisselman, California Cattlemen's Association: Production of livestock is the major use of much of our wildlands, and relies on grazing from more than 44 million acres. The management of these wildlands is of vital interest to the cattle people and it is time for the people of California to realize and understand the wildfire hazard in California and promote accelerated programs for fire hazard reduction.

Eugene H. Bertsch, Deputy State Forester: Records of man-caused fires show that the number of fires starting along all highway roadides will consistently average about 30 percent of the annual total. This percentage of fires starting in the area of state responsibility includes all roadside fires—state highway, county and private roads. Although the exact breakdown in numbers has not been determined, the roadside fire spot occurrence indicates quite clearly that the majority (about 70 percent) occur along county and private roads. The reporting procedure shows the ratio of fire occurrence between fireproofed and non-fireproofed roads for the past six years varies from a low of 3 per 100 fires to a high of 10 per 100 fires. The term fireproofed means different things to different people. Fireproofing generally means removal or treatment of roadside vegetation by fire burning, chemical spraying or mechanical discing or mowing or by physical removal of the vegetation. The effectiveness of any of these methods is dependent upon the width of the area fireproofed.

In our conference and discussions with state highway officials at all levels, the primary items considered in analyzing the problem include a breakdown of the reported fire causes. These are grouped into incendiary, smokers-tobacco-matches, vehicle exhausts and others, including traffic accidents and mechanical deficiencies involving defective or overheated brakes.

A summary of the problems as reported were in areas of concentrated population, heavily traveled highways, recreational areas, grass and debris at the mouth of culverts, mowed grass and weeds. Action to eliminate or reduce some of the problems include planting of iceplant in certain locations, more selective fireproofing treatment and closer co-operation at local levels.

George Hamilton, Geigy Chemical Company, Fresno: We are interested in a program based on something other than fire containment or fire suppression. Our concept is based on eliminating the sources of fire. We wish to emphasize the use of chemicals to eliminate this fire hazard. Modern chemical weed control is rapidly replacing mechanical

and hand weeding. The two materials produced by the Geigy Chemical Company and now being used extensively for weed control at this time are Simazine and Atrazine.

Bryant Washburn, Agrichem Industries, Davis: These gentlemen have covered this field very adequately. However, I would like to add that a new concept of chemical weed control has developed through experimentation in co-operation with the State Division of Highways and the University Extension Service and the chemical companies. Where we had a high concentration of material it eliminated all humus and rootlets. Now with these lower concentrates the weeds are allowed to germinate. Thus there are root stocks in the soil to keep the group from eroding and moving sideward into adjacent orchards or agricultural lands or ornamental plantings. This is very important. Also the lower application rate has reduced the cost of roadside weed control and has brought it down to the very economical figure of \$15 to \$25 per acre.

Quoting from an article, "Better Roadside Weed Control" in the October 1960 issue of *The American City*, Assistant Fire Chief Carl Theile of Yolo County stated that with this new program he has not had a roadside fire in a year and a half, and in the old days, Mr. Theile had to fight as many as six fires a day. Regarding costs for this type of program, figures presented by Mr. William Hopkins, Secretary of the California Weed Conference to the conference in 1961 used figures of \$15 to \$25 per eight-foot width roadside mile or roughly for one acre annual application.

Grant A. Morse, Assistant Regional Forester, United States Forest Service: I am very happy to corroborate the information given to you by the Division of Forestry this morning as to the importance of control of roadside fires. One very general and preliminary figure from studies is that one-quarter of our man-caused fires would not have started if all roadsides had been fireproofed for a distance of 50 feet. This checks very closely with the information that was given you this morning that about 30 percent of the fires handled by the Division of Forestry were roadside fires in origin.

I would also like to point out that the total number of fires that could be affected by this is a substantial number. Last year on the national forests in California we had 829 man-caused fires. We also had a record number of lightning fires about which I don't think this committee is going to do very much immediately, but we would be very interested in any suggestions.

At present there is underway in Southern California a fuelbreak activity. This is now being expanded on a trial basis in the central Sierra area. It might be well to point out for the record the different kinds of fuelbreaks. Fuelbreaks are conceived to be generally more or less wide strips or blocks that fit the topographic situation and are designed to have a minimum maintenance cost once they are established, whereas firebreaks are narrow lines that require periodic renewal and costly maintenance almost each year.

The fuelbreak program for the national forests which is being considered by Congress and which we hope to have completed in the next 10-year period will involve fuelbreak activity in the nature of 11,000 miles at an outlay of \$71 million on the national forests in California.

Harold Bowhay, Chief of the Fire and Rescue Division, California Disaster Office: I have been asked to explain to the committee how 100 firetrucks that are assigned to the California Disaster Office operate on fires and reason for requesting that they be equipped with booster pumps. The specifications set up by the federal government for this apparatus was for structure firetrucks. The trucks were to be equipped with 1,000-g p m pumps, 500-gallon water tank, 1,000 feet of 2½-inch hose, 500 feet of 1½-inch and other necessary fire equipment.

Last year the State of California experienced the worst fire season in 25 years and we had over 50 of the civil defense firetrucks on timber and watershed fires in Central and Northern California at one time. For the year the civil defense trucks responded on 408 large timber and watershed fires and 514 structural fires.

Last spring the State Fire Advisory Committee met and recommended that due to the tremendous use being made of the civil defense equipment on watershed fires, all of the 100 trucks be equipped with small portable pumps making it possible for them to pump while in motion. This would make the present equipment more effective when called on large grass, grain, timber and watershed fires. In order to accomplish this it will be necessary to amend the present budget.

Mr Bowhay showed a series of photographic slides of trucks and pumps obtained through federal surplus properties that have been converted into from 500- to 3,000-gallon pumpers by local firemen in their own shops. The pictures showed some of the equipment as it was first received and after it had been reconditioned. Rebuilding and reconditioning of equipment would be a valuable program that could be solved through the Department of Corrections at very little cost to the State.

Francis Raymond, State Forester, State Division of Forestry: I would like to outline the problems and operating procedure under which we conduct our business in regard to contracts, first on the ground equipment and second, on the air equipment.

Under Article 1, Chapter 1, of the Public Resources Code, describes the responsibility of the State and the plan called for in the statutes is in existence and is on file with the State Board of Forestry as well as the Department of Finance. It is a document known as the Organizational Inventory and Plan of the State Forester.

Ground forces: Prior to the commencement of any fire season each fire officer determines where in the local area he can obtain bulldozers, transports, jeeps, trucks, buses, etc. We believe it is fully appreciated that when the fire officer has need for these additional ground forces the need is critical and there is little time to carry out lengthy negotiations surrounding the hire. To aid the forest officer and those parties who have equipment available for the suppression of project fires, we have developed an equipment rental agreement which sets out the condition of hire and obligation of both parties. Each word has been carefully chosen to make the contract as simple and understandable as possible.

Our system seems to work fairly effectively both from the viewpoint of the State in getting its job done and that of the owner of the equipment. While confusion sometimes arises under stress of the going fire, it seems to be at a minimum considering the emergency situations with

which we have to cope I might point out some of the figures here that we have involved in this matter of hiring equipment. During the fire season of 1961 we expended for emergency fire suppression funds a total of \$442,070 for a project fire ground equipment. In addition we paid out \$19,444 to cover the cost of damages accrued in accordance with the terms of our rental agreements.

Air force: Since 1930 the Division of Forestry as well as the United States Forest Service has used aircraft for various purposes, particularly for detection and observation of going fires and for transport of firefighting personnel. It was not until 1956 that a real breakthrough was made and aircraft was used to any extent for the purposes of dropping water or fire retardants as an initial attack tool on project fires.

We utilize the air attack under the same situations that I have described for the ground forces. The problems we are confronted with are similar in nature but intensified. At the present time, we have three distinct and separate arrangements to provide for an air attack program. The first one is a standby and use contract. This contract provides that an aircraft and pilot contract solely to the State to perform the services required and must be available on the call of the State for which we provide a guaranteed sum whether the aircraft is used for fire suppression or not.

The second form or type is such that the contractor does not solely contract his services to the State. He does not stand by at a given location but is free to provide services to other agencies if he so elects. However, we provide a minor sum as a maximum guarantee to encourage him to stand by for state purposes as much as is practical.

A third type is something less than a predetermined regular contract. When situations arise where we have need for aircraft, particularly for transportation and when time does not allow us to negotiate the exact conditions of hire.

We cannot foresee that we will ever be able to eliminate hiring aircraft in this manner even though many complicated situations arise concerning rates of hire and responsibilities to parties which are often not simple to adjudicate. To give you an idea of the magnitude of expenditures for aircraft standby and rentals, for the period July to November 10, 1961, a total of \$520,448 was expended.

In summary, we can state that while we must continually search for better ways to get the job accomplished, it is our feeling in the situations that arise which are difficult to equitably adjust, we seem to be accomplishing our objectives with a minimum of confusion and with equity both to the public interest and the interest of the owners and operators of the equipment.

Mel Pomponio, Deputy State Forester: I would like to make a comment concerning the damage by an operator on our payroll to a piece of rental equipment. The State of California would assume the liability for the damage to the tractor because at that specific time the operator was an employee of the California Division of Forestry. We would have to assume that particular damage that was created at that time. On the equipment rental form there is a provision in the contract to set up conditions whereby either the State will hire the

particular piece of equipment with or without operator. There are situations where an owner wishes to rent his equipment with operator since he feels that his operator is more familiar with the equipment and can operate it effectively. There are cases where something happens which might be classed as a negligent operation. The decision as to whether it was a negligent operation rests with the fire officer and the State Forester, and when such a situation does arise where there is a judgment factor involved as to whether this was a hazardous situation or negligent operation, we attempt to resolve that in every case in favor of the owner-operator. Situations will arise where it was an absolute negligent operation, and those of us who are concerned with fire control matters cannot in good conscience pay for those damages because if we did, we expose the State of California to all types of claims that may arise because of fire conditions.

C. T. Jensen, Independent Aircraft Contractor: We have had a problem that has existed with the State of California in that their bid contracts call for the State being in a position of not being responsible in the event of an accident to the independent operator who flies his own aircraft. Is there some way that this committee can show the way or ask the Industrial Accident Commission or someone to provide some sort of insurance for the individual flying his own aircraft.

The State's position is that when an independent aircraft operator signs a contract he agrees that the State is free of all costs and damages other than normal breakdowns. Only when he flies into the side of a mountain and he is dead and gone does it become an employee-employer relationship and the Tort Claims Act takes over. (See Government Code, Division 4, Part 1, Chapters 1, 2 and 3.)

The underwriters are concerned with government agencies who renege from their responsibility to operate under the Tort Claims Act. Only four companies including Lloyds of London write this type of insurance, and two of them have documentarily committed themselves that flights of a hazardous nature are not covered in any sense or manner until they understand just how the Tort Claims Act is going to be handled.

DeWitt Nelson, Director, Department of Conservation: There are many unanswered questions to this problem and I think this discussion points up something that we should all recognize. This is a new program in the field of firefighting and we are having growing pains. The solutions of many of these problems are going to have to be evolved as we gain experience. We are doing our best to work with aircraft operators in every way, counseling with them on all phases and I think headway is being made.

Wayne Hubbard, Kelco Company: We manufacture Algin, a water-thickening agent, derived from giant kelp of the Pacific Ocean and has been successfully tested as a fire retardant and suppressant on grass and brush. The tests were conducted by the California Division of Forestry, San Diego County Range Unit No. 4 in co-operation with the Kelco Company, San Diego, California.

For all practical purposes, Algin weighs exactly the same as water, 8.34 pounds per gallon. It is not a sterilizer. It is nontoxic and when added to water it absorbs more heat energy than plain water. After

the water evaporates, the Algin dries to a tough film which seals off the fuel from oxygen thus preventing combustion and rekindling Tests have been favorable and costs are no more than some chemicals and lot less than chemicals most widely used to date

Subsequent to the hearing, the committee received a comprehensive report from **Warren R. Newall, Technical Representative, Naugatuck Chemical Company**. Following is a summary of the report entitled, "1962 Project Report, MH-30, Winter Annual Grass Growth Inhibition for Fire Protection on California Highways"

It is estimated that during the past year more than \$1,500,000 was spent controlling fires along highway rights-of-way by government agencies Most of California's roadsides have a typical vegetation and precipitation pattern and the winter rains produce a rapid-growing vegetative cover composed primarily of winter annual grasses During the long dry season this vegetative cover constitutes a serious fire hazard

The California Division of Highways has initiated a co-operative program under the direction of Mr A T. Quayle, Highway Landscape Supervisor, with the objective of economically reducing the roadside fire hazard conditions

Tests prove MH-30 is a grass growth inhibitor which is able to produce the type of ground cover desired—a pleasant appearing vegetative cover, low in height which can be fireproofed

Applications were made covering 10-foot widths at a cost of \$11.99 per roadside mile \$500,000 is approximately one-third the reported cost of controlling fires on California roadsides in 1961 This amount of money would pay for enough MH-30 to treat a 10-foot width on both sides of 20,833 miles of roadside at a 2-pound-per-acre rate of application

PERSONS TESTIFYING BEFORE THE COMMITTEE

- 1 Emerson W Rhyner, attorney, State Department of Public Works
- 2 Edward L. Tinney, maintenance engineer, Division of Highways
- 3 Horace N. Bosworth, State Highway Landscape Architect, Division of Highways
- 4 Carl F. Twisselman, California Cattlemen's Association
- 5 C. E. Green, Fire Co-ordinator, Solano County
- 6 Eugene H. Bertsch, Deputy State Forester
- 7 George Hamilton, Geigy Chemical Company
- 8 Robert Little, Geigy Chemical Company
- 9 Bryant Washburn, Agrichem Industries
- 10 Ray Hunter, California Farm Bureau Federation
- 11 Grant Morse, Assistant Regional Forester, United States Forest Service
- 12 Harold Bowhay, Chief, Fire and Rescue Division, California Disaster Office
- 13 Wilbur C. Disney, Jr., Agricultural Commissioner, Colusa County
- 14 W. E. "Ed" Greene, Oregon Ag Chemicals
- 15 Francis Raymond, State Forester
- 16 Mel Pomponio, Deputy State Forester
- 17 C. T. Jensen, independent aircraft contractor
- 18 DeWitt Nelson, Director, Department of Conservation
- 19 Merrill White, Amchem Products Incorporated
- 20 Wayne Hubbard, Kelco Company
- 21 Warren R. Newall, Naugatuck Chemical

HARLOW FIRE

Fresno, California, October 30, 1961

INTRODUCTION

The primary concern of the meeting of this committee today is to review the occurrence and the State Division of Forestry's handling of the so-called "Harlow Fire" which started in the County of Mariposa on July 10, 1961, and burned into the County of Madera, burning an acreage of some 42,000 acres and destroying homes, businesses, timber, range and watersheds, costing the lives of two persons and completely wiping out the communities of Nipinnawasssee and Ahwahnee at an estimated loss of \$2,000,000.

SUMMARY OF TESTIMONY

(Complete testimony is on file in the committee chairman's office.)

Francis Raymond, State Forester: The Statute Section 4000 et seq., Public Resources Code, establishes standards for determining the areas of forest protection which are the responsibility of the State. The State Board of Forestry is charged with delineating these areas and has done so by administrative regulations.

Recognizing the varying complex forest fire problems of this State and seasonably bad to very bad forest fire situations, the State cannot afford the expense of full-time maintenance of an organization large enough to cope with the occasional extremely bad fire conditions. However, there are ways through applied fire prevention measures and advance planning to obtain and utilize other public and private facilities to the degree that extremely bad fire conditions can be met.

Such a program is in effect. The Division of Forestry has mutual aid agreements and contracts with counties, fire districts, state and federal agencies, and numerous private organizations and persons to supply manpower and equipment to supplement regular forces during extremely bad fire conditions.

The fire business just preceding the "Harlow fire" had tied up a considerable number of fire crews and equipment. Mr. Metcalf, Deputy State Forester, will describe the "Harlow fire" progress and the actions necessary to control this fire.

Cecil E. Metcalf, Deputy State Forester, San Joaquin District: The Harlow fire, which you are investigating, was one of the major fires to date in 1961 and was man-caused. It started at a place and at a time and in particular fuels where the fire was most difficult to control. Lookouts of the United States Forest Service and the State Division of Forestry detected this fire and crews were immediately dispatched. Both crews arrived almost simultaneously at the fire about 20 minutes after original detection.

It should be recognized by this committee that fire control on forest and range areas in California is, and has been for a great many years,

considered a mutual problem of everyone. At the peak of the Harlow fire, there were a total of 2,556 men and 118 pieces of fire equipment being utilized. These were furnished by the United States Forest Service, the California Disaster Office, the logging industry, volunteer fire departments and local volunteers in addition to the forces of the State Division of Forestry. It is significant to note that in spite of the 42,000 acres burned and the 74-mile fireline perimeter and the severe firestorm condition, this fire was contained in about 2½ days after it started and slightly more than one day after the occurrence of the firestorm.

Keith Arnold, Director, United States Forest Service, Pacific Southwest Forest and Range Experiment Station: The fuels of the Harlow fire were made up of a combination of grass, brush and some coniferous and hardwood trees. The dry grass provided the material for unusually fast spread from spot fires and acted as the fuse to ignite the areas of heavy brush which provided the energy for the fire to create its own weather.

The determinant of fire behavior is fire pattern. The elements of fire pattern are the regularity and distribution of fire. In other words, how much area is burning at one time, the shape of the fire perimeter and the number of incidents of multiple spot fires. The more erratic the fire pattern the more you can expect unexpected fire behavior. The Harlow fire was characterized by spots from the start and the critical characteristic of the conflagration the afternoon of July 11 was the almost continuous generation of multiple spot fires.

I wish I could explain why the 20,000-acre burn of July 11 stopped when it did and where it did. I can only surmise because we do not know enough about fire behavior or when the combination of fuels, fire pattern and weather are in critical balance, but some combination of all these circumstances ended the blowup. Our research into the interactions of fuels, weather and fire pattern at the point of critical balance is in the elementary stages. However, increased research in fire behavior and fire weather can give us the information required to predict well in advance such violent fire behavior situations as were experienced on the Harlow fire.

Charles W. Davis, Oakhurst: Today I have seen the charts and heard the story of how the fire was handled, but in explaining by map, it was not mentioned where the fire first broke loose. I do not think fires over an extended line break loose at one time. I would like to know what work had been done. Was it possible to backfire? This fire was not moving fast according to the story. What was done to prevent that fire from going over the ridge? What was done to prevent that fire from being hot and causing a firestorm wind by the action of the fire itself?

I think a great deal more can be done by prevention than can be done in fire suppression. Fires are difficult things to deal with, and I certainly understand how men and equipment cannot come up to the head of a fire and knock it down. I don't want anyone to think I am condemning the men in charge, but the best way to stop fires is to prevent them. There should be an education program so people will know what to do in case of a fire because the first five minutes of a fire is the critical time. Prevention is really the important thing and this point was proven because many of the homes which were saved were the ones that had grass and combustible material cleared from around buildings.

Harry Baker, Chairman, Control Burn Committee of Madera County: I think the Harlow fire could have been held on the evening of July 10 and I so told both Cecil Metcalf, Deputy State Forester, and Ranger Robert Moran, but as we know it was not. I could take you right now and show you where that fire went out by itself, and if they had put a line down the hill and backfired, it would never have come across to Ahwahnee. Men and equipment were there, but it just did not get done. In my experience, I think if you get in some good firelines and then move in and backfire in the right place at the right time it will take the place of a thousand men.

For 20 years I have tried to get the State to put a line from the Metcalf Gap down through our place and on to Crooks which would cut that whole Ahwahnee country off, but they never seem to have the money. However, Cecil Metcalf now tells me this fall they will put a line in.

As of November, 1962, the Division of Forestry reports a 250 foot wide strip is 25 percent completed in Mariposa County and 75 percent completed in Madera County for a total of 50 percent completed.

John Morehouse, Chairman, Madera County Planning Commission: I want something good and constructive to come out of this meeting and anything I say is only meant to protect us in the future.

In the first place, why wasn't the fire stopped where Harry Baker said it could have been stopped? In my opinion, the reason that it was not stopped is what is wrong with all of us today. People, individuals, forest service and everyone else right down the line are not putting out a full day's work. They figure somebody somehow will take care of things. Pumps have been mentioned. It would take two or three years to get pumps, tanks, etc. What we need is for everyone to have a barrel of water with a bucket and to clear 120 feet around buildings. We get careless and need someone to enforce the rules passed in 1918 and to give us a citation if we do not comply.

We need big firebreaks and small breaks and we need to enforce the rules and get the people to do a day's work, and I think we can lick the fire hazard.

Ray Murray, Oakhurst: Speaking of the Harlow fire, I have heard a lot of talk about how it was handled. I have lived in these mountains for over 60 years and I have seen a lot of fires. We used to backfire a lot, and in my experience you have to fight fire with fire. I am not blaming the State Forestry or the United States Forest Service or anybody, but I always figured they should have started a line on the top of Crooks Mountain. We had a control burn all over the mountain. It was burned twice and they should have backfired there because the next morning when that wind came up the fire came over the mountain like wildfire.

As has been said before here today, the only thing to do is to clean up and have good firebreaks around grounds and buildings. Also the State should clean out the firelines every year and in addition to the large equipment and pumper trucks, they should have jeeps equipped with high-pressure tanks to get around in rough country.

C. B. Cheney, Ahwahnee: My grievance on the Harlow fire, although there were men and equipment running up and down the main

road, is that with all these men and equipment up there why you cannot get help. If you asked one of these truck drivers if he would help, he would reply he has no orders to go off the highway. Even when the ranger came in and called for help and one or two trucks came in, right away they were ordered someplace else. In my opinion the communities of Ahwahnee and Nipmawasee did not have the proper protection.

We have learned some things from this fire. One is that you should have a supply of water to wet down the surrounding area, and the other is that there is a county ordinance for protection that should be enforced. We also need to establish fire districts in the area so we would have some local protection and not depend on outside agencies.

Fred Engle, Deputy Director, Department of Corrections: I would like to outline the plans of the Conservation Division's inmate fire prevention activities. We now have 27 forestry camps and our plans call for 42 camps by the year 1965. We are also building near Sasauville a conservation center and we are in the process of acquiring property for a branch conservation center in Tuolumne County near Sonora. We have a branch conservation center near Garberville in the north coast area and a branch is in the process of being constructed near Chico for the southern camps.

The conservation program in the Department of Corrections and the Division of Forestry is expanding and by 1965 we will have over 3,000 inmates actually occupying camps and we will have roughly 3,500 more in the process of training for camps at the branch centers.

Our camp program calls for training these men to handle motorized tools such as chain saws, jackhammers and that sort of thing and primarily their work is fire prevention, clearing along roadways, constructing fire access trails for equipment and building firebreaks around the country in the vicinity of the camps. As we get more camps spread over the State, you will begin to see more of this work being done.

DeWitt Nelson, Director, Department of Conservation (Summary of typed statement) The hearing was conducted in a very constructive manner and testimony of most of the witnesses was well to the point and also constructive.

There were specific questions asked and answered. There were some which were raised that probably will never be answered. In a fire of this size, with severe explosion and unprecedented rapidity of spread, there are problems of logistics with men and equipment operating over 75 miles of fireline stretched over extremely mountainous terrain. In this situation no one person knows all the actions that were taken in all instances at all times.

Fighting a fire of this kind is quite comparable to a battle in which many individuals and units must and do make decisions on the spot to meet changing conditions. You will recall from the map presentation that at noon on July 11, 1961, there was only a relatively small section of the fireline that was not under control and on this section both men and equipment were making good progress. At about 4 p.m. on that date the fire burned into a large volume of heavy standing dead and down fuel which created sufficient heat to puncture the atmospheric inversion layer which was about 1,200 feet above the fire itself. When this inversion layer was punctured, high-velocity winds with low rela-

tive humidity poured down the lee side of the convection column and splattered the fire in three directions. With the combination of heavy grass, brush, high-velocity winds and low humidity we had a "fire-storm" and the fire raced over the country for the next two hours in which it burned nearly 20,000 acres. To bring it down to perspective, during the "blowup" period this fire burned an average of 160 acres per minute or 40 acres every 15 seconds.

Some of the testimony indicated that there was no use made of the backfiring technique. An analysis of the fire suppression facts show that 42.5 miles of fireline were backfired while 31.6 miles of fireline was built and held by what is known as direct attack, making a total of 74.1 miles as total perimeter of the fire. The question was also raised as to the use of old firelines constructed on either previous wildfires or controlled burns. The record shows that only three miles of old line from previous wildfires and 4.1 miles of old line from previous control burns were usable in the final control, while 4 miles and 2.3 miles, respectively, were lost. This does not include six miles of existing roads which coincided with previous burns which were also held on this fire and which were logical lines in both instances. On the entire fire there was a total of 94.1 miles of fireline built, of which 30 miles were lost, leaving the final effective control line 74.1 miles in length.

There was some discussion as to the value of control burns and previous wildfires in preventing serious fires and aiding in the control of fires. In this regard it is interesting to note that this fire was set relatively near an area that had been burned in a wildfire during the summer of 1959. This two-year-old burned-over area was of little avail in controlling the fire—even during its early stages. Of the total acreage burned, 47.1 percent or 18,409 acres had been previously burned during the past 10 years; 14.1 percent of 5,828 acres of this same area had been burned twice during the last 10 years. This bears out the statement made by State Forester Raymond that control burns do not necessarily make for easier fire control. In fact, they often increase the difficulty of fire control because of the large volume of standing dead and down material left from the previous fires which is highly combustible.

If control burns are to be sufficiently effective, both in conversion from brush to grass and for fire protection purposes, there must be followup management to clean up this dead and down material and to reduce the regrowth of brush through the use of chemicals, mechanical clearing and other devices. In this particular instance, as in the majority of control burn projects, there is inadequate followup management to accomplish the full conversion process.

Many counties have ordinances which require some cleanup around homes and improvements in the wildland areas. In some instances these counties contract with the Division of Forestry to provide the necessary inspection and enforcement of such ordinances, since this is a local responsibility problem. In this particular area the Division of Forestry had, during the current season and prior to this fire, made many such inspections on its own, urging the people to clean up around their places. The week before this fire, in co-operation with the local chamber of commerce, a public meeting for this purpose was held at Oakhurst. Such cleanup as was done appeared to be effective, as testified to by a

number of witnesses. Generally speaking, however, the majority of property owners were apathetic. Your committee may want to consider the desirability of enacting state legislation setting standards which would require such cleanup. As one witness stated: "You may have to give us citations to make us do the job."

At no time during the hearing was the cause of this fire mentioned. From all evidence presently available this was an intentionally set fire. This was just one of over 400 arson-type fires that we had this season. On three of the incendiary fires a total of five lives were lost. Unfortunately, many people advocate the "setting of fires to prevent fires." There is a great difference between "setting" a fire and using fire as a tool under controlled conditions. In the latter case control lines have been constructed in advance and men are on the job to confine the fire to the predetermined area. If burning conditions are critical the firing is postponed until the weather improves. On the other hand, in a "set" fire the whole country is wide open in front of it regardless of weather conditions. The chances of disaster are multiplied many times. When responsible people advocate promiscuous burning and those statements fall on the ears of irresponsible people, great areas and many lives are endangered. There needs to be a change in attitude by those who advocate promiscuous burning.

It is to be deeply regretted that two lives and so many homes and improvements were lost in this fire which "didn't play by the rules" according to the testimony by Mr. Harry Baker. This is certainly true. Nevertheless, it is only one example of many fires in the past and the growing potential in the future. The Division of Forestry, the U. S. Forest Service, the timber industry and some hundred volunteers of local residence worked in close co-ordination throughout this entire fire. As one witness said: "Never have I seen two outfits get along as did the Division of Forestry and the Forest Service." In spite of this we had a catastrophe, and as you stated at the outset of the hearing, its prime purpose is to determine what we should do in the future to prevent a similar situation. One area in which we can gain from this unfortunate experience is to develop closer co-operation with the local people in both prevention and suppression and in their understanding of the fire potential, the necessity for cleanup around buildings and to change the attitudes about promiscuous burning.

LIST OF WITNESSES

Francis Raymond, State Forester

Cecil E. Metcalf, Deputy State Forester in charge of the San Joaquin District

Keith Arnold, Director, U. S. Forest Service, Pacific Southwest Forest and Range Experiment Station, Berkeley

Charles W. Davis, Oakhurst

Harry Baker, Ahwahnee

Glen Baker, Ahwahnee

John Morehouse, Chairman, Madera County Planning Commission, Oakhurst

William Bailey, Ahwahnee

Ray Murray, Oakhurst

C. B. Cheney, Ahwahnee

M. A. Hahn, Ahwahnee

W. M. Sell, Jr., Ahwahnee

Lindsay Wright, Oakhurst

Fred Eagle, Deputy Director, Department of Corrections

Ruby Altman, Ahwahnee

Howard Moore, Assistant Deputy State Forester, San Joaquin District

S. W. Lawhon, U. S. mail carrier

Paul Mandt, Ahwahnee

D. A. Watkins, California Highway Patrol

DeWitt Nelson, Director, Department of Conservation

FOREST PRACTICE ACT

EUREKA, CALIFORNIA, October 19, 1961

INTRODUCTION

The Forest Practice Act, enacted in 1945 (Chapter 10, Division 4, Public Resources Code) is legislation which provides the regulation of commercial timber operations on private land and divides the State into four forest districts

The main purpose of the Forest Practice Act, as stated in the legislation is "to conserve and maintain the productivity of the timber lands in the interests of the economic welfare of the State and the continuance of the forest industry." Therefore, the rules adopted under the act must be directed toward that purpose

In each district there is a forest practice committee of four members, appointed by and serving at the pleasure of the Governor. Two members represent timber owners and one the farm timber ownerships. A fifth member is a nonvoting secretary appointed by the State Board of Forestry from the Division of Forestry.

These forest practice committees are charged by law to formulate and adopt forest practice rules and approve forest management and alternate plans for final approval of the State Board of Forestry. If the proposed rules are acceptable to the state board they are adopted, after which they are filed with the Secretary of State and incorporated into the California Administrative Code under Title 14.

SUMMARY OF TESTIMONY

(Complete testimony is on file in the committee chairman's office.)

Francis Raymond, State Forester, Sacramento: Under law, the basic responsibility for development and adoption of forest practice rules rests with the forest practice committee and the State Board of Forestry. The State Forester and his staff have only the responsibility for administration of the programs. They may have an opportunity to express their views as to the content of the rules, but no official voice in the rulemaking process and may not do other than comply with established procedures.

Enforcement of the forest practice rules, as specified by the act, is a long and complex procedure. The rules are directed exclusively toward timber operators, many of whom do not own the land or timber on which they are operating. Operators come and go, depending upon the availability of timber and the penalty of permit revocation may have little meaning to these unstable operators.

At the close of 1960 there were 1,598 active timber operator permits in the State. In 1960 there were 2,496 inspections made and a total of 1,839 infractions of rules were observed. Over 40 percent of them dealt with disposal of snags and the filing of fire plans. The act has requirements for control of erosion, protection of the soil, siltation and stream disturbance. In 1960, 12 percent of infractions concerned erosion control.

Improved procedures for enforcement of the Forest Practice Act and rules have been slowly but progressively developed over the years. In 1951 the Forest Practice Act was amended to provide specific penalty measures. Again in 1957 the act received major amendments to clarify the language and to further strengthen enforcement. Since these changes in the law and rules, the Division of Forestry has intensified enforcement efforts and stepped up prosecution for violations.

There are many questions unanswered to those that may be dissatisfied with the forest practice rules. As a result of published complaints about timber-harvesting practices, the State Chamber of Commerce has looked into the matter and last month (September 1961) recommended to the Board of Forestry that it have the University of California School of Forestry make a study to determine whether the basic purpose of the Forest Practice Act has been satisfied. At this meeting the board appointed a committee composed of members of the board and representatives of the state chamber, the university, industry and the Division of Forestry to explore how such a study might be conducted.

The Forest Practice Act and the rules can contribute and have contributed something toward protection of streams and other resource values, but they cannot be depended upon to bear the needed solutions for all problems. The Board of Forestry, the forest practice committees and the Division of Forestry are especially cognizant of the complaints in logging areas and the division is working closely where interests and concern are mutual within the present structure of law.

Phillip Berry, The Sierra Club: Administration of the Forest Practice Act entails inspections and taking action to secure compliance with the rules. How well the rules are being complied with is difficult to determine by the infrequent inspections. Bringing the delinquent operations into line obviously will require inspections more than once or twice a year. Even with the help of other personnel within the division, eight inspectors cannot police the entire State of California. The act is intended to be effective. There have never been adequate inspections of lumbering operations and accordingly publication of the reports was discontinued after 1958 due to lack of staff. In 1958, infractions of the forest practice rules averaged one in every two inspections, and the division estimated that about 37 percent of the operators were in full compliance. The degree of noncompliance of the other 63 percent was not determined. That year's report stated that future reports would analyze the degree of noncompliance; however since then no reports have been published.

There are several ways to strengthen enforcement against delinquent operators. (1) While constitutional consideration might foreclose any changes of shortening the proceedings under the Administrative Code for suspending or denying a permit, certainly the period for which either sanction operates can properly be lengthened. (2) Some of the arbitrary limitations on the State Forester's powers might be eliminated. Proceedings for suspending a permit need not be brought by the Director of Conservation but could be brought by the State Forester himself. (3) Making a violation of the rules a misdemeanor rather than mere grounds for suspending a permit would greatly improve the co-operativeness of delinquent operators. In addition, it would elimi-

nate the "very slow process" now involved in litigating suits under the Administrative Code (4) The violator of the practice rules could be forced to pay the cost of remedying damage done Payment could be secured by placing a lien either on his property, logging equipment or on the logs taken from the area (5) The penalty for operating without a permit could be increased

In scope, the Forest Practice Act goes far beyond any forest conservation law in other timber-producing states, and the lead of the California Legislature in this field deserves recognition However, the methods chosen to effectuate the commendable purpose of the act have been manifestly inadequate in most respects The suggestions made here are not intended as a definitive list of solutions to the defects of the act However, they demonstrate that the act must provide more control if it is ever to be more than a pleasant statement of policy

Robert W. Madison, Humboldt County Forester, and Secretary, Humboldt County Forestry Committee: Today we have heard much testimony as to the effectiveness of the Forest Practice Act We learned that a great difference of opinion exists as to its adequacies in maintaining our timber lands in production Some say it is adequate and others say it has no value The Humboldt County Forestry Committee does believe that the Forest Practice Act has not been fully effective We recognize the act has great educational value and has improved forest practices in Humboldt County We know that the greater portion of operators or timber owners do more than is required by the act to obtain reproduction on their lands We also know that some operators and timber owners have no concern about future timber crops, and it is this group of noncompliers that continually erode our basic economy The problem seems to be, do we and the State continue to convert these violators through educational programs and threatening them with permit removal, or do we obtain compliance with stronger enforcement?

The Humboldt County Forest Committee asks for stronger enforcement of the present Forest Practice Act.

Fred Landenberger, Chairman, Jedediah Smith Chapter, Society of American Foresters: We are a group of professional forest managers, all graduates of a registered professional forestry school and we intend to study the application of the Forest Practice Act with respect to its clarity and effective ability from the standpoints of operation, enforcement and responsibility for compliance

John Miles, Member, Redwood District Forest Practice Committee: It is the consensus of the Redwood District Committee that the Forest Practice Act has been generally effective in keeping forest lands productive and we believe they are good rules While steady progress has been made in reaching the goal of the act, the act does have shortcomings which cause confusion and hamper compliance and enforcement.

Ambiguous wording in the act makes it difficult for the Division of Forestry to fix responsibility for rules compliance on the primary party controlling timber operations and the enforcement procedures should be streamlined so the punishment commensurate with the crime can be applied quickly.

John Callaghan, Assistant Secretary, California Forest Protective Association: The forest practice rules when approved by the State Board of Forestry, have the force and effect of law. However, those portions of the rules which are subject to more clear-cut and concise determination perhaps might have misdemeanor penalties. This might very well be explored.

Second, I am firmly convinced that there is strong necessity for more assistance in the Attorney General's office so that these matters can be diligently pursued as soon as possible when they come to the Attorney General's attention.

In the event of action by any other type of farming or industrial operation, it is my understanding that there are laws under which immediate corrective action to stop the activity may be taken.

Chairman Lowrey: For clarification, is the raising of timber and the activities which go along with timber harvesting considered an agricultural operation?

William Schofield, California Forest Protective Association: I think this would be the proper place to interject this. We have tried year after year to have tree farming considered as agriculture and we have been denied that continually, although it plainly stated in Section 301 of the Agricultural Code that we could come under agriculture. We are not considered an agricultural growing crop.

Chairman Lowrey: I am astounded at your statement. A bill did pass and it is in complete compliance with the federal definition almost word for word, and I thought it was nailed down just as tight as it could be. Now, if it is not, let us find out what is wrong with it. If there cannot be compliance with the law, we will look to correction as far as the legislative branch is concerned. (See Exhibit A.)

William R. Schofield, Secretary-Manager, California Forest Protective Association: I am a coauthor of the Forest Practice Act and wrote 90 percent of the act which was presented by the lumber industry to the Joint Legislative Committee set up in 1943. This is the only State in the union that has a voluntary law written by the industry regulating themselves. We submitted to it. We are proud of it. There has been good efforts and real results from the Forest Practice Act. Get in an airplane and fly over the cutover areas and you will see where the Forest Practice Act began to take effect. It is a good law. All laws should be corrected. Forestry is not static. It changes all the time. Therefore you don't want to write certain regulations into the act. They should be taken care of by the committee. The act merely states what the objective is to be and rules are developed by committees at the local level and pass on up to the Board of Forestry for approval. There have been a number of revisions made of the Forest Practice Act. These committees have made changes in 1947, 1951 and 1959.

Furthermore, I want to point out—and this is something that the Legislature can do—we have appeared time after time at Board of Forestry meetings and asked for more and more inspection. We have asked for more enforcement of the Forest Practice Act, but what happens? The Attorney General has, to my knowledge, had half a dozen people who are supposed to be advisers to the Board of Forestry and

the Division of Forestry, and about the time we get them educated to know which end of the tree grows in the ground, they move them to another assignment. I think that is one thing this committee should look into and perhaps see if we cannot get better co-operation. The Board of Forestry and the Division of Forestry are big enough in the State of California to have at least one man solely assigned to forest problems.

DeWitt Nelson, Director, Department of Conservation: We have heard and read a great deal about the forest practices and the way they have been dealing with our forest resources and one thing and another, but I think we should recognize some of the problems connected with harvesting our forest resources and particularly this old growth timber in the Redwood Region.

In the logging of this type of terrain, the heavy material leaves a corresponding amount of debris on the ground. A high percentage of our major operators are carrying on very fine forest practices on a long continuous production basis.

Some of our small owners are doing a good job, but I think when you get right down to it the big problem lies in the remaining small ownerships where they do not have a long-term policy like a corporation nor do they have the continuity of ownership. That is one of our large problems, and one we probably are going to have with us for a long, long time.

We have been exploring what we might do to secure better enforcement. It was pointed out we do not have the power of injunction and the possibility of a bond issue has been discussed. I do not recall why the proposal for bonding was not accepted. Drillers of oil wells take out a bond. Probably a logging operator to secure a permit should have a bond.

Certainly we need to streamline the enforcement process. If everything moved along without a hitch, the fastest time in which we could process a violation is 13 weeks. That is due to the procedures set up and established in the Administrative Procedures Code. If there is any way to streamline and shorten the time, we would certainly like to have it.

QUESTIONS RAISED BY CHAIRMAN LOWREY FOR THE RECORD

Chairman Lowrey: There are four forest committees in the four zones or districts of the State. How much does the State of California pay in salary to the gentlemen who serve on these committees?

DeWitt Nelson: Those committee members receive no salary whatsoever. For 12 years or until 1957 they held public hearings and meetings at their own expense. They are now qualified to receive their travel expenses only.

Chairman Lowrey: They receive no salary, yet they have really been the people who have made the Forest Practice Act work as well as it has with practically no expense to the State of California. They have donated their time in public service to the preservation of the timber industry.

Chairman Lowrey: This is directed to State Forester Raymond. There is another problem that exists that we must get into the record. In the State of California, we have a Range Advisory Committee appointed from the various agricultural interests as regards our lands in the State. This Range Advisory Committee submitted to you and to the Board of Forestry a request that you do some investigation and compile some data, but you have stated that due to the terrific fire season and the lack of personnel you have not been able to compile the data and that it would be forthcoming sometime in the future. When are your recommendations going to be presented to the Board of Forestry?

Francis Raymond: I believe you are referring to a recommendation in regard to a fire prevention problem and program. There are so many problems involved in this that we should have a thorough study of the whole matter before this is placed on the agenda for the board to consider.

We believe that our studies and report will be ready to present at a February (1962) meeting of the Board of Forestry.

Chairman Lowrey: We will be in touch with you. We are concerned as to what your recommendations are and what the board plans to do with your recommendations. (See Sheldon Jeffers' testimony, Santa Barbara hearing, and Exhibit B, Santa Barbara.)

Field trips were arranged by Mr. Charles Fairbanks, Deputy State Forester, and Mr. Robert E. Dasmann, Forest Supervisor, United States Forest Service. The committee was accompanied by members of the Board of Forestry, personnel from the State Division of Forestry, United States Forest Service, State Division of Soil Conservation and representatives of the lumber industry, 24 people in all.

On October 18, 1961, the group toured the Mendocino National Forest observing brush conversion work and national forest timber sales. Of particular interest was the conversion of chamise to grass in Grindstone Canyon, making all resources of national forest lands, soil, water, wildlife and recreation, fully productive in accordance with the multiple-use principle. The group also observed timber management planning, cutting methods, slash policy of piling, burning or chipping. The tour continued on to Covelo then proceeded south across the valley following the Eel River through Jackson State Forest passing through grasslands, brush intermingled with eucalyptus timber stands, a typical Douglas fir country. Up the divide to the coastal slopes of the main redwood belt. That evening the group was conducted on a tour of the Union Lumber Company mill at Fort Bragg.

On October 19th the group drove through the redwoods to Eureka for a hearing that afternoon.

On October 20th the group toured north of Eureka to view the forest practices on the Pacific Lumber and Simpson Timber Company lands. At Korbel headquarters, Mr. John Miles, Chief Forester for the Simpson Timber Company, gave a short briefing after which the group boarded special company buses to travel on private truck roads to see at first hand the company's North Fork logging operations.

EXHIBIT A

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, December 3, 1962

HON LLOYD W LOWREY
Rumsey, California

Planned Production of Trees—No. 5766

DEAR MR LOWREY You have directed our attention to Section 301 of the Agricultural Code, which reads as follows:

"301. Inasmuch as the planned production of trees is distinguishable from the production of other products of the soil only in relation to the time elapsing before maturity, the production of trees shall be considered a branch of the agricultural industry of the State for the purposes of any law providing for the benefit or protection of the agricultural industry of the State."

You have asked that we analyze the effect of this section to determine which provisions of the Agricultural Code are thereby made applicable to tree production.

A great mass of the provisions of the Agricultural Code deal merely with specific aspects of particular segments of the agricultural industry. On the other hand, numerous provisions of the code relate broadly to policies or practices which apply to the agricultural industry generally. It is to these latter provisions that the declaration of Section 301 is addressed.

In order to demonstrate this proposition, we will consider the organization of the Agricultural Code by indicating briefly the subject matter of its various divisions, and for each division select a particular reference to illustrate the distinction between "special" and "general" provisions.

Division 1 is concerned with the officers and administration of designated state and local agricultural bodies, including agricultural fairs. Among the general provisions of this division would be Section 30 which charges the Department of Agriculture "to promote and protect the agricultural industry of the State," and Section 41 which directs the State Board of Agriculture to "inquire into the needs of the agricultural industry of this State and the functions of the department in relation thereto, and confer and advise with the Governor and the director as to how the agricultural industry may best be served by the department." Thus, if in the application of these sections, or of any of the many other generally applicable provisions of the Agricultural Code, the question could be raised as to whether or not the "planned production of trees" is part of the "agricultural industry," reference to Section 301 would assure an affirmative answer.

Division 2 covers the subject of plant and animal quarantine and pest control. Among its chapters are those relating to the regulation of the agricultural pest control business, and to the control of predatory animals. Section 161 comprises a part of the chapter on predatory animal control and may be selected to elucidate further the principle under consideration here. Section 161 empowers the Director of Agriculture to employ hunters to control predatory animals which are damaging livestock, agricultural crops, or standing timber. "This section is "special" in the sense that its express mention of "standing timber" precludes reference to Section 301, yet at the same time Section 161 covers a still broader subject matter than Section 301, namely, "standing timber," not merely growth involved in "the planned production of trees."

Divisions 3 and 4 are inapplicable to our discussion, since they are restricted to "Animals" and "Milk and Dairy Products."

Division 5 contains provisions relating to produce standardization and is for the most part composed of "special" provisions, such as those which are directed to standards for particular crops (i.e., tomatoes, grapes, figs, etc.). However, the division contains a chapter on agricultural chemicals (Chapter 7, commencing with Section 1030), and the articles thereof relating to the use of fertilizing materials, economic poisons, and certain injurious materials are broad enough to include the use of such in "tree farming" operations.

* All subsequent citations are to the Agricultural Code.

Division 6, the final division of the code, is devoted to agricultural marketing regulation. Like the preceding division, it is predominantly "special" in its application. Nevertheless, it is not without examples of "general" provisions, such as Section 1285 which pronounces the purpose to further "intergovernmental co-operation in such marketing activities as will accrue advantageously to the *agricultural industry of the State*" (Emphasis added.)

Very truly yours,

A. C. MORRISON
Legislative Counsel
STANLEY M. LOURIMORE
Deputy Legislative Counsel

LIST OF PERSONS TESTIFYING BEFORE COMMITTEE

Eureka, October 19, 1961

Francis Raymond, State Forester
Phillip Berry, The Sierra Club
Robert W. Madison, Humboldt County Forester
Fred Landenberger, Chairman, Jedediah Smith Chapter, Society of American Foresters
John Miles, Member, Redwood Forest Committee
John Callaghan, Assistant Secretary, California Forest Protective Association
Robert D. Calkins, Conservation Officer, Department of Fish and Game
Wm. R. Schofield, Secretary-manager, California Forest Protective Association
Melym J. Barendse, Humboldt County Supervisor
Dewitt Nelson, Director, Department of Conservation
Grant A. Morse, Assistant United States Regional Forester, United States Forest Service

REPORT ON ACTIVITIES OF THE DIVISION OF FORESTRY

Santa Barbara, California, September 12 and 13, 1962

INTRODUCTION

Following is a summary of testimony presented at this hearing covering the following items.

1. Report from the Division of Forestry on areas of the State where the State provides fire protection to private lands
2. Report on special areas of critical forest fire hazards endangering life and property
3. Forest fire prevention plan for the Division of Forestry.
4. Report on controlled burning program for the State
5. Report on forest insect infestations and progress being made for their control
6. Report on success of Division of Highways policing of fire hazards on state highway rights-of-way.
7. Report on compliance and enforcement of Forest Practice Act.
8. Report on California Forest Protective Organization.

SUMMARY OF TESTIMONY

(Complete testimony is on file in the committee chairman's office)

Francis Raymond, Chief, California Division of Forestry: I will endeavor to describe to you as simply as possible the fire protection area jurisdictions within the State.

The Division of Forestry's fire protection operating units were organized in various counties by agreement between the boards of supervisors and the State Forester. Financial support for these came from the counties with augmentations from the Legislature and from federal appropriations under the Clarke-McNary Act.

During this development, the lands given protection were primarily those areas of

1. Timber and brush watershed established as Clarke-McNary lands under the criteria of the federal act and for which California received allotment of federal funds, and

2. Those areas of local interest—grazing and grain lands for which protection and financial support were provided by some counties

This appeared to the Legislature to be unequal treatment to many areas which were not receiving forest fire protection and by enactment of Chapter 904, Statutes of 1945, of the Public Resources Code, a state policy was established for determining areas which would be provided protection by the State regardless of any classification made by the federal government or otherwise.

The original classification of state responsibility areas was completed in 1946 and were again studied in 1947 by administrative regulations on October 23, 1958, as Section 1220 et seq., Title 14, California Administrative Code

It is the responsibility of the State Forester, in accordance with Public Resources Code Section 4004 and other laws, to maintain a plan of protection for the state responsibility areas and because of various circumstances of these lands, it is both convenient and appropriate to utilize the most practical methods available to establish the system of fire protection

The bulk of the land involved in the state responsibility areas is protected by the Division of Forestry, a total of 26,248,000 acres.

In five counties, Los Angeles, Ventura, Kern, Santa Barbara and Marin, there is a total of some 4,230,000 acres of state responsibility area. These counties, having their own county forest fire protection organizations, provide fire protection for these areas under contract by the State Forester with the several county boards of supervisors.

Inside the national forest boundaries because the United States Forest Service maintains a sizeable and appropriate forest fire protection organization to protect the federal lands in the national forests, the State Forester contracts with the United States Forest Service for protection of these state responsibility areas.

In summary, the State Forester provides forest fire protection to all of the state responsibility areas, substantially at state expense, in the following manner:

- 26,248,000 acres by the California Division of Forestry
- 4,230,000 acres by contract with five county boards of supervisors for protection by county fire departments
- 5,154,000 acres for protection by contract with the United States Forest Service to use national forest protection forces on lands inside national forest boundaries

This is a total of 35,632,000 acres of state responsibility areas.

It can readily be observed that, historically, the policy for forest fire protection has been to try to effectively use existing forces to administer forest fire protection on a unit basis. In other words, it would be both wasteful and inefficient to superimpose another fire protection organization within the national forests to protect state and private lands when a similar satisfactory organization already exists. Similarly, it seems inappropriate to have the Division of Forestry protect those state responsibility areas in the counties which have had their own fire protection departments and the boards of supervisors choose to maintain this contract arrangement.

A "formal" fire protection plan has been in effect for many years, amended and augmented from time to time. Recent developments in the State have emphasized the need for a more critical examination of the fire protection plan and early in 1961, the Board of Forestry requested the development of a new plan. This plan was prepared and has been approved by the Board of Forestry as of August 16, 1962.

Fire Prevention Plan

Emory Sloat, Deputy State Forester: The risk of forest fires has been greatly increased by the population expansion and various activi-

ties in the wildland areas. While many citizens live in rural areas and make their living from the land itself, thousands of others elect to live in the country and commute to their city jobs. In the division's fire protection area 60 percent or more of the forest fires are caused by local people and experience indicates that increased efforts in fire prevention are mandatory.

This fire prevention plan section provides a program which brings together the many principal activities of the division in a formalized manner with a view to attaining comparable activity in similar areas, statewide.

The plan consists of an objective and four major segments of fire prevention—fire hazard reduction, education and public relations, law enforcement and analysis and planning.

The objective of the State Forester's fire prevention plan for the Division of Forestry is to reduce the occurrence of preventable wild-fires and resulting resource losses to such a degree that fire damage will be held below the level at which it would seriously interfere with the expected yield of products and social benefits from the land to which the program is applied.

Analysis and planning is a continuing searching and objective examination of the forest fire prevention program to appraise its effectiveness. The basic factors to be considered are: What is causing or could cause fires, why, where and when do they start and who starts them. It is necessary that the intensity of forest fire prevention efforts be carried out on a definitely scheduled and programed basis.

Education and public relations is a program designated to encourage favorable attitudes, activities and customs directed toward the prevention of forest fires. The aim of this plan is to have forest fire prevention training and education programs carried on through the efforts of the informational service, schools, service clubs and many other organizations.

Law enforcement is the prevention of forest fire law offenses, the investigation of violations of law, and the prosecution of persons responsible for such violations. Many fires can be prevented if people's actions or operations are in compliance with all fire prevention laws and regulations. When education fails, firmer methods must be taken to obtain compliance with fire laws.

Fire hazard reduction relates to fire prevention, fire risk means the relative possibility of fires being ignited, and fire hazard relates to quantity and type of flammable material. Reduction of fire risk and fire hazards is accomplished by the elimination or modification of vegetation and other flammable materials which could contribute to the start of forest, watershed or range fires or contribute to the spread of such fires.

Forest Fire Problems of California

Eugene Bertsch, Deputy State Forester: Fire protection is fundamental to the management of wildland resources. In California it must be considered first, last and in between, and this fact has long been recognized by the forest fire protection agencies.

The record for the past 30 years shows that the annual average improvement dollar damage is rapidly increasing. In 1961 the division

had 3,207 forest fires, which burned 300,000 acres and caused \$5,500,000 damage to forest and range

It is apparent that we, in California, have reached a point where the law-abiding citizens and responsible officials must take stock of the situation and help these people in some way to help themselves by more drastic action. If laws, ordinances or regulations are necessary to accomplish it, then there is no alternative but to enact or pass what seems most appropriate to remedy the situation. In addition and of equal importance is the need for support and understanding by the people of the State and the courts to be able to accomplish an effective program of fire prevention that will in turn reduce the risk and hazard to life and property and prevent greater destruction to our natural resources.

Edward L. Tinney, Maintenance Engineer, Division of Highways: Following is a brief résumé of the policy and practices of the Division of Highways in the matter of reducing roadside fire hazards during the past year.

A new policy inaugurated last year consists of spreading fire-retardant chemicals along strips six to eight feet in width adjacent to the paved shoulders, where fire hazards exist. These sprays are applied in diluted dosages so that the effect of the material is to stunt the growth rather than to completely eliminate it. Thus spraying closely approximates the cost, \$14 to \$15 per acre, of mowing which has caused us some difficulty in the past because of the doubt that results from the mowing operations.

On U.S. Highway 40 between Vacaville and Davis last year, prior to the spray application, we had 111 fires in the area. This year we have had only one fire. Of course, we cannot give this chemical treatment all the credit because we have had favorable weather conditions. However, we think that this is a pretty good indicator that this program will be successful. We anticipate that this type of treatment will reduce roadside fire problems and possibly decrease our costs.

Chairman Lowrey: I would like to quote from two reports given to the committee which substantiate the Division of Highways' statement. The first report is from the Colusa County Fire Chiefs' Association, and I quote from a letter dated September 7, 1962:

Comparative Report of Colusa County Highway's Rights-of-way
Fires for 1961 and to Date, 1962

Arbutle Fire Department 1961—33 fires 1962—15 fires

Remarks: Where spraying and discing were done on the west side of 99W, we had two fires of incendiary nature. On the west side, north end of the freeway, we had four fires where no spraying or discing was done. The most fires occurred east of the highway between the highway and the railroad tracks where the mowing machine was used. We assume the fires were reduced where proper control was used on the opposite side of the highway. The fire chief appreciates the work that has been done and the efforts have proved their point.

Williams Fire Department 1961—67 fires 1962—12 fires

The fire chief is well satisfied with the work the Division of Highways has done on roadside control. We believe that with an earlier start this fall, our problem could be further reduced. The discing on Highway 99W completely solved the problem on that stretch of the highway from the canal to Meyers Road. The spraying on Highway 20 could be extended further toward the hills.

Colusa Rural District Fire Department 1961—53 fires 1962—12 fires

Due to weather conditions and construction of the new bridge on Highway 20 to Williams and the discing along the right-of-way, fires this year are about normal before the large increase of immediate previous years.

Maxwell Fire District 1961—15 fires 1962—11 fires

Eight fires in the untreated area, one fire in the treated area, two fires in treated area from field side

The agriculture commissioner from this county reports that he considers a real good job has been done on the first attempt to find a solution to the problem

Report submitted by Arthur G. Hamblin, Secretary, Colusa County Fire Chiefs' Association

Another report from the Solano County Fire Warden, C. E. Green, dated September 7, 1962, states: Our records indicate that there were only 15 roadside fires during the period from May 1, 1962, through September 1, 1962, as compared with 243 roadside fires during the same period in 1961. This represents a great reduction in total man-hours expended by our firemen and a corresponding reduction in cost to the taxpayers for fire suppression. (It should be noted that mild weather conditions and several areas of highway construction in the county have also been contributing factors in the reduced number of fires.)

The Solano County Fire Service feels that the State Division of Highways fire abatement program has been quite successful throughout most of our county. Although there are some areas where hazards still exist, we feel that with a continued program of co-operation between the fire service and the Division of Highways these problem areas can be eliminated.

Chairman Lowrey also stated that we really appreciate the co-operation received from the Division of Highways and feels that if this program is extended to other areas of the State, we are not going to have problems like last year.

On the other hand, we have had a letter from Paul Aurignac, member of the State Board of Forestry, which points up a problem in his area relative to control burning on railroad rights-of-way. Mr. Aurignac states in his letter to me dated August 25, 1962: "The lack of willingness by some interested parties to co-operate is appalling. In our area, the Division of Highways and the Division of Forestry were willing to control burn the Southern Pacific Railway right-of-way in conjunction with the strip belonging to the Division of Highways. The Southern Pacific turned a deaf ear to our pleas (to abate a fire hazard with controlled fire). I hope some way is found to make the Southern Pacific people co-operate for the good of all the traveling public and the farmers adjacent to their right-of-way. A trial burn was conducted very successfully for one or two seasons, but this year due to a high level policy, a negative attitude was all we could secure. Public liability and subsequent opening to suits is I believe magnified way out of the realm of sensible fire management."

B. C. DeLapp, Los Angeles County Fire Department: In our fire code, we have an ordinance in which a property owner is required to clean 30 feet completely around his structures and go another 70 feet down to 18 inches in height. This is to leave the root collars and root system on the ground to prevent erosion and also to allow percolation of the water.

One thing I want to point out, when you view some of the pictures of the disastrous Bel Air fire of last year, you will note the vegetation on the hillside and ridge subdivision areas. This is responsible for the propagation and spreading of fires. The local governments, realizing the problem, are really going to bear down on the causative agents and program accordingly.

The film, "Design for Disaster," of the Bel Air fire of 1961 was shown.

Report on Controlled Burning

Francis Raymond, Chief, California Division of Forestry: I would like to refer back to the fire prevention plan section of the State Forester's fire plan where we had to arrive at some point of departure between fire prevention itself per se and other activities. In developing the plans of the Board of Forestry, we felt that as a matter of practical application we ought to have a stopping point for the prevention effort and a starting point for the other activities in which fire control is of principal concern.

It was recommended to the State Board of Forestry on August 16, 1962, that the following items be removed from the fire prevention plan section and included in another part of the plan, probably within the fire control plan section. One is the presuppression plan which includes the breaking up of large blocks of land by the construction of fire truck trails, fire breaks and fuel breaks, to physically carry out fire hazard reduction work according to approved plans. This has been left out of the fire control plan because we are now working to develop a format and a plan which will be incorporated in Section No. 2 of the fire control plan. (As of November 1962, Section No. 2 of the forest fire control plan has not been developed.)

Chairman Lowrey: I have had complaints from many people during the last three weeks who have wanted to control burn. They have their fire trails in, the date is set, and the crews are ready to go. Then they receive a notice from the division that they must wait to control burn. The division harps on liability and places so many roadblocks in the way the property owner is literally scared to death and therefore does not apply for a permit.

Francis Raymond, State Forester: The policy of the division in regard to individual burning is rather detailed. Part of this instruction is that the rights under the law is a legislative policy of the State of California, and people are to be granted burning permits under all reasonable conditions. The Board of Forestry in its policy has urged me as State Forester to take the necessary precautions to see that these permits are not used under dangerous conditions. There is no question but what we are going to interfere with a few safe burns when we have dangerous conditions around in other areas. We don't stop burning unless it is extremely dangerous. Statements that came out in the editorial insinuate things which are absolutely not true. Why would we prevent people in Lake County from burning during a period of the year when they do not even have to have a permit to burn? (Exhibit A.)

Sheldon Jeffers, Member, Range Improvement Advisory Committee:

Actually I have wondered exactly what we have accomplished on this new fire prevention plan for the State of California. Over a year ago the Range Improvement Advisory Committee was asked to present some suggestions for fire hazard reduction to go into the program and the committee spent six months preparing recommendations. These recommendations were included in the plan that was presented to the public in Santa Barbara, San Diego, Redding and Eureka, and then at the last moment they were pulled out of the plan. I can't understand it. They must have known that this was not going to be part of the plan and they should have come out and said so. Francis, do you actually believe that this advisory committee has been of benefit to the Board of Forestry or that we have accomplished anything over the period of years?

Francis Raymond, State Forester: Sheldon, I have no question in my mind but what they have been very beneficial over the years. Of course, I want you to understand that the Range Improvement Advisory Committee is an advisory committee to the Board of Forestry and not to me as State Forester. They are responsible to the board and not to me.

With reference to the Range Improvement Advisory Committee's recommendations, our task force committee reviewed all of the material presented and ran into one problem. Where do we stop with the fire prevention plan and start a fire control plan? These particular items which the task force had taken from the Range Improvement Advisory Committee's recommendations were pulled out because they referred more to fire control operations than to fire prevention. I want to make it a matter of record that the recommendations of the Range Improvement Advisory Committee will be considered a part of the fire control plan. We certainly are not going to forget them. They are in the record, have been acknowledged and we have them pending fitting them into the format of the fire control plan (Exhibit B).

W. R. Schofield, Forestry Consultant: I served as a member of the Range Advisory Committee for a number of years. I think the only problem is that the legislation passed in 1945 was not sufficient to cover what is needed in the way of clearing up brush-covered lands. There is just as much advantage in clearing the brush from a fire standpoint as there is for range improvement. It has a double-barreled action, but you need legislation specifically designating that the Division of Forestry or someone should put up the money on a controlled burn for purely suppression of fire danger. I think that you can resolve this situation very well if the Legislature is willing to provide legislation that will permit the State Division of Forestry to actually take on the controlled burning to give them sufficient money specifically for that purpose so they could provide crews, equipment, etc.

Victor Osterh, Extension Agronomist, University of California at Davis: First, I believe that the Range Advisory Committee has served a purpose in their attempts to assist the State Board of Forestry. As far as the range improvement program is concerned, and in this instance where controlled burning is one of the tools in brush removal,

I believe livestock men have certainly benefited. It should also be written into the record that there are other benefits such as increased water yield, increased feed and the fire hazard reduction aspects.

Jared H. Hendricks, Secretary, Sportsmen and Ranchers Committee on Control Brush Burning in California: The California Division of Forestry and the United States Forest Service are constantly striving for improved techniques of fire suppression and fire prevention. We believe these two activities to be important. However, we feel that control burning as a means of fire prevention should be given more emphasis.

It does not seem logical to expect to be able to completely prevent and suppress all wildfires, particularly as the kindling pile grows. In other words, prevention and improved techniques of fire suppression must be accompanied by a program of fuel removal by planned action in order to avoid an accumulation of more fire hazards. The most practical method of removal of this fuel is to burn it.

Many millions of dollars are spent every year in fire suppression and still we have wildfires that do millions of dollars worth of damage. Control burning to break up the brush fields and provide fuelbreaks should reduce the size of wildfires with a subsequent reduction in suppression costs and damage to our resources.

John Callaghan, Secretary-Manager, California Forest Protective Association: First, as to fire prevention, I believe that one of the major problems is that of getting basic information that can be useful in preventing fires. These mass statistics that Mr. Bertsch was using yesterday are fine for seeing overall trends and for developing public information programs, but they don't of themselves put out fires. I hope that the Division of Forestry's new fire prevention plan contemplates emphasizing what causes fires and is finally fashioned so that something can be done about it.

Second, control burning as it enters the fire prevention picture is a very complex problem and trying to do something about that is a real tough one when we talk about millions of acres of brushland that might be subject to such treatment. The cost of a program of representative burning necessary to keep the brush fields in a less flammable state is probably fairly staggering. An alternative to that is being contemplated by the Division of Forestry and which we people in the timber industry think has some promise, that is of breaking the area up into bands of reasonable width on which the amount of vegetation has been reduced and the large old brush field have been eliminated and some other form of vegetation substituted or even just young brush which actually is quite unflammable when it is young.

Actually as far as control burning as a fire preventive is concerned, I think it is a little bit of a misnomer insofar as a conservation prevention measure is concerned.

Third, before this committee at other times there have been statements made that broadcast burning should be undertaken in the timber areas as a fire prevention means. I should like to point out that broadcast burning to reduce accumulation of litter has been tried over and over by timber owners and almost universally they have abandoned it because too many young trees are burned up, too many light fires

escape from control, too much damage resulted to the valuable butt log of mature trees. Just to make the record clear, 90 percent of the industrial timber owners in California do not wish to be involved in a broadcast burning program in general.

Fourth, the question of slash and its effect in wildfire situations is not completely well known. I think we need some studies in this regard and I trust that the work will be going forward that is being conducted by the experiment station will be accelerated.

Daniel Dotta, Technician, Division of Forestry Pest Control: California is now experiencing one of the most serious epidemics of bark beetles in many years. The insects involved are the pine engraver and the western pine beetle. The heart of the problem is in the Counties of El Dorado, Amador, Calaveras and Tuolumne. The elevations range from 1,600 to 5,000 feet. Up to the 2,500-foot level, the pine engraver predominates and above this mark the western pine beetle is in the majority. The California Pest Control Council has appointed a Mother Lode subcommittee to study this infestation. Recommendations have brought about widespread support from the State Chamber of Commerce, county boards of supervisors, timber landowners and late this fall (1962) direct control action should begin in areas where values warrant. The key to control would be the co-operation of hundreds of small landowners within the control units. State law permits the State to assume up to 50 percent of the cost control on private lands with landowners absorbing the other 50 percent in the form of money, labor or materials.

The Division of Forestry is prepared to make full use of its own crews, conservation camp crews and pest monies to help control this outbreak.

The second infestation is in the San Bernardino and San Jacinto Mountains in Southern California. Here again an all-out effort is now being made to contain these infestations on co-operative projects between the Division of Forestry, the United States Forest Service and the Counties of San Bernardino and Riverside.

The fir engraver beetle is now killing white fir trees throughout the Sierra Nevada Mountains, particularly in Sierra County and around Lake Tahoe. This insect in the past has only partially killed trees but is now killing the entire tree in large groups. It is an insect of which more study is needed. Recommendations for control have been made to log out the infested trees and where this is not feasible to treat them with chemicals.

Another infestation which is beginning to show its head is the mountain pine beetle attacking the sugar pine in the higher elevations. The most active is located in Madera and Mariposa Counties. An appraisal by the federal and state entomologists is now being conducted. Their recommendations will be forthcoming shortly.

Dr. Keith Arnold, Director of the Pacific Southwest Forest and Range Experiment Station, United States Forest Service, presented a movie showing research work the station has been doing on forest insect infestation. His comments follow:

I would like to make two comments on this movie. One is that in 13 minutes we have seen five years of research by a strong research team. The insect problems as they occur in our forests are extremely complex.

and this leads to my second comment. We have a great need for more research in this area because it takes so long to follow the insect problems and develop new methods that are effective.

I would like to suggest, Mr. Chairman, that your committee consider the desirability of recommending increasing the total insect research program to meet the total insect problem that faces the State. At the same time we should remember that more timber is being lost to the combined insect pests and diseases than is being taken by fire.

Francis Raymond, State Forester: Report on compliance and enforcement of the Forest Practice Act. At your hearing in Eureka on October 19, 1961, I gave extensive testimony in relation to the Forest Practice Act and some of the problems encountered in its administration. Since that time there has been no substantial change in the situation. On possible recommended legislation to correct compliance and enforcement, Robert H. Connett, Deputy Attorney General, stated he would be pleased to assist the committee in drawing up legislation to meet these conditions. I sat down with Mr. Connett the other day and went through the possibility of correcting injunctive procedures and different methods in other codes and sections on administrative problems. He pointed out several which could be converted to the Forest Practice Act to make it practical and reasonable to handle. I would like to recommend that industry be represented when proposed changes are discussed. I will arrange to have Mr. Connett present at these discussions, and I feel it important that we know how the proposed changes would operate before the legislation is introduced. This is far better than getting into it after the fact.

Alex Calhoun, Chief, Inland Fisheries Division, Department of Fish and Game: Logging has been creating difficulties for the Department of Fish and Game for a long time. The immediate difficulty is physical destruction by heavy equipment working right in the streams and sedimentation from heavy soil erosion. Large bulldozers often operate right in the streams, tearing up the bottom, the banks and the riparian vegetation. Logging roads and landings are commonly built right in the stream bottom. Channels are frequently filled with debris. We know of 22 streams damaged so far this year for a total of 28, which is an incomplete total.

Stream protection is now largely voluntary insofar as logging on private lands is concerned. A timber operator can run a good trout stream without openly violating any state laws or regulations. The Forest Practice Act and the related rules deal only with forestry aspects of logging. They ignore other resources including streams, watersheds, water, and fish and game. All are intimately related to logging. Director of Conservation Nelson and State Forester Raymond have pointed to needed reforms in the Forest Practice Act to facilitate its enforcement, now extremely slow and cumbersome. We would like to echo this need.

We think the current logging damage to streams is very serious and we think it demands corrective legislation. However, it is not clear what form the legislation should take. Several diverse private interests and a number of governmental agencies are involved. A co-operative effort toward a solution seems to offer the greatest hope.

Phillip Berry, Sierra Club: Less than one year ago representing the Sierra Club, I appeared before this committee to offer objections to the glaring inadequacies of the Forest Practice Act. As the committee knows, neither the Forest Practice Act nor the practice rules promulgated under its authority have changed substantially since a year ago. Needless to say, the objections of the Sierra Club and other conservation organizations to the inadequacy of the existing law still stand. Developments since last year have made our objections stronger and more numerous.

Judge Peter J. Cormack, Member, State Board of Forestry, Redlands, California: I consider myself a conservationist, not a Johnny-come-lately, but one who for 35 years has been active in promoting conservation in both the state and federal governments. The question today is: What are we doing about giving the full measure of protection to our natural resources? What do we mean by conservation? To me it means this: Conservation is the maintenance, protection, preservation and regulation of our natural resources in a manner consistent with sound democratic principles and objectives that will guarantee the following: (1) the wisest possible use, (2) for the greatest benefit; (3) to the largest number, and (4) for the longest time.

I know that this committee is earnestly and sincerely seeking answers to the many problems, and the people of the State of California will look to you to set the pattern that will afford the answers to our current dilemma.

Lewis A. Moran, Chief Deputy State Forester: I will present the critical deficiencies in the division's organization. It should be borne in mind that these critical problem areas (listed below) are the result of plan shortages and could be rectified by implementation of the organization inventory and plan.

1 The allotment to contract counties for the protection of state responsibility land and to United States Forest Service for protection of private land should be increased to reflect the 11 percent salary increase granted to state employees.

2 Due to the tremendous impact of the conservation camp program upon the engineering section, it is essential that a senior civil engineer be added.

3. The division needs two assistant civil engineers in the field to perform duties required to keep conservation camp inmates productively employed.

4 At some of our conservation camps, we have large transports for the purpose of moving our heavy equipment to fires. It is deemed necessary to place three more units at camps presently operating without these units.

5 Forestry has a schedule set up for the replacement of fire trucks. However, the division has never received sufficient funding to perform the replacement as scheduled. Thirteen fire trucks are urgently in need of replacement because of obsolescence and abnormal terms of operation.

6 In 1960 the 104-hour duty week was instituted without providing relief personnel. Three hundred eighty thousand dollars is needed to maintain the level of crew strength in the forest firefighter and lookout classes.

7. It is necessary that \$200,000 be expended to purchase additional equipment that has been designed and found highly valuable through the pilot testing program.

8. A forest technician is needed to investigate young growth timber A requirement under Section 124, Article 13, State Constitution.

9. The division's insect control budget should be increased to \$50,000 to take care of the serious outbreak in the central Sierra.

10. The division's automotive equipment fleet has reached 2,854 units. It is now mandatory that an equipment engineer be assigned to each district headquarters staff to be fleet manager and adviser to the deputy. Ninety-two thousand dollars is needed to place one engineer in each district.

11. It is essential that an assistant forest ranger be budgeted in District 5 to bring this district up to the standard set for dispatching procedures throughout the State.

12. An expanded air attack program is vitally needed, and it is essential that the division gear up its program to prevent disastrous losses.

13. The addition of a safety officer is needed at the State Forester's office to head up a safety program.

14. In order to increase the efficiency of seven forest fire stations, it is mandatory that \$97,000 be added to the budget to purchase seven additional trucks.

15. Our research activity should be increased by \$35,000. Many answers have already been found to forest problems and an increased effort is needed to get more answers on a shorter timetable.

16. Two training centers, one at Ramona, San Diego County, the other at Sutter Hill, Amador County, are admittedly not operating as efficiently as they might be. This is due to lack of instructor staffing. Staffing needed for these two vital centers will cost \$93,000 per year.

17. The ever-increasing number of duties assigned to the fire control ranger is much too heavy. It is essential that one associate ranger per district be added to the budget. This staffing will cost \$82,000 per year.

18. In the Division of Forestry there are presently 35 forest fire prevention patrolmen. Our plan calls for an additional 12 patrolmen. One hundred thousand dollars is vitally needed to keep pace with the development of increased risks in the wildland areas.

19. Budgetary implementation of \$74,000 is needed to provide for 28 relief dispatchers at each of our ranger unit headquarters.

20. Another critical area in the plan that needs attention is the establishment of additional medium bulldozers and transports with operators. There are nine of these in our fire plan that have not been implemented. These units, along with operators, would cost about \$500,000.

21. One forest technician is needed as forest manager at Boggs Mountain State Forest in Lake County.

22. The addition of two forest technicians to the staff will allow us to conduct a more intensive inspection job and stricter enforcement of the forest practice rules resulting in the long run in improved productivity of the forest lands of the State.

23. Due to the increased occurrence of fires and heavy fire losses in Contra Costa County, it is felt that the Mt. Diablo station should be activated. Forty-seven thousand dollars is needed for this support.

24 In co-operation with the State Personnel Board, it was determined that the Division of Forestry employees were not properly compensated for standby and oncall duty. Compensating the employees for the extra duty requirements will result in a cost increase of about \$1,000,000.

To sum up the critical deficiencies in the division protection system, \$4,000,000 is required at the present time to provide the necessary manning and equipment. To activate the present organization inventory plan in full would cost an additional \$2,000,000 for a total of \$6,000,000.

EXHIBIT A

EDITORIAL—LAKE COUNTY RECORD-BEE

Lakeport, California, September 6, 1962

AS THE SMOKE FILTERS FROM OUR NOSTRILS, A THOUGHT. While we're still attempting to wheeze out some of the smoke we've eaten for breakfast lunch and dinner the past several days as a result of the nostril-twanging Widow Creek Fire on Cobb, would be a most momentous time to replant an oft-sought thought—that of control burning—with the State Division of Forestry.

Many a local fellow has nicely, and otherwise, attempted to point out to the state boys that most of the brush and timber fires like last week's would cause little, if any, damage if Sacramento-squatted policymakers would allow the many more-than-willing property owners to get rid of the mounting, hazardous fuel through burning during bonfire season periods.

Had such burning been permitted, the area blackened last week would not have erupted into such a roaring, damaging inferno, because more than likely the blaze would have been stopped at a vast break created through control burning.

Such a policy would have saved the 14 homes, hunting camps, ranch buildings and timber. State forestry officials are negligent in this respect.

We don't agree that arson is the way out, unfortunately, in order to 'get away with it,' the local property owner—whom we often suspect of setting most of the summertime grass and brush fires—must ignite the works during the normal fire season. And fire just doesn't always stay where one wants it when weather conditions make easy control nearly fruitless.

But, again, it's the Division of Forestry's fault. If it would listen to some of the men who know the area best, the problem would not exist, we're sure.

We only wish that some of the forestry wheels in Sacramento had been owners of destroyed homes and other possessions.

We wish they could have been the ones who wanted to protect themselves and their property through a properly timed control burn, but unable to obtain a permit.

If the State, as we've been told, indeed has plans for increased controlled burn activities, we say get with it! You're years late already.

The forestry folks who are permanent residents of Lake County are not to be discredited by this however. They know their area, as well as its present hazards.

It is unfortunate they are not in a position to buck their superiors. Apparently, they've just got to live down the edicts of their aging chiefs in the capitol city.

While the fire burned, local residents could be heard muttering, "If they'd have let us control burn."

If the State Division of Forestry is so reluctant to let individual landowners control burn, they should supervise the job themselves.

We're confident taxpayers in this (golden?) State much rather would like to see more control burning costs than suffer wildfire losses five times that amount.

And, it it creates better deer hunting, so what?

EXHIBIT B

RANGE IMPROVEMENT ADVISORY COMMITTEE FIRE CONTROL RECOMMENDATIONS

1 That greater sums of money and more effort be expended to prevent fuel accumulations of brush, litter, fallen trees, and the like on areas recently burned by wildfires, utilizing such methods as reseeding with grass, spraying brush sprouts, re-

burning and so forth, as a means of reducing fire hazards and preventing forest fires

2 That all means of co-operation be exploited between the California Division of Forestry and other public agencies and private owners in reducing fire hazards, such as training new fire crews on controlled burns, maintaining fuelbreaks following controlled burns, and any other methods

3 That a program of fire hazard reduction be carried out, in which timber and brush lands will be broken into fire control units by a network of barriers along strategic locations where fuel conditions will be made favorable for fire control access and safety of firefighters. These barriers should be 300 feet or more in width; free of heavy ground fuel such as logs and slash with no continuous area of understory fuel, and shaded by maintaining as dense a high parklike canopy of hardwoods and conifers as possible.

PERSONS TESTIFYING BEFORE THE COMMITTEE

Santa Barbara, September 12 and 13, 1962

Francis Raymond, Chief, California Division of Forestry
 Emory Slout, Deputy State Forester, California Division of Forestry
 Eugene Bertsch, Deputy State Forester, California Division of Forestry
 Edward L. Tinney, Maintenance Engineer, Division of Highways
 B. C. DeLapp, Los Angeles County Fire Department
 L. T. Burcham, Assistant Deputy State Forester, California Division of Forestry
 Sheldon Jeffers, Member, Range Improvement Advisory Committee
 Wm. S. Schofield, Consulting Engineer
 Victor Osterli, Extension Agronomist, University of California
 Jared H. Hendricks, Secretary, Sportsmen and Ranchers Committee on Control
 Burning in California
 John Callaghan, Secretary-manager, California Forest Protective Association
 Daniel Datta, Technician, Division of Forestry Pest Control
 Dr. Keith Arnold, Director, Pacific Southwest Forest and Range Experiment Station, U.S. Forest Service
 Alex Calhoun, Chief, Inland Fisheries, Department of Fish and Game
 Phillip Berry, Sierra Club
 Judge Peter J. Cormack, Redlands, California
 Lewis A. Moian, Chief Deputy State Forester, California Division of Forestry

RECREATIONAL POTENTIAL OF THE KERN RIVER VALLEY, AND LAKE ISABELLA, KERN COUNTY, AND IM- PROVEMENT OF KERN CANYON HIGHWAY 178

Bakersfield, California, April 24 and 25, 1962

INTRODUCTION

We present a general summary report of the hearings conducted by the Assembly Interim Committee on Natural Resources, Planning and Public Works under the chairmanship of Assemblyman Jack T. Casey, vice chairman of the committee, at Bakersfield on April 24 and 25, 1962.

The committee heard testimony regarding the recreational development of the Kern River Valley, Lake Isabella area, and the urgent need to improve Highway 178 and other related problems

SUMMARY

(Complete testimony is on file in the committee chairman's office)

Eldon E. Ball, Supervisor, Sequoia National Forest, United States Forest Service: In a three-hour presentation at the opening of the hearing, Supervisor Ball discussed the concept of management of the national forest and described the United States Forest Service's multiple-use plan for the development of the Kern Plateau and Domeland area. The Sequoia National Forest's subregional plan, developed in 1955, serves to guide the district ranger and the forest supervisor in co-ordinating all the uses that may be desired on this public land. Under a multiple-use program through the building of access roads, campgrounds, picnic areas and recreational sites this area will serve millions of citizens who are seeking recreation.

Mr. Ball showed films and commented on the potential winter sports areas such as Shirley Peak, Tobias Peak, State Peak, Plute Mountain Peak, Breckenridge and the Scobie Mountain area suitable for hunting and the Golden Trout found in the Domeland streams.

When the new Highway 178 is completed, new recreational areas will become available in the Kern River plateau and will relieve some of the congestion now found in Kern River canyon recreation proper. The Domelands include some 500,000 acres of the proposed wildlife reserve and are adequate for those enjoying primitive recreation with access by both horseback and hiking trails.

This subregional plan for the area provides as we go through the program of development a timber management plan. This plan was the result of a complete inventory of the plateau area and was accepted by the present Chief of the Forest Service and indicates how timber management is tied in with other uses on the plateau. These plans are available to the committee for study at their leisure.

Roland Curran, Representing Kern Wildlife Federation: I shall try to give you the background of the present controversy affecting the

Kern Plateau The possibility of someone logging this country became a matter of concern 25 years ago when the results of logging in adjacent areas became manifest. The concern increased when the Mt. Whitney Lumber Company cut the timber and left a desolate waste on the west side of the Kern River opposite the Cannel Meadows area. It became alarming when a few years ago the Forest Service traded them adjacent stumpage for their cutover lands and permitted them to ravage the area in like fashion, destroying the trout streams, eroding the land, killing off game and leaving the area in shambles and a fire menace.

In 1956, the district supervisor, Eldon Ball, whom you have just heard, told the people of the valley that the Forest Service was going to call for bids for cutting of the timber in the Cannel area and that this would require the building of expensive logging roads. When asked why the rush when he had previously told them before any change was made in the use of the area that the Forest Service would hold public hearings and try to work out an agreeable program, his reply was, and I quote, "It is necessary to get the Mt. Whitney Lumber Company off the hook. They have lost their bid to the north of their present operations to the Merced Box Company and we must put them up in the Cannel area to save their operation."

The Forest Service reacted with great swiftness and called a public meeting in Visalia. For a stacked meeting there was never one to surpass it and to see a great public agency so demean itself was a cause for sorrow to the onlooker. It was also a fearful warning of the tremendous power of this bureaucracy and its callous disregard for the opinions and aspirations of the general public. After running through a series of witnesses who were either employees of the Forest Service or employees or lumber company officials the contract was let and the results speak for themselves.

The Forest Service, in order to prove its devotion to the multiple-use program which it had loudly ballyhooed, spent a great deal of money on fancy brochures, public relations and publicity spreads in an effort to justify their contract. Then they promptly padlocked the gates preventing anyone other than the lumber company from using the road. This proved another shining example of the hypocrisy which the public has come to expect from our local forest guardians.

The Forest Service knows it does not have the money and obviously cannot get the money to put on an adequate recreation program on the Kern Plateau. They nevertheless prepare grandiose plans, including reservoir and lake sites, and sell their program to an unsuspecting public under the guise of a multiple-use project when in reality it consists of but one use: "Cut those trees."

A trip to the Kern Plateau is a must if one is to free his thinking of Forest Service propaganda. The management of these areas is of great concern to everyone in California and provision has to be made for all types of usages and the Forest Service should be stopped where it is today unless and until it proves its contention and can justify its program by the means to implement it.

Ardis Walker, Director, Kern Plateau Association: Judge Walker expressed the association's appreciation to the committee for calling this hearing on a resource problem, the solution of which will have far-reaching consequences on the State of California. In this case it shows

comprehensive vision that a legislative committee take time to inquire into the fate of state-owned resources and factors of statewide concern in the field of public welfare and economy even though the resource involved lies within an area of the State administered by a federal agency

For this reason the Kern Plateau Association has asked for a moratorium on further timber sales and logging road construction on the Kern Plateau until comprehensive study of the total resource potential of the area has been made by unbiased authorities and the results of such a study have been made available for public evaluation.

Frank R. Stockton, California State Chamber of Commerce: We are supporting the proposed plan as presented by the United States Forest Service and believe the Kern Plateau has already received sufficient study and that nothing further should be done to delay the development program and the creation of the domeland wild area as proposed

Allan Coates, Porterville Chamber of Commerce: The Porterville Chamber of Commerce along with the Tulare County Sportsmen's Association, consisting of eight clubs with 10,000 members, strongly endorse the land management program, commonly known as the multiple-use program of the United States Forest Service

Oscar Greene, President, Lake Isabella Chamber of Commerce: Our chamber has gone on record favoring the United States Forest Service plan to develop the domeland and plateau areas. California is desperately short of areas in which people can seek outdoor recreation and it appears to us that those persons seeking solitude have a vastly greater opportunity to find their solitude than those who are simply seeking healthful outdoor recreation. We take serious issue with those people who advocate constantly enlarging these areas. Rather we advocate building adequate highways into more areas in order that the area may be enjoyed by more and more people.

In our opinion there are four major problems in the Kern River valley which, if solved, will make this area truly the finest recreational area to be found anywhere.

1. The establishment of 110,000-acre-foot-minimum recreational pool on Lake Isabella.
2. The construction of an adequate highway between Bakersfield and Lake Isabella.
3. A flow of water in the Kern River between Roads End and Kernville adequate to provide full recreational use of this stretch of the river.
4. The establishment of a winter sports area adjacent to the Kern River valley.

Charles Connaughton, Regional Forester, United States Forest Service: As senior representative of the federal agency assigned responsibility for the management of the lands in question here today, we are pleased that the Assembly committee has taken the time to review this matter recognizing fully that the lands are administered under the

laws of the United States Congress I am hopeful that when the public hearing is called on this domeland area with which you are concerning yourself, it will be possible for the chairman to appear and present the views of this committee as a result of your deliberations. We have approached it systematically and certainly have established the facts. They are available to you and to anyone else to make their own review and analysis and draw your own conclusions.

The committee adjourned at 1:30 p.m. to observe Kern Canyon Highway 178, Lake Isabella, the dam and reservoir and were briefed on the need for the establishment of an 110,000-acre-foot-minimum pool for recreation purposes.

Bakersfield, April 25, 1962

A. B. Newby, Vice President, Kern County Board of Trade: We hope that your committee in its wisdom will see fit to urge the California Highway Commission to appropriate the necessary funds for construction of a new highway to the Kern River valley-Lake Isabella area. We also should like to request the committee's consideration in urging the United States Congress to make funds available to the Corps of Engineers for a resurvey of the Isabella Reservoir for the purpose of improving its recreational values.

William Balch, Kern River Watermaster and Manager, Kern County Land Company: In co-operation with recreation interests, the water company has been studying methods whereby the recreation pool could be increased in such a manner as not to impair the irrigation uses. The water company has met with representatives of various organizations in the Kern River valley and the water company and its personnel will be available to assist by providing data and other information in the hope of bringing about greater benefits to this country through multiple-purpose operations of Isabella Reservoir with the objective in mind of making certain that no segment of the economy is denied its current use of the reservoir.

Pauline McNally, Representing the Kern Plateau Association: Yesterday testimony was heard relative to timber cutting in the Johnsondale area and the testimony indicated that the area was in as favorable a position as to logging practices as it is anywhere else. I should like to quote a specific statement of the Comptroller General of the United States in his report of August 1, 1957. "Forest Service officials agree that cutting on the Johnsondale area national forest exchange timber compares unfavorably with other cuttings on national forest lands." I would also like to quote material taken from the Kern Plateau field trip of June 24-26, 1960, by the California Fish and Game biologists in which they state: "Between Mansion Meadow and Trout Creek lies an area of large granite pinnacles and domes some 35 square miles of rough, steep, sparsely wooded terrain comprising what is known as the domeland. While it is a very picturesque country, it would seem to have little appeal for the public over its present status, and creating a wild area there would accomplish nothing."

The Kern Plateau Association does hereby reiterate its resolution asking for a moratorium for the Kern Plateau as a protection against any further exploitation until proper studies are made justifying any programming thereof and requesting that this action be taken for and in the interest of the public to fully protect and provide the greatest good for the greatest number

Walter Lacosse, Manager, Mt. Whitney Lumber Company: I am not going to defend the lumber company and I do not want to enter into the controversy. I want to state a few facts in answer to some remarks which were made regarding the operation of the Mt. Whitney Lumber Company. Regarding the marginal timber on the Kern Plateau, I would like to state that during the year 1961 we shipped timber from the Kern Plateau east for the first time, and we had several letters commending the texture and quality. It is a natural slow-growing tree and consequently makes a finer texture and better lumber. Regarding the job that was done on the Kern Plateau where we logged during the years 1959 and 1960, I am very proud of that particular job. I have heard discussed many times that we do not clean up the forest. No, we don't clean up the forest. I do not think the Forest Service or any of us would have the money needed to clean up the forest. We expect nature to help us. We lop and scatter and bring material as close to the ground as possible for eventual rotting and deterioration. The Forest Service works under rules laid down by Congress. We work under regulations as laid down by the Forest Service and we are interested in doing a good job in perpetuating the forest.

Aaron H. McFarland, Member, Kern County Fish and Game Protective Association: I am a member of the association's executive committee which was formed for the purpose of redeveloping the Kern River to protect aquatic life in the river. This is to be done by co-operating with the various state and federal agencies.

First, we must have sufficient continuous flow of water at all times in the Kern River for trout and other aquatic life to live and recreate themselves. Second, Bakersfield is rapidly becoming a metropolitan area and it is necessary for us to plan and to take proper steps to provide clean recreation facilities for our citizens and their children.

Mr. McFarland presented photographic slides showing the recreational potential of the Kern River and lodged a complaint against the various utility companies for having dried up the river and destroying the fishing on the river.

Charles P. Salzer, Kern County Board of Supervisors: Mr. Salzer read a resolution passed by the Kern County Board of Supervisors pertaining to Highway 178 to Lake Isabella.

Some of you are familiar with the conditions of this road and the Division of Highways and the Highway Commission will be the final authority on it, but I do know you gentlemen can be of aid and assistance and Southern California will certainly appreciate any effort you can put forth.

Mr. Salzer read another resolution pertaining to Lake Isabella Dam. We are in partnership here, and it is going to take co-operation of all

federal, state and local agencies to develop this to the fullest extent. Consequently we need plenty of assistance from elsewhere. There is a limit as to what we as one county can do.

William Carver, Kern River Chamber of Commerce: The one thing I do not think you have been made aware of is the fact that there will be a hearing in Bakersfield by the State Water Rights Board on May 3d. It was this concern that the chamber asked me to appear here to apprise you of the fact that there is such a hearing.

As I understand the problem, the storage space for recreation, whether or not it is 35,000 or 110,000 acre-feet, the supply thereof will be the concern of local interests. The carryover criteria that was mentioned earlier notwithstanding, witness the fact that the county is buying water for that recreation pool. The purpose in bringing this to your attention is due to the fact that the chamber feels this matter of the application for unappropriated water is a part of your resources complex on the Kern River.

The hearing next week states that the purpose of the conference is to explore the views of all parties in regard to existence of unappropriated water, to exchange views, etc. Specifically it has been alleged that there is little or no unappropriated water, that is water not already claimed and used, other than existing rights of the applicants and others on the Kern River.

There are sufficient code sections and much in the law to substantiate the situation. There is Section 1251, I believe, which makes it mandatory for the Water Rights Board to make this study, and if it is within the power of this committee, we would like you to consider together with your resources complex of the Kern River, the possibility of a moratorium study in this matter.

PERSONS TESTIFYING BEFORE THE COMMITTEE

Bakersfield, April 24 and 25, 1962

Eldon E. Ball, Supervisor, Sequoia National Forest
 Roland Curran, representing Kern Wildlife Federation
 Ardis Walker, Director, Kern Plateau Association
 Frank R. Stockton, California State Chamber of Commerce
 Allan Coates, Porterville Chamber of Commerce
 Homer F. Power, President, Tulare County Chamber of Commerce
 Homer Harrison, Secretary, Kern County Sportsmen's Council
 Oscar Greene, President, Lake Isabella Chamber of Commerce
 Clinton Young, Mt. Whitney Lumber Company
 Charles Connaughton, Regional Forester, U. S. Forest Service
 A. B. Newby, Vice President, Kern County Board of Trade
 W. T. Shannon, Director, Department of Fish and Game
 William Balch, Kern River Watermaster and Manager, Kern County Land Company
 Pauline McNally, representing the Kern Plateau Association
 Walter Lacosse, Manager, Mt. Whitney Lumber Company
 Mayhew H. Davis, representing Richard Thompson, President, National Forest Recreation Association

58 REPORT ON NATURAL RESOURCES, PLANNING AND PUBLIC WORKS

Ralph Edmonds, representing Kern County Fish and Game Protective Association
Aaron H. McFarland, Member, Kern County Fish and Game Protective Association
W. L. Welch, District Engineer, Division of Highways
Charles P. Salzer, Supervisor, County of Kern
Jack Heim, President, Kern River Fish and Game Association
Harold Cate, Superintendent, Isabella Reservoir
Josh Clark, Chairman, Cross Country Highway Committee
Carl L. Stetson, Chief, San Joaquin Valley Branch, Department of Water Resources
Lampheo Graff, Chairman, Kern-Kaweah Chapter, Sierra Club
C. A. Weber, Chairman, Roads Committee, Kern River Chamber of Commerce
Stephen T. Wardwell, State Landscape Architect, Division of Beaches and Parks
C. Dexter Haymond, President, Greater Bakersfield Chamber of Commerce
William Carver, Kern River Chamber of Commerce
Russ Williams, Kernville

LAKE TAHOE INTERSTATE PARK PROPOSAL

Field Trip, July 25, 1962

For many years the wonders of Lake Tahoe have been an irresistible summer and winter paradise. The scenic grandeur of this area is rapidly being subdivided, commercialized and overused.

As a result, the state park commissions of both Nevada and California became very concerned about this increasing public demand so in 1961 informal discussions about this problem were held and the results were reported to the two state administrations. Governors Grant Sawyer of Nevada and Edmund G. Brown of California then directed their respective state park commissions to work jointly in studying this very complex problem and to formulate a bistate solution.

On July 25, 1962, interested California legislators of both the Assembly and Senate Natural Resources Committees were conducted on a field trip by auto along the east shore of Lake Tahoe and by boat viewed the shoreline of the proposed site of a bistate park. At that time they were briefed on the general problems of the Lake Tahoe basin in order that they will be in a better position to make decisions on solutions to the problems in the future.

SUBCOMMITTEE ON BAY AND WATER POLLUTION

San Francisco, California, December 27 and 28, 1961

INTRODUCTION

This subcommittee was authorized to investigate California's pollution problems under house resolution introduced at the 1957 Regular Session of the Legislature. As a result of the activities and the testimony presented to this committee at previous hearings, legislation has been introduced and we have been able to strengthen the water pollution laws of our State.

It was through the expression of interested parties that we arranged for the hearing and field trip relative to A. J. R. 45 which deals with the establishment of a research pollution facility in California, H. R. 408, which deals with synthetic detergents in ground water and other related pollution subjects including Assembly Bills 3057, 3089 and 3091.

SUMMARY OF TESTIMONY

(Complete testimony is on file in the committee chairman's office.)

Paul Bonderson, Executive Officer, State Water Pollution Control Board: We have been increasingly concerned with the problems resulting from synthetic detergents in sewage, particularly as they affect ground water. Over the past several years, the housewife is gradually shifting from use of soap to detergents. Soap and other material normally found in domestic sewage are subject to biological degradation. The synthetic detergent is not subject to this biological breakdown, so if you have a certain amount of these synthetic detergents in your raw sewage, you will essentially have the same amount in the effluent of the sewage treatment plant when it is discharged.

There has been a great deal of work done on this subject by the soap industry, but unfortunately the bulk of the work done relates to the effects of this substance upon surface waters. In California the principal problem that we are faced with is the effect of the synthetic detergents upon ground waters.

In the past you could spread essentially raw sewage on the surface of the ground and natural purification processes would remove, stabilize and purify the sewage before it was commingled with the ground water. It could be pumped out of the aquifer, reused and have no adverse effect upon any use that is made of such water. Unfortunately, the detergents do not break down even in percolation through the ground, so there are instances in California where water wells now contain a significant amount of synthetic detergents. The State Water Pollution Control Board is cognizant of this situation and we hope to develop information that will aid in solution of this problem.

The State Water Pollution Control Board has two projects underway at the present time to study this problem. The first is a contract with the California Institute of Technology to study what will happen to particular detergents at the new Whittier Narrows Waste Water Rec-

lamation Plant built by the Los Angeles County Sanitation Districts. The other project under consideration is to evaluate what has occurred in one particular instance where domestic sewage has been percolating into the ground water for an extended period of time. This will be done in what is known as the Colton Narrows area near San Bernardino where percolation has traveled several miles to water wells that are being affected by the detergents. The board is in process of developing a project with the Department of Water Resources that will delineate the spread, the travel and the persistence of detergents in ground water.

The work done previous to this time has been along the lines that are usually followed by the engineer, that is the empirical approach. The Cal-Tech approach will be more fundamental. They have a very capable microbiologist that will approach this in a more fundamental fashion to try to determine if there are certain organisms or certain sets of circumstances whereby the detergents might be broken down and destroyed so that in the effluent they would not have an adverse effect on the ground water. There is considerable interest in Assembly Joint Resolution No. 45 in that it provides for the establishment of a federal water pollution control research laboratory in California. It might be pointed out to the committee that the United States Public Health Service, as a result of federal legislation, is carrying on a far more extensive and active role in the water pollution control field than has been the case in the past, and it is significant that there be support for this activity here in California.

San Francisco and other parts of California would be an ideal place to undertake this type of activity. You have the physical problems here. You have a beautiful Bay to work in, you have a coastline of many miles. You have California's technical facilities—the University of California, Stanford University, U.C.L.A., Cal-Tech and others that have the technical competency to help support this activity that is lacking in other parts of the country. I think it would be particularly appropriate if California were to receive a regional research laboratory.

Stanley McCaffrey, President, San Francisco Bay Area Council: Federal legislation provides for the establishment of a facility for research in water pollution and the training of people in an educational institution which has faculty and facilities adequate for this type of research and training. We feel that in the San Francisco Bay area we meet the federal legislation requirements and nowhere else in the United States could a facility be established that would be of more value in connection with solution of this problem internationally. We of the council are co-ordinating the interests of the many groups and individual leaders interested in this subject in preparing a presentation to the Department of Health, Education and Welfare for the establishment of such a laboratory in the Bay area.

James McCormick, Regional Water Pollution Control Board: Our organization unanimously went on record supporting Assembly Joint Resolution No. 45 and directed a letter to Secretary Ribicoff asking him for full consideration of establishing such a facility in California, and particularly in the Bay area. The problem in water pollution in the State is our real lack of technical knowledge of certain phases of water pollution. For example, at what point do you reach the maximum of

assimilative capacity of water? Under the new pollution law, the dischargers perform bioassay tests to determine along with the state agencies the effect of the chemical discharges in water. Actually what are we doing when we do this? We have no real knowledge as to the effect of these chemicals on organic life. I am sure the state agencies will admit they lack a considerable amount of technical knowledge. So, in essence, I think that this is not a problem only to California, because the very language of the act pretty much establishes a need for this research facility. Actually it appears as if the act was written for California. Even Mother Nature has provided a physical laboratory unparalleled anywhere else in the world. We have plenty of agencies that could co-ordinate this work, and we compliment the committee upon focusing public attention on the desirability and need for establishing one of these federal research projects in this area.

P. H. McGaughey, Director, Sanitary Engineering Research Laboratory, University of California: I am going to confine my remarks largely to the nature of the program at the university which should be attractive to the federal government in locating a laboratory here.

The Division of Hydraulic and Sanitary Engineering has two research arms: the Sanitary Engineering Research Laboratory and the Hydraulic Laboratory, each operating under a director. They are dedicated to three purposes. One, the development of faculty competence through research; second, the provision of the necessary research opportunity for educating graduate students, and third, to serve the State and the nation through the provision of basic factual data that are needed in the solution of practical problems. Through this arrangement, the University of California now has the most extensive sanitary engineering program in the United States. We are interested in research in all of the areas in which the federal laboratory would be interested and we can assist the laboratory by co-ordinating and co-operating in research projects.

I would call to your attention that the university facilities at Richmond now have an extensive research installation both on a pilot scale and a field scale concerned with sea water recovery, ground water recharge, detergents in ground water, pollution of San Francisco Bay, etc. We have another branch on the Davis campus with which we co-operate and work on water pollution and Chancellor Strong has made a public statement that he would consider the use of either of these sites for such a laboratory if the federal government was interested in using them.

William C. Blake, Supervisor, City and County of San Francisco: I am a member and former chairman of the Bay Area Air Pollution Control District. The problems of air pollution sometimes crosses over the boundaries of water pollution. We have had such problems in the south end of the Bay where water pollution has caused air pollution.

Because of the problems presented, the nuisance created, and the very slow and lax attitude of the city officials of San Francisco toward water pollution control, it was felt that a member of the Board of Supervisors of San Francisco be appointed to the State Regional Water Pollution Control Board. At the suggestion of Assemblyman Meyers, Governor Brown appointed me. However, City Attorney Dion R. Holm

rules the position of supervisor and a member of the State Regional Water Pollution Control Board to be incompatible. I have no criticism of this action. However, I feel that A B 3057 which would allow any member of a county board of supervisors or a city council or any other county officer to be a member of the pollution control board is an excellent bill, and I urge that the State Legislature adopt A B. 3057 at the next session.

Dr. Rolf Eliassen, Professor of Civil Engineering, Stanford University: These regional water pollution control laboratories are extremely important in the solution of the problems of the nation. There is one laboratory now in Cincinnati, but that is not enough to solve a number of these problems. The big point is to locate these laboratories in regions where there are educational facilities adequate to support the laboratory. I feel that California should be considered and if land were desired, Stanford University has 8,800 acres of land, some of which might be made available as a site for such a regional laboratory.

Water pollution control implies a large staff of skilled engineers and Stanford University offers many phases of civil engineering, of humanities, science, engineering, economics, mathematics, law, chemistry, biology, physics and medicine. All of these factors add up to one conclusion, that Stanford University would have a great deal to offer the staff of a regional water pollution control laboratory if it were to be located in this area.

Russell W. Hart, Regional Engineer, United States Public Health Service, San Francisco: In the last session of Congress, the 16 Democratic congressional members from California presented to Secretary Ribicoff of the Department of Health, Education and Welfare a justification for the establishment of a laboratory in California. Considerable interest has been generated in this proposal, both among people in the northern part of the State and people in the south. The San Diego area submitted to Secretary Ribicoff a very fine brochure supporting the establishment of such a laboratory in the vicinity of San Diego. The northern people also have a brochure under preparation which will point out advantages which would merit establishing a laboratory here in this particular area.

You have heard testimony from Professor Rolf Eliassen of Stanford University relative to the resources which are available there. You have heard from Professor McGaughey of the University of California of the great work that is going on at the Davis campus. In addition there are private laboratories here in California which with the establishment of this regional water pollution laboratory of the federal government would co-ordinate its services to bring to focus these problems in the field of water pollution. With the implementation of the California Water Plan for which \$1,750,000,000 in bonds were voted, I see the need for intensive research in the whole field of water quality because quality is going to be the key to the whole problem. I think the project should be approved considering the necessity and the thinking behind the program that is involved.

Frank Stead, Chief, Division of Environmental Sanitation, State Department of Public Health: Most of the key points have been

touched on in the previous testimony, and I would merely like to add one or two points.

Our department has two major concerns in this problem. One is the presence of detergents in sewage. We have many unanswered questions before we can grant assurance that treated water reclaimed from sewage may be safely injected into an underground strata. The other concern, of course, is the continued presence of virus and other human pathogens for which there is no sensitive direct laboratory measure. We are dealing here with something which must be thought of not only as to its chemical toxicity but to its actual physical change and the characteristics of the water itself to which detergents are applied. Consequently we attached a very high degree of importance to a research project previously mentioned at Whittier Narrows which has as its object finding out whether detergents can be completely removed either in the treatment process or in the carefully managed percolation operation itself. If this can be done, then one of the obstacles toward the early granting of approval to the injection of water reclaimed from sewage on a large scale will have been removed.

Walter T. Shannon, Director, Department of Fish and Game: We feel that this committee is to be commended for the action it has taken in the past to provide pollution laws to correct certain conditions which have been very serious, and we are highly in favor of H R 408 which continues the investigation of pollution of the waters in the State of California.

On A J R 45, our agency is in agreement with the desirability of a United States Public Health Service laboratory facility here in California. Significant endorsement of A J R 45 has come from many quarters in California including support voted by the State Water Pollution Control Board and Governor Brown has indicated his support of such facilities in a letter to the Secretary of Health, Education and Welfare.

Assembly Bill 3057 declares that the office of a member of a regional water pollution control board shall not be deemed to be incompatible with the office of any elected city or county officer. It appears that this bill does not conflict with the intent of the present water pollution control statutes and I see no valid objection.

A B 3089 would increase the membership of the state board from 14 to 16 by the addition of two members selected from a regional board. The department believes conflicts could be anticipated in regard to the state board's function of allocating funds to regional boards and in drawing up statewide policies for the control of pollution, Section 13022.

A B 3091 would require the reporting to the regional board of any discharge of untreated sewage or industrial waste when such waste would enter state waters together with treated waste or with storm or floodwaters. Obviously the criteria of treatment or lack of treatment as proposed by A B 3091 is insufficient to distinguish between the safe and the objectionable discharges. Therefore we believe the present law which considers the protection of the receiving waters regardless of the

type of waste or its degree of treatment to be the better means of achieving the desired results.

By letter to the committee, **Alan E. Davis, Director of Field Operations, California Manufacturers Association**, advised of CMA's position on the following bills.

A B 3057—This bill would have declared that the office of member of a regional water pollution control board is *not* incompatible with the office of any elected city or county officer. CMA has never been satisfied that membership on any local enforcement board or commission is completely compatible with the office of any elected city or county official. We believe that under present circumstances effective water pollution control cannot be maintained where there is the slightest possible conflict of interest or political pressure. I cite two examples:

First, if a city sewage plant, for instance, continually violated its pollution control requirements and the board was compelled to take legal action, any member of the board serving as an elected city official would be in an untenable position in having to vote for positive legal action which may make him very unpopular with the citizenry who use the facilities.

Second, circumstances arise occasionally where political pressure by the voters tends to cause an elected city or county official to take a stand on proposed board action which may be politically popular but not conducive to equitable and effective pollution control.

CMA still maintains a position against the intent of this bill as originally introduced.

A B 3089—This bill would have added two more members to the State Water Pollution Control Board—one who is a member of a regional board in the northern half of the State and the other from a board in the southern half. CMA is still opposed to the principle of this bill for the following reasons:

- 1 The state board makes policies and the regional boards carry out these policies. We believe these two functions should remain separate and distinct for effective pollution control.
- 2 Since the state board can review the action of the regional boards, the two new state board members would be in a position of having to act on decisions that their own regional boards may have made. This would be similar to a superior court judge sitting on an appellate court in review of his own lower court decisions.
- 3 The state and regional boards and their staffs are currently undertaking a program of close co-operation and co-ordination in the pollution control program.

A B 3091—This bill requires the reporting of any proposed discharge of untreated sewage or industrial waste, together with treated sewage or industrial waste or storm or flood waters, to the regional water pollution control board. You will recall the discussion on this particular bill before the committee. There was a great deal of misunderstanding about its purpose and effect. It is still our fear that this bill in its original wording would have weakened Section 13054 of the Water Code to the extent that the regional water pollution control boards could lose some of their control authority over the discharges by public agencies. Section 13054.1 already calls for filing with the regional board of any proposed change in the character, location or volume of the discharge. This section, in our opinion, adequately covers the problem that exists in San Mateo County which was the apparent reason for A B 3091. The bill as proposed would also result in a tremendous increase in the amount of paper work for the regional boards without any particular beneficial results for proper pollution control. The amended versions were even more confusing because the amendments did not seem to properly fit the language of the bill.

LIST OF PERSONS TESTIFYING BEFORE THE COMMITTEE

San Francisco, December 27 and 28, 1961

Walter T Shannon, Director, Department of Fish and Game

Paul Bondeson, Executive Officer, State Water Pollution Control Board

Frank Stead, Chief, Division of Environmental Sanitation, State Department of Public Health

Ruth Church Gupta, Member, Regional Water Pollution Control Board No 2

James McCormick, Member, Regional Water Pollution Control Board No 2

William Geisner, Sanitary Engineer, Department of Public Works, City and County of San Francisco

Curtis L Newcombe, Vice President, California Division, Izaak Walton League

Stanley McCaffrey, President, San Francisco Bay Area Council

P H McGaughey, Director, Sanitary Engineering Research, University of California at Berkeley

William C Blake, Supervisor, City and County of San Francisco

Dr Rolf Ehassen, Professor of Civil Engineering, Stanford University

Russell W Hart, Regional Engineer, United States Public Health Service, San Francisco

SUBCOMMITTEE ON BAY AND WATER POLLUTION

SAN FRANCISCO

September 27 and 28, 1962

SUMMARY OF TESTIMONY

Paul R. Bonderson, Executive Officer, State Water Pollution Control Board: I would like to make a personal observation as it relates to the water pollution activities; that is, there has been quite a change in the Water Pollution Control Board's programs as a result of the activities of this committee. This has been most evident and most impressive to the staff members of the State Water Pollution Control Board.

There is great need for the establishment of a federal research facility here in California, and I am convinced any type of ground water problem or ground water situation you might want to study is right here in California.

At previous hearings, I have briefed this committee on what this laboratory facility constitutes and I am leaving A J R 45 and H R 408 dealing with this facility to the organizations who will testify here today and to those we will hear from next week in Los Angeles and San Diego.

J. F. Gorlinski, Executive Officer, Central Valley Regional Water Pollution Control Board: We have another operation that poses a problem to pollution. This is the hydraulic mining operation of the Rex Sierra Gold Mining Company located on Oregon Creek at the border of Yuba and Sierra Counties. We have met with the Rex Sierra people, and I have personally been up to the site. We are in the process of establishing waste discharge requirements for this operation.

The prime consideration in this operation is siltation and turbidity which we went into quite extensively. The present plan of operation is to hold the material during the low water season and to discharge it after the high water has arrived which should flush it out. The chief difficulty there is the limited storage capacity they have for tailings. The company has applied for a license from the California Debris Commission to store material behind Bidwell Bar Dam. The problem is to get it there without spoiling the California streams and we are setting up specific waste discharge requirements to present to the board meeting on October 18.

Paul Eastman, Program Director, Water Supply and Pollution Control, United States Department of Health, Education and Welfare, Regional Office No. 9: I can add very little to the discussion of the status for the establishment of a research laboratory in California. I can reiterate for the purpose of emphasis that there are two kinds of laboratories that have been authorized. One type is the water quality criteria research facility for which money has been appropriated for two such laboratories. It is rumored but not announced that

the freshwater facility will be established in the Great Lakes basin or the Upper Mississippi basin, and the salt water quality criteria laboratory will probably be established in the State of Rhode Island.

The other type of laboratory is the regional research and study laboratories. The authorizing legislation states that these laboratories shall be established including but not limited to seven general areas in the United States. The area which probably comes closest to including California is the southwest area. However, a southwest laboratory has been announced to be located in Ada, Oklahoma, so this means that if California is to get a regional research and study laboratory, it will have to be an eighth laboratory designated as a Pacific-Southwest facility.

Frank Stead, Chief, Division of Environmental Sanitation, State Department of Public Health: The first difficulty with detergents is a physical one, namely, the very active frothing. The next is a physiological one, the production of adverse tastes. Under California law with respect to water supply, frothing itself is the first concern with respect to domestic water systems and taste is second. The law requires that water served to the public not only be safe from a bacteriological and chemical point of view but that it be potable.

Speaking for the whole subject of public health interests, the things that mark our present decade are the widespread distribution of three kinds of contamination in water. These are the synthetic detergents, the organic insecticides and the presence of radioactivity in the total environment. Our department places the highest emphasis on a surveillance program which will keep us continuously and accurately informed of exactly where we stand with respect to the three problems. This requires co-ordinating the activities of four state agencies, namely, the State Water Pollution Control Board, the Department of Water Resources, the Department of Fish and Game, and the Department of Public Health.

Leslie Hood, Director of Information, San Francisco Bay Area Council: For the past 10 months we have been actively seeking to have a federal water pollution control research facility located here in the San Francisco Bay area. The Water Supply and Pollution Control Division of the Bureau of State Services of the Public Health Service of the United States Department of Health, Education and Welfare in their memorandum dated October 2, 1961, listed eight criteria regarding site locations, and I would like to summarize these very briefly.

1 Availability of Transportation Facilities. The Bay area is the terminus of three major transcontinental railroads and is served by 10 airlines and is the major port on the Pacific Coast in terms of general shipping.

2 Public Utilities, Communications, Power, Water Supply and Waste Disposal. The Bay area has an excellent communication system, our power rates are among the lowest in the country, our water supply is more than adequate, and we have adequate waste disposal systems.

3 The Community. Social, Cultural and General Living Conditions. The Bay area has a very high rate of industrial expansion. The

area's schools are surpassed by none. We have sufficient housing to accommodate the several economic levels. Our recreational facilities are second to none, and our churches serve all religions.

4. *Availability of Needed Technical and Nontechnical Personnel* The Bay area is regarded as one of the prime areas in the country with our universities and our intellectual climate, there would be no problem in recruiting personnel.

5. *Special Library Facilities Suitable for Scientific and Technical Research Needs* The Bay area has well over 50 libraries in the various universities, college, governmental agencies and other private institutions where a collection of scientific literature is maintained. This does not include the public libraries. Some of these libraries, particularly the University of California and Stanford, rank amongst the top in the nation.

6. *Proximity to Federal, State and Other Agencies Having Related Responsibilities in Water Resources Development* Agencies specifically mentioned which are located in the area include:

Federal: Department of Defense, Department of Commerce, Department of Interior, Federal Power Commission, Department of Agriculture, United States Forest Service, Region 5, Naval Radiological Laboratory, Coast and Geodetic Survey, Department of Health, Education and Welfare, and Housing and Home Finance.

State: Department of Public Health, Department of Water Resources, Department of Fish and Game, Department of Natural Resources, State Water Pollution Control Board, Department of Agriculture, Bay Area Air Pollution Control, Division of Recreation, Department of Public Works, and the Division of Small Craft Harbors.

7. *Proximity to Major Regional Water Resources Problems* In the State, there are eight major areas which present critical problems. They are Klamath River, Humboldt Bay, Bodega Bay, Lake Tahoe-Truckee River, Sacramento-San Joaquin River Delta, San Francisco Bay System, Lower San Joaquin Valley and Los Angeles Basin. A look at a map will show that the Bay area is the most conveniently located to study all of these critical water pollution control problem areas.

8. *Proximity to Universities, Institutes and Other Operating Research Installations Covering a Broad Spectrum of Scientific Disciplines and Activities* In this regard, I would like to refer you to a copy of the "Scientific Resources of the San Francisco Bay Area," a 108-page compilation of the various institutions of learning, scientific foundations and engineering societies, industrial research facilities, trade associations and other scientific organizations in the Bay area. In addition, I have asked representatives of the two major universities in the area to discuss their institution's particular qualifications and to make additional remarks regarding the various criteria outlined.

This concludes our presentation of the Bay area as a site for the location of this facility. Four of the criteria established, we find near equals in other parts of the State, in four, the Bay area has no peer and these four are from the scientific research point of view the most important.

Dr. P. H. McGaughey, Director, Sanitary Engineering, University of California: I believe California is confronted with urgent problems that will confront all semiarid states and countries of the world. The research attack on these problems, in my opinion, is best done where the problems exist rather than in some other area where the climate is different.

You have in the record the report of the Bay Area Council which sets forth very clearly the scale and scope of the program. The important fact is that in the University of California in Berkeley and Richmond you have the largest activity in the United States in the area of water pollution research. The point pertinent to the testimony here is to locate a facility in California, and I am certain it should be in the Bay area.

Dr. Verne H. Scott, Associate Professor, Department of Irrigation, University of California at Davis: Although considerable progress has been made through basic and applied research on problems of water quality and pollution, it is apparent there are many unsolved problems of great importance to the urban, industrial and agricultural economy of the State of California. The forecasts are for more intensive research efforts, closer working relationships between all of the agencies who are involved in carrying out programs of research control and testing in this important field.

If a federal water pollution control laboratory is established in the Bay area, it would certainly provide facilities and staff that could carry out the responsibilities of the United States Department of Health, Education and Welfare. We would assume that these responsibilities would be carefully defined, and with the establishment of a laboratory, it would contribute to the solution of California's water pollution problems. If it were located near the University of California's facilities, it would permit close co-operation and liaison on problems of mutual interest.

Dr. Rolf Eliassen, Department of Civil Engineering, Stanford University: Stanford University should be a major factor in the consideration of the establishment of a federal water pollution control laboratory in the Bay area.

Water pollution control implies a large staff, skilled in sanitary engineering and water resources. In its Department of Civil Engineering, Stanford offers study and research in these fields. Added to this is a large staff of men skilled in hydrology, fluid mechanics and construction engineering, plus the school of humanities and sciences with outstanding departments of chemistry, biology and physics. Each of these engineering specialists and sciences is highly important in the study of water quality problems.

The school of mineral sciences has a large department of geology. Specialists in ground water flow, an important aspect of water pollution control, and in geology and geochemistry could be of great assistance in programs related to water quality control.

Many problems involved in water pollution control are concerned with public health. Thus it is important that the federal regional laboratory be near an excellent medical school. Stanford's school of medicine with specialists in all fields of medicine and its research facilities are virtually unsurpassed.

The new laboratory will be concerned with the economic aspects of water pollution control. Stanford has a new Institute in Engineering-economic Systems established with the aid of the Ford Foundation. Economists, statisticians and mathematicians are teamed together to produce a unique organization with one of its prime goals the solution of problems in the field of water resources.

John B. Harrison, Executive Officer, Bay Area Regional Water Pollution Control Board: As far as our actual problems here in the Bay area are concerned, they are mostly questions of money. The way the population is increasing, it will be a constant struggle to get primary treatment, and I do not think you can truthfully say that any of these problems can be settled for all time.

Alan Friedland, Sanitary Engineer, City and County of San Francisco: Since the hearings in 1959 the Port Authority has made progress. We have awarded a million dollars' worth of projects around the Channel Street area, and between now and the first of the year we hope to let another \$2,000,000 worth of projects. We now look to the end of 1963 to have all of the work completed.

The quarantine is still on at Aquatic Park. We have not been able to meet the 1,000 per 100 millimeter 20 percent of the time requirements, but we are very close to it. The chlorination now is up to a 10 parts per million chlorination at a 10-minute detention and I think the quarantine will soon be lifted.

Grant Burton, Chairman, Regional Water Pollution Control Board No. 2: We had some serious pollution problems when this board came into existence, and I believe that considerable headway has been made. However, as Mr. Harrison said, we will never catch up with the problem completely because the population is growing so fast it is a slow process.

The matter of control on subdivisions is of great concern to our board. With the rapid growth taking place, the policy is to see that there are ample sewage facilities there before construction starts. In the past we have found that city plants overcharge and then there is a very bad pollution situation. We are in favor of a policy whereby municipalities notify us when their plants reach 80 percent of capacity. We can then begin to look at the problem together and plan for the future before the plants are overcharged. We are in favor of this policy, and where we can establish it we are going to follow that line.

As to the federal research facility, the last time your committee met I made a statement that we had written a letter to Washington regarding this. We are on record as favoring and supporting the location in California, preferably in our region where we have some problems it could help us with.

On A.B. 3089, which increases the state board membership, they could appoint existing members from regional boards and accomplish the same purpose. It might be well if we had a little closer relationship there. It would probably lead to better co-ordination and there would be no chance of conflicts arising between boards.

There is another matter which is not listed here but should be considered by your committee as it has to do with ground water. That is

the matter of some legislation which would control construction and abandonment of wells. There is some legislation now but I do not believe it is complete.

Rex E. Benham, Chairman, Safety Committee, Local 34, International Longshoremen and Warehousemen's Union: We feel that the longshoremen, clerks and truck drivers who work on the waterfront rate decent sanitary facilities. We also feel that considering the State of California owns the Port of San Francisco it behooves either the pollution control board or the State of California or the Legislature to work out some way to hook these facilities into the sewer lines where they belong and not discharge into the Bay. We do not want to come down tomorrow morning and find all or part of the 21 piers that are in this category cut off and boarded up and we are faced with temporary chemical facilities that are a dirty disgrace like we had recently on Pier 45.

William C. Blake, Supervisor, City and County of San Francisco: I have no dispute with the way the Bay Area Water Pollution Control Board is operated. They are doing an excellent job. But after they have made their decisions, they have to go to the various boards of supervisors who actually include their findings in the budget and tell the department heads this is the policy. There is a big grey area in this field in which there is a lack of communication. There is a great loss of time because we are not getting the response that the Bay Area Water Pollution Control Board could have. In my opinion, if members of boards of supervisors were allowed to serve on regional boards communications would be improved and we would have action and not excuses as we have today.

Right here in my own City of San Francisco, the department heads have proceeded to make their own decisions, and it has held up the construction of the sewage disposal plant to where the water pollution board was ready to take legal action against the city. It became a political situation, and it is just recently after several years that our board of supervisors has gone on record and told the water pollution board that by next January we hope to be in construction and in compliance with their request.

Eugene Howell, Engineer, San Mateo County Public Health: I will comment on two bills, A B 3056 and A B 3091. The others have been covered very well by previous testimony.

On A B 3056, it is my feeling that there should be some way of controlling development of new subdivisions where they are connecting to community sewer systems which in some cases are already overloaded and would result in an overflow of sewage into streets and into treatment plants that are not meeting requirements. One solution would be to require a certification, preferably by a city engineer or a district engineer who should know his own sewers and treatment plant serving his district, as to the adequacy of the treatment plant to handle the additional sewage. I believe it should be spelled out in the legislation who would be responsible to certify as to the adequacy of these sewers.

On A B 3091, I believe when it is necessary for a community to bypass the sewage treatment plant and discharge raw sewage into the

Bay, they should notify the regional water pollution control board that this arrangement is necessary so they may have a record of why they do have these breakdowns resulting in bypassing of raw sewage. Another factor is that many communities have bypass structures to keep sewage from backing up into homes during rainy weather and again when an interceptor sewer comes close to capacity. By putting in a bypass structure, one can delay the time in which that sewer should be enlarged. I think this is wrong and therefore if that is what it is being used for, they should notify the pollution board so they can establish requirements for that bypass if it is to be used for any length of time.

James F. McCormick, Member, Regional Water Pollution Control Board and Representing Associated Sportsmen of California: All of the sportsmen in Northern California are very happy with the turn and trend of pollution abatement in California. Your cease and desist order is shown to be one of the most effective means of getting the job done. We do not mean by this that we are not alarmed about the things to come. We are particularly apprehensive about the proposed conduits in the California Water Plan. We are a little alarmed about all this effluent from sewage, industrial waste and unusable agricultural water being discharged into the San Francisco Bay. We are very apprehensive as to what will happen to our migratory fish. We would urge this committee that all efforts be directed to a very intensive study of such drainage canals.

Dr. Earl Herald, Superintendent-curator, Steinhart Aquarium, California Academy of Sciences: When aquarists speak of water quality, we are not talking about the kind of water that comes out of your tap. We are talking about water which has been treated which is suitable to keep fish alive. When we get through filtering and sterilizing with ultraviolet and a variety of other procedures, we have water which is considerably better than you drink. My point is that every aquarist has to be a bioassay analyst if you are going to keep fish alive. In order to maintain that, we have to get into the water quality problem.

From the standpoint of the establishment of a laboratory, you must study all kinds of problems. You cannot study freshwater toxicity problem and not get into brackish water. You cannot study brackish water without also getting into salt water, so this is a gradation and it is a serious thing. If a laboratory site is selected in California, it should be in a place which offers a considerable range of latitude and availability of conditions. By reason of what we have right here in San Francisco, we have this range of latitude available. We also have a considerable backlog on water conditions as it effects animal life. That is how some of us on the biological side feel about our water problems.

J. C. Fraser, Chief, Water Projects Division, Department of Fish and Game: The director of our department, as you will recall, made a presentation on behalf of Mr. Warner, Administrator of the Re-source Agency, at your hearing last December. This covers the position of the department quite well.

I would like to add a word of encouragement to the general picture of obtaining a federal water research laboratory in California. There

is no question that work in this field in California is very vitally needed and the department of Fish and Game is sincere in its interest in pursuing this field of research

The committee recessed until 10 a.m., September 28, 1962, for a field trip to visit sites around the Bay in connection with establishing a federal research facility

LIST OF PERSONS TESTIFYING BEFORE THE COMMITTEE

San Francisco, September 27, 1962

- Paul R. Bonderson, Executive Officer, State Water Pollution Control Board
 J. F. Gorlinski, Executive Officer, Central Valley Regional Water Pollution Control Board
 Paul Eastman, Program Director, Water Supply and Pollution Control, U.S. Department of Health, Education and Welfare
 Frank Stead, Chief, Division of Environmental Sanitation, State Department of Public Health
 Leslie Hood, Director of Information, San Francisco Bay Area Council
 Dr. Earl Herald, Superintendent-curator, Steinhart Aquarium, California Academy of Sciences
 Dr. P. H. McGaughey, Director, Sanitary Engineering, University of California, Berkeley
 Dr. Verne H. Scott, Associate Professor, Department of Irrigation, University of California, Davis
 Dr. Rolf Elhassen, Department of Civil Engineering, Stanford University
 John B. Harrison, Executive Officer, Bay Area Regional Water Pollution Control Board
 Alan Friedland, Sanitary Engineer, City and County of San Francisco
 Grant Burton, Chairman, San Francisco Bay Regional Water Pollution Control Board
 Rex E. Benham, Chairman, Safety Committee, Local 34, International Longshoremen and Warehousemen's Union
 William C. Blake, Supervisor, City and County of San Francisco
 Eugene Howell, Engineer, San Mateo County Public Health and Welfare Department
 James F. McCormick, Member, San Francisco Bay Regional Water Pollution Control Board, and also representing Associated Sportsmen of California
 Donald Donaldson, Chairman, Marin Rod and Gun Club
 J. C. Fraser, Chief, Water Projects Division, Department of Fish and Game

SUBCOMMITTEE ON BAY AND WATER POLLUTION

Los Angeles, October 1 and 2, 1962

SUMMARY OF THE TESTIMONY

(Complete testimony is on file in the committee chairman's office)

Raymond Stone, Executive Officer, Santa Ana Regional Water Pollution Control Board: For the purpose of discussion, I think we should define what a detergent is and then what synthetics are Soap, solvents, sand, water—anything that cleanses is a detergent Synthetic detergents of the type you find in boxes as laundry soap are made up of a surfactant and a phosphate material which is like a water softener.

When soaps were used, the surfactant was largely soap with very little phosphate as compared to the synthetic detergents When you would get a soap scum or curd, it would be precipitated and settle out of the water. The opposite of this is our synthetic detergents Here your surfactant is generally also benzene sulfonate. This material, when you cleanse with it, does not combine with either the hardness of the water or the dirt It does not form a curd that will settle out. The pollution effect of synthetic detergents is one basically of aesthetics; that is, the waste gets into the groundwaters and later when it is used for domestic purposes or irrigation you have the problem of foaming and as such, it manifests itself as a nuisance.

On June 6th of this year we held a symposium in Ontario, California Invited were the local leaders, supervisors We had the United States Public Health Service represented by a man from their Cincinnati laboratory The universities were represented as well as the soap and detergent industry We all met to discuss the whole problem of detergents There is a lot to be learned from the treating standpoint and from the industrial standpoint Right now one big company is supplying 90 percent of the market, and I am sure their competitors are looking for something else that can be used to solve the problem, and we are looking to solutions to balance the problem

Preston Hotchkis, Chairman, Southland Water Committee: I would like to approach this question of pollution on a broader scale than merely the matter of detergents Too little has been said about the responsibilities for the protection from contamination of our life blood, water The people of the State authorized the expenditure of \$1½ billion to bring water to this and other water-short areas The obvious question arises, why spend millions of dollars to bring in water to replenish underground reservoirs to be polluted without solving at the same time the problem of preserving the quality of water. We will have gained nothing.

Leslie A. Chambers, Director, Alan Hancock Foundation, University of Southern California: The statement I wish to make is confined to the matter of location of a regional water pollution laboratory. The criteria for the selections of sites as authorized by Public Law 87-88

are immediately available in more than one area of the State of California. Different geographical regions of the State have unique water resource problems. Northern California with its abundance of surface and ground water may have problems related to pollution of streams and underground supplies. The southland will be concerned with conservation of limited supplies through such complex procedures as subsurface recharge of waste waters and the maintenance of quality in water reused repeatedly.

We would welcome the establishment of one of the new regional laboratories in working relationship to the University of Southern California. Nevertheless we suggest that the legislative and other efforts of the State be directed toward assurance that the location be fixed after objective determination that the site chosen will provide technical support to all parts of the State. This recognition is only one of several which will be required. It would be unfortunate if legislators should assume that a federal facility would minimize in any way the responsibility of the State in water quality program or substitute for nonfederal laboratories within the State.

Robert C. Merz, Head of Civil Engineering, University of Southern California: I concur fully with what Dr. Chambers has said. The one point I would like to make is that the establishment of a federal water pollution control facility near a major university such as ours, staffed with highly competent people in all phases of sanitary engineering with access to a series of fine laboratories would do much to stimulate greater interest on the part of our students to go into this vast field for sanitary engineers.

Paul Beerman, Chairman, State Water Pollution Control Board: As we advised your committee last year, the board went on record as supporting the provisions of A. J. R. 45.

Currently we are sponsoring six important research projects. Two of them relate to the effects of refuse dumps on ground water. Three of the current projects are concerned with waste water reclamation and related problems. The last project pertains to the effect of marine waste disposal on kelp beds.

We are now working on a much longer range program of research covering about five years beginning in 1964 so we can have a basic integrated program of research which will point toward the saving of our water supplies in the State of California and incidentally in a great many other places.

John D. Parkhurst, Chief Engineer, Los Angeles County Sanitation Districts: The Sanitation Districts of Los Angeles County have constructed and now operate and maintain a comprehensive sewage system treatment and disposal facilities serving an area of 700 square miles. The districts also operate and maintain four waste water reclamation plants solely for the reclaimed water which can be produced and returned to beneficial use.

The districts maintain laboratories to make bacterial examinations and routine tests. However, the laboratories are not equipped nor is it practical to make the more exotic analyses to promote high-level re-

search. It would appear that the proper role for a federal water pollution laboratory in California would be to supplement existing laboratories in the State with the federal laboratory undertaking research far too complicated, delicate and expensive to be handled by the existing facilities. Such a facility would be a welcome and important contribution to the health and safety of this region.

Mr. James H. Krieger, General Counsel, Western Municipal Water District, Riverside County: I would like to comment on the proposed legislation. Addressing myself first to A J R 45, we think this resolution should be supported and the installation placed in a location that would be most favorable to the State of California.

Next is A B. 3057 which simply declares that certain people who are members of the regional water pollution control boards can serve notwithstanding an ostensible conflict of interest. We think this is good legislation, as it clarifies the position which some of these members already have.

Referring to A B. 3089, we tend to doubt the validity of having members of the regional board serve on the state board because, after all, the state board is an appeal board for the regional board and for people to act as both trial judges and appellate court judges might be detrimental to the welfare of the board as a whole.

Commenting on A B. 3091, it seems to us that other portions of the law as they are now written attempt to reach this situation. It is part of the problem and should be included, but we have a little trouble with the language of that proposal and suggest that it might be fitted into other parts of the statute more gracefully than forming a new subdivision of Section 13054.

Now coming to H R. 408 and noticing the broad compass, we would like to make certain comments about the act. Only recently the City of San Bernardino without any prior approval of the regional water pollution control board commenced the construction of a pipeline and pumping plant that would pump its sewage five miles upstream into the Santa Ana River. The result of this was that there being no relief that the downstream water users had within the compass of the Dickey Act, they had but one recourse and that was to go into court. Under the Dickey Act, there is no recourse on behalf of the people who are affected by the requirements established by the regional water board. The only recourse that we have under the present act is to file a complaint with the board. Now our primary suggestion is that the power of enforcement of requirements once established by the regional board could be *prima facie* evidence of the standard with which the dischargers had to comply. But in the instant case there were no standards at all and under these circumstances, the regional board is powerless to do anything. It seems to us that the regional board should be in a position to actually issue a cease and desist order against any proposed construction plan, and thus give the board an opportunity to establish the requirements for proper discharge within the best interest of the entire stream system.

There also should be serious thought given to the pollution board itself having the right of enforcement other than the cease and desist

which, as I read it, does not have a great deal of force and effect until it is turned over to the district attorney. I think we should give some thought to the pollution control board itself having some enforcement powers if it is going to make standards stick.

Harvey O. Banks, Consulting Engineer, Western Municipal Water District, Riverside County: It is our feeling that the purpose of the present water pollution control laws in this State are to protect and maintain the quality of the water from adverse and unreasonable impairment through discharge of sewage and industrial wastes. In our experience, under the present law it is too difficult for water users to take action to protect their interests and we are recommending that the law be changed or amended so as to make it easier for an aggrieved user of water to obtain a hearing and if necessary, to take action to protect his interest.

With respect to the Attorney General's opinion, where a natural filtration or evaporative process intervenes between the actual point of discharge of sewage or industrial waste and the point at which the effluent finally rejoined the receiving waters, the regional board has no authority to prohibit the discharge. The Attorney General did not realize that there are many substances in sewage and industrial wastes which are not affected in any way by natural filtration processes such as chlorides, cadmium, chromium and a whole host of others, so the concept that a natural filtration process adequately protects the receiving waters is not a valid concept from the standpoint of physical fact.

There are a number of reports due out very shortly which are going to be worth very careful examination, and any recommendation would be that this committee continue its studies and as soon as those reports are available, further hearings be held so that we may have a chance to express our recommendations at that time.

Alan E. Davis, California Manufacturers Association: You will recall that when A B 3057, A B 3089 and A B 3091 were heard before the committee on May 23, 1961, in Sacramento, I related CMA's position on these three bills. In the opinion of the California Manufacturer's Association, if these bills were to become law, they could create more problems than they would solve. For these reasons, we opposed them then and do oppose them now.

I have no expression on A J R 45. It has been well received here today by previous witnesses, and anything I would say would have to be my own personal opinion and not the expression of CMA or its industrial wastes committee.

Luther Nichols, Vice President, California Manufacturers Association: I would like to speak on this pollution subject for the record. CMA has been one of the leading advocates in California for all-out research to find answers and solutions to the pollution problem. We have some question as to whether every one of these seven laboratories, located as they are, are essential or whether some of this work could be more effectively taken care of in central laboratories adequately staffed and at less expense rather than duplicating facilities. That is

the only basis on which we have not come to a conclusion as a committee or taken a position thereon in connection with the proposal to locate a laboratory in California. If another laboratory is to be located in the West, we certainly would be in favor of it being located in California.

Herbert C. Davis, representing California Fish Cannery Association: With respect to the question of the effect of the sewer outfalls in Los Angeles County on the fish situation, two sewer outfalls have been developed that collectively produce in the neighborhood of 500,000,000 gallons of essentially fresh water which is dumped into the ocean. There has been no evidence that the change in the ecology by the introduction of this vast volume of water has produced any great damage to either the commercial or sportfishing in the area. I am quite sure that since we do not have to drink this 500,000,000 gallons of water a day, it is quite all right to continue to use the ocean as a place to put it.

With respect to A B 3057, the act does not spell out whether or not city or county officials who are elected should be on the regional pollution board. I point out to you that from 1949 when the first boards were appointed, our governors have very carefully avoided appointing elected officials until the present incumbent decided to do so. This matter was discussed on the Dickey Committee very extensively as to whether or not elected officials should be appointed for the reason that an elected official should never be placed in the position of having to make distasteful decisions or be placed in a position where his decisions might be tempered by the necessity for being re-elected.

I would like to suggest to the committee that if you want to make a good bill out of A B 3057, take out the word "not" and simply prohibit elected officials from serving so that they do not get themselves in a position of having to make distasteful decisions.

I will not comment on any of the other matters before you.

Arthur F. Pillsbury, Professor of Irrigation and Engineering, University of California at Los Angeles: As part of the University of California's system, we stand ready to assist this committee in any way we can in its efforts to further the planning and development relative to water resources. Tomorrow we will be pleased to show the committee some of the facilities on our campus and hope you will benefit by becoming acquainted with the operations of our school.

On Tuesday, October 2, 1962, the committee was conducted on a field trip in which we visited the campuses of the University of California at Los Angeles and the University of Southern California. We then proceeded to an inspection of the Los Angeles County sewage treatment facilities at Whittier Narrows.

LIST OF PERSONS TESTIFYING BEFORE THE COMMITTEE

Los Angeles, October 1, 1962

Raymond Stone, Executive Officer, Santa Ana Regional Water Pollution Control Board
Preston Hotchkiss, Chairman, Southland Water Committee
Leslie A. Chambers, Director, Alan Hancock Foundation, University of Southern California
Robert C. Metz, Head of Civil Engineering, University of Southern California
Paul Beerman, Chairman, State Water Pollution Control Board
John D. Parkhurst, Chief Engineer, Los Angeles County Sanitation Districts
James H. Krieger, General Counsel, Western Municipal Water District, Riverside County
Harvey O. Banks, Consulting Engineer, Western Municipal Water District, Riverside County
Alan E. Davis, California Manufacturers Association
Luther Nichols, Vice President, California Manufacturers Association
Herbert C. Davis, California Fish Canneries Association
Arthur F. Pillsbury, Professor of Irrigation, University of California at Los Angeles
Fritz Mangold, Sports Council, Inc.
Raymond M. Hettel, Engineer, Los Angeles Regional Water Pollution Control Board

SUBCOMMITTEE ON BAY AND WATER POLLUTION

San Diego, October 3, 1962

SUMMARY OF THE TESTIMONY

Dr. J. B. Askew, Health Officer, San Diego County: I would like to comment on A J R 45 in regard to the establishment of a research facility in California. San Diego has an acute water problem and has looked at this matter with a great deal of interest. We have done what any community would do to try to obtain the location of this federal facility here in San Diego.

We have to import practically all of the water that is consumed throughout our county, and we have given very close attention to water reclamation. We are not too sure at this time as to what degree of treatment is needed. This is one of the purposes of the Santee County Water District research project which you will view on your field trip this afternoon.

We also have an excellent resource here in the Scripps Institution of Oceanography on the University of California campus at La Jolla. We believe that we could contribute a great deal to the unknown questions which arise from reuse of water.

Ralph E. Graham, Director of Utilities, City of San Diego: I wish to speak principally to A J R 45 pertaining to the establishment of a federal water research facility in California. A House of Representatives report No. 1488 dated March 1962 discusses the need for such laboratories and experts throughout the nation are demanding realistic water quality standards. This need is confirmed by the alarming number of fish killed, increasing difficulties in purifying water supplies and by the increasing incidents of offensive tastes and odors and unsightly discolorations found in our household drinking water.

The City of San Diego invites your attention and support of the establishment of one such laboratory in the San Diego area in order to take full advantage of the many considerations such as proximity to universities and research installations, governmental agencies responsible for water resource development, availability of technical and nontechnical personnel and other factors.

Paul Beerman, Chairman, State Water Pollution Control Board: One of the primary functions of the State Water Pollution Control Board is to develop basic policy with relation to pollution in the State of California and the control thereof, so that uniform application can be made by each of the regional boards on certain basic items. We are engaged at the present time in trying to get a long-range, four- to five-year program of research. In connection with this, it is most important to find out what it is that ought to be researched. If we knew definitely what the various factors are that have to be controlled and to what degree treatment has to be made, then the research could be pointed to the reuse of certain waters such as in the San Diego area where you

do not have the underground facilities to provide a certain measure of purification of the water.

We have problems in various areas of the State and they are not identical. At the Whittier Narrows project yesterday, we saw a situation where water can be placed underground and lose its identity. This you cannot do in this area because you do not have the underground basins, so research has to be pointed toward developing and knowing whether or not you can do this thing safely and to what extent.

Dennis A. O'Leary, Executive Officer, San Diego Water Pollution Control Board: There have been no critical problems of pollution created by synthetic detergents in this region of which we are aware. However, it is being watched quite closely by the regional board in conjunction with the Department of Water Resources. Our problems have been restricted primarily to those of unsightliness and nuisance in surface flows of undiluted or partially diluted sewage and operational problems in sewage treatment plants to reclaim larger amounts of water for beneficial use again.

When the Assembly committee last met in Southern California in 1958, they inquired into the pollution of the San Diego Bay and the Pacific Ocean north of the Mexican-United States boundary. The regional board wishes to inform the committee of the progress made on these problems. A \$50,000,000 metropolitan sewage disposal system is now under construction to correct the San Diego Bay pollution problem, and when completed in late 1963 all waste discharges will be diverted out of San Diego Bay.

The long-standing pollution problem caused by Tijuana, Mexico, has been resolved. Instead of discharging its sewage into the Pacific Ocean in California, Tijuana is now using a new system intended to retain all of its sewage in Mexico through a system of pumping stations and a canal which conveys raw sewage from Tijuana to a point five miles below the border where it is dumped without treatment into the ocean. Conditions of pollution at the border have ended and the San Diego County Director of Public Health has recommended that a three-year-old quarantine be removed.

David E. Pierson, Chairman, Colorado River Regional Water Pollution Control Board: Our board wishes to request your assistance in the abatement of an international pollution problem which is being caused by the City of Mexicali, Mexico. This problem exists because the City of Mexicali with a population of 250,000 is discharging each day 3,000,000 gallons of raw sewage, brewery and industrial wastes into the New River which immediately crosses the international boundary into the City of Calexico, Imperial County, thence northward on into the Salton Sea which is a natural sink for the Imperial and Coachella Valleys, an attractive recreational area.

The continued discharge of raw sewage and industrial wastes by Mexicali, Mexico, has created record cases of typhoid fever and threatens the health and safety of the people of this area. It deprives the New River of oxygen content and thereby produces foul odors and makes sewage solids plainly visible in an open stream which flows through the urban communities.

The method of sewage disposal from Mexicali falls far short of that which should be reasonably expected from a 20th century city. For years our regional board and other local groups have urged various United States agencies to do what they can to end the Mexicali discharge of raw sewage and industrial wastes into California. To date, these requests have resulted in only vague promises and no action.

It is our understanding that the Mexican government has now lowered the priority for correction of this discharge. We therefore consider it necessary to bring this problem to your attention, and I wish to make two requests of your committee.

First, we would appreciate receiving your advice on any possible method of combating this situation. Second, we would ask that the California Legislature forward a memorial resolution to the United States Congress petitioning its assistance in obtaining a permanent correction of this critical sanitation problem, the construction and operation of a treatment plant for domestic and industrial wastes in Mexicali, Mexico.

Arthur Swajian, Executive Officer, Colorado River Regional Water Pollution Control Board: We are furnishing you copies of pertinent correspondence with various federal agencies on the international pollution problem which exists in Mexicali, Mexico, as outlined by Mr. Pierson. This correspondence dates from 1950 to the present date. We have been working informally through our Congressman and he through the State Department. The sum of the information we have received was that the Mexican government was prepared to start construction in January 1962. This was eight months ago and we have seen no action whatsoever in Mexicali.

Alex Calhoun, Chief, Inland Fisheries, Department of Fish and Game: Throughout California, silt pollution is damaging trout streams in varying degrees. It differs quite radically from industrial and sewage pollution which ordinarily comes to this committee's attention. One of the most dramatic examples is dam construction where great quantities of silt from the reservoir basin and the construction area are allowed to float down into a stream where it settles and impacts the gravel.

Game wardens can cite a contractor for polluting a stream with silt under Fish and Game Code Section 5650. However, all too often the stream and its inhabitants have been excessively damaged before action can be taken.

Road construction of all types is another serious offender, usually less dramatic than dam construction, but far more widespread and therefore much more serious in the long run.

Secondary and tertiary roads throughout the State also discharge large loads of silt into streams with every storm. All too often, tertiary roads in the mountains are ill designed with little concern for erosion control.

The advent of the bulldozer has not been good for the streams or the hills. We need to recognize the harm they are doing and discover how to reduce the erosion and stream sedimentation they are causing.

The Department of Fish and Game is charged with protection and enhancement of the trout resources in these streams and does what it

can to prevent stream damage with the inadequate laws in the Fish and Game Code. The fish belong to the people of the State. We need better laws to protect them, and we are hoping that Director Nelson's recommendations for much needed reforms in the Forest Practice Act will be adopted at the next session of the Legislature.

This whole problem is unusually large, complex and difficult. We have no pat solution. The first step toward a solution is to define the problem, and we are trying to do that. We thought that your committee would be interested in the pollution aspects of the situation; hence our report today.

Robert L. Wynn, City of Imperial Beach: The City of Imperial Beach is concerned about the Tijuana, Mexico, pollution of the waters of the ocean. We are concerned that the distance of five miles below the border is not adequate to protect the ocean waters off Imperial Beach. We believe there is need for an emergency standby facility which would be capable of capturing and disposing of any surface outflow of raw sewage from the City of Tijuana. We would appreciate it if the committee would consider a memorial resolution to Congress on this problem.

On a field trip in the afternoon, the committee viewed the Santee County Water District's reclamation and recreation project.

The Santee County Water District has established and is now successfully operating a unique project which involves the reclamation of water from sewage and subsequent reuse of the water for recreational purposes and irrigation.

The project represents a planned approach to the reuse of water reclaimed from sewage and as such, its significance is so great that hundreds of people interested in the general field of water supply, pollution control and recreation have visited the project.

The need for waste water reclamation required contributions of knowledge of all the various state departments and the co-operation provided by the United States Public Health Service to establish this research program at Santee. The preliminary phase of the bacteriological, biological and chemical work began in February 1962 and an all-important virology study is now underway.

LIST OF PERSONS TESTIFYING BEFORE THE COMMITTEE

San Diego

Dr. J. B. Askew, Health Officer, San Diego County

Ralph E. Graham, Director of Utilities, City of San Diego

Paul Beerman, Chairman, State Water Pollution Control Board

Dennis A. O'Leary, Executive Officer, San Diego Regional Water Pollution Control Board

David E. Pierson, Chairman, Colorado River Regional Water Pollution Control Board

Arthur Swajan, Executive Officer, Colorado River Regional Water Pollution Control Board

Charles Martin, Secretary, California Wildlife Federation

Alex Calhoun, Chief, Inland Fisheries, Department of Fish and Game

Robert L. Wynn, City of Imperial Beach

SUBCOMMITTEE ON ACQUISITION OF FORT FUNSTON

San Francisco, October 31 and November 1, 1961

The subcommittee met to hear testimony in regard to Assembly Bill No. 3120 which would provide for the appropriation of \$1,067,500 from the General Fund to the Division of Beaches and Parks for the acquisition of Fort Funston as a state park.

Twenty-five people representing city, county, state and civic organizations presented testimony in favor of this bill. These people attempted under Proposition B on the City and County of San Francisco November 1961 ballot to do for the State of California what the State cannot do for itself at this moment in its beaches and parks development program.

The federal government ordered Fort Funston sold at public auction and unless the city reserved the land for the much needed park and recreational facilities, the 116-acre parcel of open beach and park land would be auctioned to the highest bidder and be lost to public access and use, perhaps forever.

Proposition B passed at the November 1961 election and as of November 1962 the City and County of San Francisco has purchased these 116 acres of Fort Funston.

PERSONS TESTIFYING BEFORE THE COMMITTEE

Joseph Houghteling, Chairman, California State Park Commission
James E. Warren, Supervisor, Planning and Development, State Division of Beaches and Parks
James R. McCarthy, Director of Planning, City and County of San Francisco
Richard S. Kimbell, General Manager, Park Department, City and County of San Francisco
Harold L. Zellerback, Chairman, Citizens' Committee, Fort Funston Park Bonds
Phoebe Brown, Senior Planner, Department of City Planning, San Francisco
John Milton, Executive, Stonestown Development Corporation
Randle P. Shields, San Francisco Chamber of Commerce
Genevieve Pezzolo, President, Spring Blossom and Wild Flower Association
A. J. Quinn, President Dolores Valley Improvement Association
Michael DeBernardi, Councilman, Daly City
Colonel Bert Cuevas, President, Parkside Improvement Club
Jean Fassler, Vice Mayor, City of Pacifica
Frank Skillman, Director of Planning, San Mateo County
Mrs. Alan Burch, California Congress of Parents and Teachers
Frank Abienthal, Institute of Architects, Northern California Chapter
Donald Cleary, Legislative Advocate, City and County of San Francisco
Mrs. Morse Erskine, Secretary, Citizens for Regional and Recreational Parks
Joseph F. Egan, representing the Regular Veterans Association
Leo G. McClatchy, Professor of Business, San Francisco State College
Miss Polly Glycer, Professor of Recreation, San Francisco State College
Ruth Church Gupta, Vice President, San Francisco Council, District of Merchants
Alfred Dermody, Chairman, West of Twin Peaks Council of Improvement Clubs
Alfred H. Hahns, Past President, Parkside District Improvement Club
Mrs. Thomas Best, Secretary, Great Highway Improvement Club

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ASSEMBLY INTERIM COMMITTEE REPORTS
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NUMBER 4

GROUND WATER PROBLEMS
IN CALIFORNIA

A REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON WATER
TO THE CALIFORNIA LEGISLATURE

(House Resolution No. 179, 1961)

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December 1962

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LETTER OF TRANSMITTAL

October 5, 1962

HON. JESSE M. UNRUH,
Speaker of the Assembly

MEMBERS OF THE ASSEMBLY
State Capitol, Sacramento, California

GENTLEMEN The Assembly Interim Committee on Water submits herewith its report on Ground Water Problems in California. This report and the hearings which preceded it were authorized by House Resolution No. 179, 1961. Also included in this report are the committee's consideration of Assembly Bills 3042 and 1995 and Assembly Concurrent Resolution 120.

As more fully set forth in the body of the report and the Summary, your committee has thoroughly studied the legal, physical, economic management and other aspects of ground water management in California. No legislation is being recommended because the approaches to ground water management currently used in the State, when properly understood and applied, appear to be adequate. If specific problems arise in the future, legislation can be drafted to handle them at that time. In the meantime, your committee finds much progress is being made on ground water management and feels that state agencies, local districts and the public can gain further experience and make substantial progress from continuation of the present approaches.

This report is partially an educational document intended to explain ground water management problems for the Legislature and the public by evaluating the ground water management tools now available in California and by synthesizing the various technical disciplines involved into a comprehensive, integrated treatment of all facets of ground water management. From its two-year study, the committee concludes that local, basinwide districts can best replenish overdrawn ground water basins by using revenues collected through replenishment assessments (1) to finance purchase of water for spreading, (2) to equalize the burden of using high cost imported surface supplies with low cost ground water and (3) to transport surface supplies of water whenever ground water basins have inadequate transmission capacity. The objective is maximum utilization of the low cost ground water basins without destroying the basins.

Your committee wishes to express its appreciation to the numerous organizations, state agencies and to private citizens who have contributed generously of their time and talents. The chairman and the

committee wish to thank the committee staff, the Legislative Counsel Bureau and the office of the Legislative Analyst for their services

Respectfully submitted,

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I. INTRODUCTION

During the 1961 General Session of the Legislature, interest in water legislation began shifting from the planning, financing and construction of the State Water Facilities to other means of conserving water. Various factors were involved. The preceding years had been dry and had accelerated the drop in ground water levels in many parts of the State. Sea water was intruding into coastal ground water basins in critical proportions. The prospect that the United States Supreme Court decision in *Arizona v. California* would eventually curtail the delivery of Colorado River water in Southern California prompted increased interest in protecting and refilling the ground water basins as a reserve supply. Finally, the negotiation of contracts for purchase of water from the State Water Facilities led contracting districts to consideration of underground basins as terminal storage for imported water.

A number of bills were introduced in the 1961 General Session to assist local water agencies in constructing sea water intrusion barriers and ground water basin replenishment facilities. Bills on ground water adjudication were also introduced. The Porter-Dolwig Act was passed which declared the State's interest in the protection and preservation of ground water basins and authorized studies and investigations to be made by the Department of Water Resources.

The extensive nature of some of the ground water bills introduced in the 1961 session indicated that more information and understanding on the State's ground water problems was desirable and, therefore, several were referred to interim study. In order to have a complete study of ground water problems, Chairman Porter of the Assembly Committee on Water introduced House Resolution 179, which authorized the committee to study "the legal, physical, economic and management problems of full utilization of ground water basins of this State, including the correlation of all available data thereon."

This report covers the assignment made by House Resolution 179 as well as Assembly Bill 3042 and Assembly Bill 1995 which were referred to interim study. Assembly Concurrent Resolution 120 directed a joint hearing with the Senate Factfinding Committee on Water which was held as part of the ground water hearings.¹

The committee's work on ground water covered, first, a comprehensive series of field hearings in the major ground water problem areas of the State to develop a record on the nature and extent of the ground water problems as well as the actions being taken to solve these problems, and, second, two hearings to receive recommendations on the

¹ Assembly Bills 3042 and 1995 and Assembly Concurrent Resolution 120 are reproduced on Appendix pages A-3 to A-10.

steps the Legislature should take to solve these problems. The following hearings were held:

<i>Date</i>	<i>Location</i>	<i>Subject</i>
August 2, 1961	Sacramento	General introduction
September 20, 1961	Bakersfield	Ground water problems of the southern San Joaquin Valley
September 21, 1961	Fresno	Activities of the Ground Water Recharge Research Project, U S Department of Agriculture
September 22, 1961	Fresno	A C R 120 and ground water problems of central San Joaquin Valley
November 28, 1961	Los Angeles	Tour of spreading and injection works in Orange and Los Angeles Counties
November 29, 1961	Anaheim	Ground water problems of Orange and Los Angeles Counties
May 9, 1962	Hayward	Ground water problems of south San Francisco Bay area
May 14, 1962	Ventura	Ground water problems along Santa Clara River
May 15, 1962	San Bernardino	Ground water problems of eastern part of Southern California
July 19, 1962	Long Beach	Recommendations on ground water, H R. 179, A B 3042 and A B 1995
August 2, 1962	Sacramento	Recommendations on ground water, H R. 179, A B 3042 and A B 1995
October 4, 1962	Balboa	Committee work session
October 5, 1962	Balboa	Committee work session

Ground water problems involve many details which the committee was unable to consider or evaluate. The committee's hearings did, however, clearly develop the need to evaluate various approaches to the solution of ground water basin problems in different parts of the State and to indicate how these might be applied more broadly throughout the State. In most areas of the State, the key to the solution of ground water problems lies in local attitudes and political feasibility. Consequently, it is important that the successful approaches in one area be cataloged and made available to other areas for study and consideration. Therefore, this report is a comprehensive review of the legal, economic, engineering, political, geographic and other factors affecting ground water management which for the first time relates all these factors to one another.

II. THE GROUND WATER PROBLEM

California's ground water basins have an incalculable economic value to the State. About 50 percent of the water used in California is provided by surface storage and diversion while the remaining half is lifted from the underground by pumps for irrigation of crops, industrial use, and distribution to homes and business. Some areas of the State are exclusively dependent upon ground water, others use mixtures of ground water with surface water from streams or rivers, and still other areas are entirely dependent on surface water supplies.

The supplies of water underground are contained in a geologic structure of various sands, rocks and gravel, the extremities of which are formed by rock and impervious materials that enclose the ground water basin to give it the physical and figurative characteristic depicted by the use of the word "basin."

The water in the basin has its origin in rainfall which percolates downward through the soil. This percolation process can be very slow or rapid depending on the porosity and transmission capability of the particular materials in any given location in the basin. Coarse sand and gravel located in stream bottoms and in alluvial cones formed by streams that wash such debris from mountains into valleys adjacent to foothills commonly provide the most rapid percolation. Areas where rapid percolation can occur are known as "forebay zones."

Occasionally a ground water basin is completely enclosed and has no natural external drainage. Normally it is traversed by a stream or river which provides both a continuing surface source of water for percolation while simultaneously providing drainage from the basin. Frequently a series of ground water basins occurs along a river with the water level in the basins arranged in a descending profile similar to the drop in elevation of water in the river.

Ground water has its highest elevation at the source of supply and flows under the pull of gravity towards the lowest point along a "hydraulic gradient" or slope. Where pumping occurs, the extraction reduces the ground water level at the point of extraction. Water will then move to this low point from surrounding higher water levels in the basin with the speed of movement depending upon the gradient and the natural resistance of the water-bearing material to such movement. The continued extraction of water from a well creates a "cone" shaped depression in the water table. A series of such overlapping or adjacent cones forms a "pumping trough." Conversely, the injection of water into a ground water basin creates a ground water "mound" and an overlapping or adjacent series of mounds creates a ridge or "hydraulic barrier" to movement of ground water.

Adjacent ground water basins, especially along a river, may be connected both by the surface flow of water and by underground movement of water along the hydraulic gradient. Basins adjacent to salt water in the ocean and in bays may be connected with the salt water

The normal movement of ground water along the hydraulic gradient generally provides for drainage from the basin into the ocean. The outflow of fresh water keeps the salt water from entering the basin. If the ground water level is reduced below the sea water level, salt water will penetrate the ground water basin and impair the quality of adjacent water. Raising the ground water level by refilling the basin or creating a hydraulic barrier are the two best known means to prevent such sea water intrusion, although physical barriers or pumping troughs may also be used.²

The water-bearing material in a basin is found in layers or "aquifers" which may be separated by impervious layers of clay. When water moves through an aquifer overlain by clay along a hydraulic gradient, the weight of the water builds up pressure which may cause the water to rise to the surface at openings in the clay and drain away. Where such pressure builds up and there is no method of escape, a pipe driven into the aquifer will produce an "artesian well."

The difficult problems which exist in working with surface water supplies are compounded when the water is underground where direct measurement is very limited. Vast amounts of data must be collected to map the geologic structure of a ground water basin. Such mapping is important to determine the quantity of water in the basin, the movement of water and the "safe yield" or amount of water that can be safely pumped each year. In addition, long ago the shifting of the earth's surface occasionally moved a nonpermeable surface into the line of water transmission of the aquifer and thus restricted or blocked the movement of water. Such "fault lines" or "uplifts" are prevalent, particularly in Southern California.

Each ground water basin or group of basins in the State exhibits individual physical qualities. The source and amount of inflow or outflow, the transmissibility of aquifers, the quantity of water in storage, the quality of the water in storage or percolating into the basin, the best locations to spread water, the best locations to pump, possible damage to the basin from pumping too much water, the possibility of compaction or subsidence of dewatered soils, and other matters show infinite variation. It is, therefore, necessary to study each basin individually before its physical characteristics can be described.

Although precipitation is the natural source of percolating waters in a ground water basin, it is not the only source of percolation. Depending on local conditions, water used for irrigation results in substantial percolation from its downward movement. Similarly, waste water from septic tanks, cesspools and sewage works will move downward to resupply the basin. Such waters normally purify themselves biologically through the percolation process, but certain salts and chemicals in irrigation and waste waters are not affected by percolation and may deteriorate the quality of ground water.

When more water is continuously pumped from a ground water basin than naturally enters the basin, its safe yield has been exceeded and the ground water level falls. If the overpumping or overdraft is not too large or too prolonged no serious immediate harm may result. In fact, a benefit may occur since the overdraft can support the growth

² Appendix page A-11 contains a more detailed discussion of these matters which has been extracted from a paper by Harvey O. Banks.

of an economy that can subsequently pay for more expensive imported water. However, if the water level continues to fall, various harmful consequences eventually occur. The wells must be deepened, sometimes at considerable expense, until eventually some pumpers along the edge of the aquifer can no longer reach water. Heavy overpumping may result in soil compaction and subsidence of the earth's surface. The deepened wells may reach poor quality water which underlies the better water or which drains in from the edges of the aquifer. Along coastal areas sea water may intrude.

The presence of overpumped ground water basins in California has led to efforts to artificially refill these basins by percolating imported water. This process is called "replenishment" or "recharging" and these two terms are used interchangeably in this report. A recharged basin can be used as a reserve to be pumped out during some future dry period or when future demands for water temporarily exceed the combined imported supply and the safe yield of the basin. Such an underground reserve is available for use in periods of military emergency or interruption of surface supplies by earthquake or other disaster. Use of the reserve can, when properly planned and integrated with the use of surface supplies and the construction of new surface supply facilities, also lead to dollar savings in the overall cost of a long-range water supply. In addition, the aquifer can serve as a natural, low cost system for distribution of water.

The planned development and operation of both underground and surface water supplies is known as "conjunctive operation." Recharging a ground water basin by artificial means is called "spreading" and involves a definite physical act to place the water on the surface of the ground for percolation underground. However, recharging is also accomplished indirectly if pumping from the basin is reduced below the safe yield so that natural inflow into the basin accumulates and refills the basin. These two approaches are quite different but they both result in refilling the basin.

The key to any effort to reduce pumping in a basin or to spread water lies in securing sufficient water to supply the demands of the area. Normally this water is secured by importing a new surface supply, by developing local unused surface supplies through storage and diversion, by shifting pumping from an overdrafted aquifer to an adjacent or deeper aquifer not overdrafted, or by recycling water within the basin such as by waste water reclamation. It is also possible to get more efficient use of existing supplies and reduce waste by educational programs and increasing the delivered price for water.

If water is to be spread to replenish a basin, the water must be imported or developed. Funds for this purpose have been raised in several instances by an ad valorem assessment or by a "replenishment assessment", also known as a "pump tax." The pump tax is an assessment levied on the amount of water pumped and is established at a rate per acre-foot calculated to finance purchase of the amount of water to be spread.

In several instances court decrees have been secured to limit the amount of water which all pumpers can extract to the safe yield of the basin. Because the decree establishes the amount of water a pumper

can extract, it determines the extent of his water right after the reduction. This court action is called an "adjudication."

In those areas of the State where overpumping exists, there have been demands for "management of ground water basins," which is a broader term than the more technical expression "conjunctive operation." But, just as the physical properties of ground water basins differ, the economic and political factors vary from basin to basin and there is no evidence from the committee's hearings of any common management practices for ground water basins. Management of ground water basins, therefore, means little more on a statewide basis than taking appropriate steps to best preserve, protect and utilize each ground water basin. Such steps may range from recording minimal data in the northern part of the State to expensive legal and engineering endeavors in Southern California.

When management is given a more specific meaning, it generally covers the relatively complete control of the ground water basin as practiced in certain areas of Southern California. However, such complete control is not needed in most parts of the State where its discussion results in misunderstanding and generates concern that inappropriate control actions are being proposed for ground water basins which do not need control. This report will discuss ground water problems as they exist in the context of each major ground water basin problem area and will not generalize on conditions throughout the State.

III. GROUND WATER PROBLEM AREAS

The committee studied all of the critical ground water problem areas of the State and collected information on many of the less critical problem areas. Of those studied, six areas appear to include all the major problems and indicate the nature of the steps being taken to solve them. A brief discussion of these six areas follows.³

1. SANTA CLARA VALLEY WATER CONSERVATION DISTRICT⁴

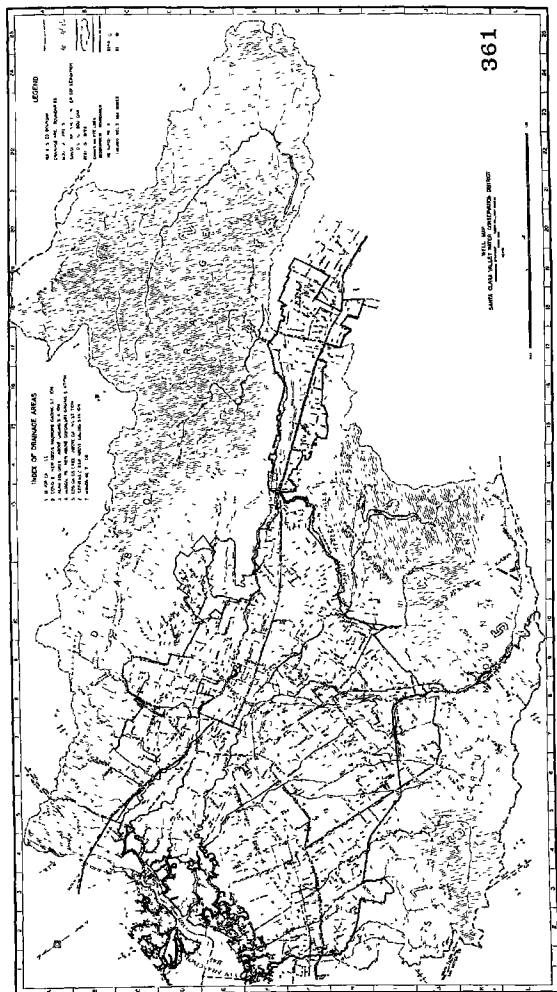
The Santa Clara Valley lies immediately south of San Francisco Bay and drains into that bay. In recent decades it has developed extensively, based on both farming and urban growth, and now possesses a high assessed valuation. Ground water was the original water supply for the area and is still used by agriculture. Most of the urban water supply also continues to come from ground water, but increasing quantities are being purchased from the imported supply of the City of San Francisco. The State's South Bay Aqueduct will add an additional supply for use in the northern part of the valley. A future imported water supply to be percolated into the ground water basin primarily for agricultural use is planned for the southern part of the valley from the Pacheco Pass Aqueduct of the U.S. Bureau of Reclamation.

The Santa Clara Valley Water Conservation District was organized in 1929 under the Water Conservation Act. The district's boundaries include all of the underground basin which benefits from its operations. By 1936 the district had built six dams with a combined reservoir storage capacity of 43,921 acre-feet to store winter rains for later release and percolation along the streambeds. From 1936 to 1943 the average ground water level rose 80 feet with about 50 percent of the rise attributable to increased precipitation and the remainder to spreading. Thereafter, another dry cycle and increased use of water again caused the water level to drop rapidly. In 1950 and 1952 a total of 112,700 more acre-feet of surface storage was constructed which caused water levels to recover but they began dropping again by 1959. In general, water levels were approximately the same in 1932 and 1961 due to spreading operations, but the population had increased from 150,000 to 650,000.

By 1960 the district was operating percolation ponds along four rivers amounting to 502 acres and 65 miles of pervious creek beds with a total percolation capacity in both of 860 acre-feet per day. In addition, the district has constructed and operates various canals, pipe-

³Other areas of the State with ground water problems concerning which the committee received testimony are southern Alameda County, Livermore Valley, Santa Maria River Valley, San Fernando Valley, San Gabriel Basin, Antelope Valley, Mojave River Valley, Coachella Valley and the Palm Springs area. Lack of space to discuss in detail the problems and activities in these areas does not mean that the committee is unaware of them or does not appreciate them. A wealth of material on these areas will be found in the transcripts of the committee hearings, which were reproduced and distributed as hearings were held.

⁴An interesting history of the formation of the Santa Clara Valley Water Conservation District has been written by Stephen C. Smith, entitled *The Pueblo District in Integrating Ground and Surface Water Management: A Case Study in Santa Clara County*, Giannini Foundation Research Report No. 252.



lines, and a pumping plant for surface transmission of water to spreading areas as a means of sustaining the water level in all sections of the basin or to provide a surface supply to relieve overpumping. The district makes reservoir releases to permit maximum full-time operation of percolation facilities and provide for surface distribution to agricultural users.

The district in 1959 inaugurated a three-year weather modification program using radar tracking of storms, 25 ground-based silver iodide generators, and generators in one aircraft. In conjunction with the City of San Jose, the district has been operating an experimental oxidation pond and eventually hopes to recover approximately 20,000 acre-feet of waste water annually. Effluent from the Milpitas sewage plant is currently being used for irrigation along the lower Coyote River. Since its organization the district has conserved over 1 million acre-feet of water but overdraft still exists and land subsidence has become a serious problem.

The district's conservation and spreading program is supported by taxes levied on land only, to provide a water supply to all parts of the district. All water users pay a portion of the cost of providing the basic supply. Additional charges are made for surface transportation. No adjudication of ground water rights has been undertaken nor is any contemplated.

A co-operative arrangement has been reached between the district and the Santa Clara County Flood Control and Water Conservation District by which the latter county district will purchase water from the South Bay Aqueduct. Through a combination of facilities owned by the two districts, the water will be made available to the northern portion of the Santa Clara Valley by means of both spreading for underground distribution and by surface distribution. A similar agreement covers a long-range plan for eventual distribution of Pacheco Pass Aqueduct water. By 1970 when Pacheco Pass Aqueduct water is available the district anticipates a total overdraft of 500,000 acre-feet. Only after 1970 will enough water be available to replenish the basin and, therefore, recharge is not expected to be completed until about 1990. The Santa Clara Valley is preparing a relatively well-planned water program.

The 1962 First Extraordinary Session of the Legislature passed S B 1 which authorized the Santa Clara County Flood Control and Water Conservation District to pay for imported supplies by imposing a dual-rate pump tax on all water pumped. The maximum rate allowed is \$5 per acre-foot for agriculture and \$10 for municipal and industrial use. No pump tax has yet been levied. The Santa Clara Valley Water Conservation District would also like to use a pump tax. The district now pays several cities which purchase imported water from the City of San Francisco up to \$20 per acre-foot as a rebate on the taxes these cities pay the district as a means of encouraging the purchase of outside water supplies. The district feels that a pump tax would eliminate such payments and would also remove certain inequities currently existing where the amount of pumped water used and revenues from land assessments bear no relationship. The district is of the opinion that a pump tax would be the most equitable means to place the cost of a districtwide water supply directly on those who use the water.

2. UNITED WATER CONSERVATION DISTRICT

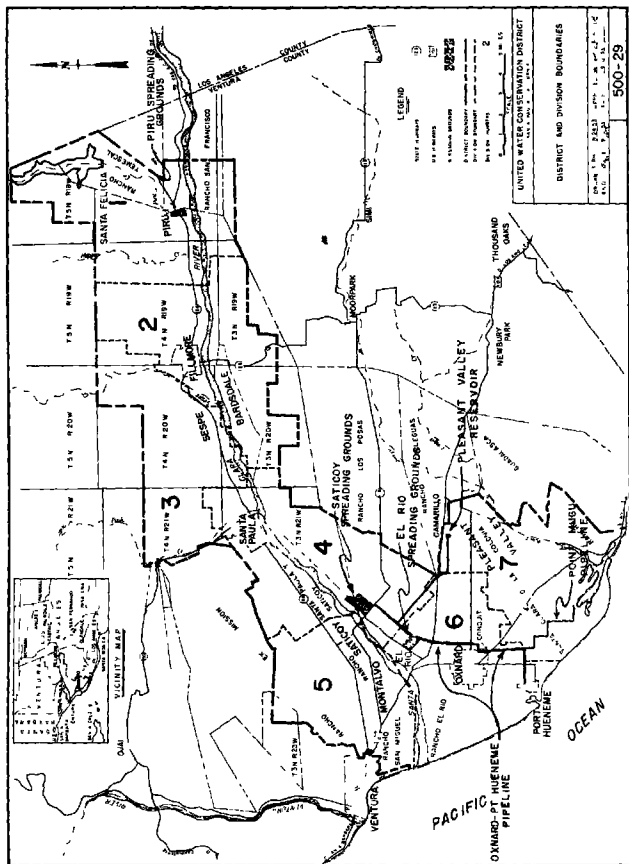
The United Water Conservation District includes essentially all of a series of seven interconnected ground water basins along the Santa Clara River in Ventura County. These basins extend from the Santa Clara River at the Los Angeles county boundary, across the coastal plain at Oxnard to the ocean. The lands within the district are largely agricultural in use with substantial urbanization along the coast. The assessed valuation is capable of supporting an active water supply program.

The lands and ground water basins within the district make a complete hydrographic unit. Precipitation falling in the hills surrounding the valley percolates into the ground water basins as it moves downstream along the Santa Clara River and its tributaries. Any excess of flows over percolation drains into the ocean. First spreading of surface flows which would have wasted to the ocean occurred in 1928 by direct diversion from the Santa Clara River. Additional spreading began in 1930 and 1931. The district completed construction of Santa Felicia Dam in 1955 which provided 100,000 acre-feet of storage for formerly wasted storm water. The district's operations permit natural percolation of rainfall to be supplemented by storing storm water at Santa Felicia Dam for later percolation during periods of heavy pumping.

The district now has two spreading grounds adjacent to the river, and a third a short distance from the river, which are provided water by a combination of diversion works and pipelines. The spreading grounds are located to provide a water supply for the ground water basins in conjunction with natural percolation into the ground water basins. Additional local storage projects to conserve storm water are planned for future construction. After local surface and underground water supplies are fully utilized, portions of the district expect to receive an imported supply from the State Water Facilities.

The district uses the ground water aquifers to the extent of their transmission capacity to distribute conserved and spread water underground for pumping by the users. A pipeline supply is also provided to Oxnard, Port Hueneme and Point Mugu by the district from wells in the closest spreading grounds. A pipeline supply is provided these cities because overpumping of the aquifer under this coastal area has caused sea water intrusion due to the fact the aquifer is not capable of transmitting sufficient water.

It is the policy of the district to provide, by supplementation of natural supplies, an adequate common water supply for all pumpers in the district at no direct cost to the pumpers. The cost of supplementing that common supply by means of surface storage projects and spreading facilities is borne by a districtwide tax on all lands and improvements. Where pipeline and surface distribution is provided by the district because of varying accessibility of different areas to the common supply, as noted above, the water users are expected to repay the construction and operating costs of the distribution works but there is no charge for the water.



The district also furnishes a pipeline supply to the Pleasant Valley County Water District. In this instance the individual pumper pays to the Pleasant Valley District the approximate cost he would have incurred for operation of his own well while the Pleasant Valley County Water District pays the United Water Conservation District, by means of an ad valorem tax, the difference between the total of the individual pumper's payments and the remaining cost of the pipeline which the district constructed to serve Pleasant Valley. The cost to the pumper for the pipeline supply is reduced to the cost of operating his wells, thus encouraging use of the pipeline supply and reducing overdraft of the Pleasant Valley Basin. This financial arrangement was adopted because the use of water imported into Pleasant Valley in lieu of pumping ground water is considered to benefit all the district by reducing the pumping on a common ground water supply.

The coastal area of the district is one of several sea water intrusion areas in the State. Although the district is providing a pipeline supply to the intruded area, it is also encouraging the pumpers in the area to deepen their wells into a lower aquifer that has a supply of good quality water. In addition, some study is being given to the possibility of creating a fresh water barrier to sea water intrusion.

Water quality is a problem for the district not only because of sea water intrusion but because of degradation of ground water from reuse within each basin, restricted natural discharge of rising water draining from each basin, and limited pumping for export from each basin. Salinity increases successively in each downstream ground water basin. The source of this salt is irrigation water, municipal and industrial wastes, as well as naturally saline ground waters. Plans are being studied to pump water from upstream basins to downstream areas in order to limit reuse of water in a basin and to move the water with a high salt content to the ocean faster.

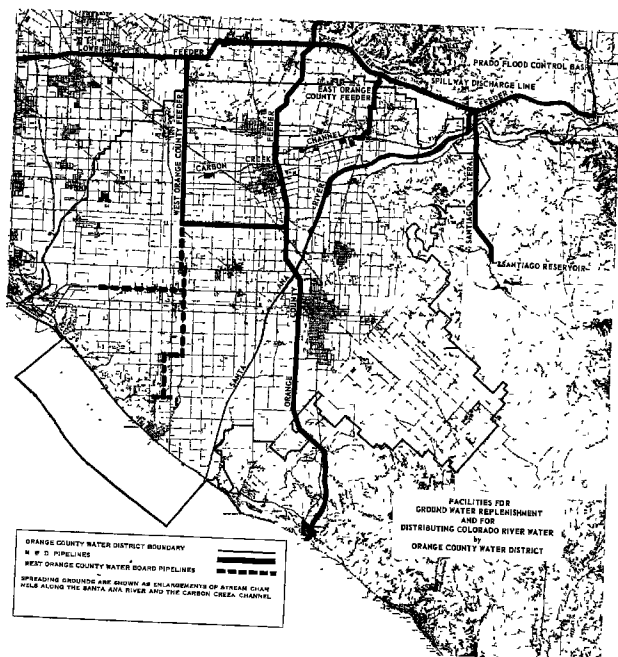
Since 1928 the district has stored and spread some 665,000 acre-feet of surface water. Looking toward the future, the district plans to develop fully the conjunctive operation of its ground water basins and surface supplies by drawing down the ground water basins during dry periods to provide the maximum firm yield of combined surface and underground supplies. The hydrologic, geographic, geologic, economic and political conditions associated with the district's operations are optimum for such conjunctive operation.

At present the district has no pump tax nor has there been an adjudication. The amount of water available to the district is limited and will require careful conservation. The present overpumping is along the coastal portion of the district and amounts to 50,000 acre-feet per year. This overdraft is being rather successfully managed to minimize damage to the ground water basin and to fully utilize existing local water supplies until new surface supplies are available from the planned construction of local dams. The replenishment of the overdraft is not expected to occur until water from the State Water Facilities becomes available after 1970.

3. ORANGE COUNTY WATER DISTRICT

Essentially all of the coastal plain portion of Orange County is within the Orange County Water District. The area is one of high assessed valuation containing valuable irrigated citrus and farm lands, extensive residential communities and light industry.

The district covers the lowest ground water basin through which the Santa Ana River flows. Its natural source of water is percolation from precipitation plus both surface and underground movement of water in the Santa Ana River. The upper part of the basin is a forebay area while the lower part is a pressure zone in which artesian wells existed many years ago. Heavy overdrafting of the basin in past years has lowered the ground water level and permitted some sea water intrusion along the coast.



The basic water supply in the district has come from ground water pumping along the Santa Ana River. This river has also supplied water to other rapidly growing areas upstream. The Orange County area has rights to surface supplies of the Santa Ana River and because of increasing upstream uses has brought suit to limit pumping upstream. In *Orange County Water District v. City of Riverside* the courts determined the rights of the Cities of Colton, San Bernardino, Riverside and Redlands and enjoined them from exceeding these prescriptive rights.

In the early 1940's, the district began constructing temporary works to spread flows using 724 acres of percolation beds it had purchased in the Santa Ana River channel. With the continued dropping of ground water levels, the district began purchasing imported water in 1949 from the Metropolitan Water District of Southern California for spreading in the river channel. Adequate financing to purchase sufficient imported water was not available and, therefore, an historic step was taken.

The district's act was amended in 1953 based on the philosophy of providing an adequate water supply rather than curtailing water use through adjudication. Legislation to finance the purchase of water by a replenishment assessment or pump tax was included in the 1953 amendments and the district was expanded to include lands overlying essentially all of the basin. The pump tax was to purchase imported water for spreading to resupply the basin so that a safe ground water level could be maintained in spite of increased pumping.

In levying the pump tax, the Orange County Water District Act requires the district's board of directors to estimate the amount of overdraft in acre-feet for the next year. This amount is multiplied by the cost per acre-foot of imported water to determine the total amount of money necessary for the purchase of water to make up the overdraft. The total amount of money is then divided by the amount of water anticipated to be pumped to give the assessment for each acre-foot of water pumped. The system does not limit pumping, but it requires each pumper to contribute towards maintaining a common underground supply of water in proportion to the amount of water he uses. The more water he uses, the more total assessment he pays. Wasteful use of water is discouraged because the pumper must pay his proportionate cost to replace the water he wastes. An integral part of the system is the registration of each pumper with the district and the installation of a meter on his pump to measure his water use in order to compute his assessment. The replenishment assessment was tested in the courts and found constitutional.

With the authorization of the replenishment assessment in 1953, the district began a program of large-scale purchase and spreading of imported water. The first assessment was \$3.50 per acre-foot of water pumped. This amount has increased over the years as the cost of imported water increased and as natural percolation decreased due to dry weather until the assessment is currently \$6. In the first seven years of operation, the assessment raised \$5,400,000 with which 470,000 acre-feet of water was purchased. In addition, the district has also raised \$3,555,000 by an ad valorem tax which has been used to pay the operating costs of the district and to purchase 306,000 acre-feet of water to re-

charge the basin. The district was successful in 1955 in reversing the dropping water level and partially refilling the basin. This favorable result ended in 1961 when very dry weather reduced natural inflow into the basin and the water levels dropped again in spite of the large amount of water being spread.

The district's spreading operations have occurred in the forebay or upstream portion of the basin and have maintained high water levels there. However, the concentration of spreading in this forebay area adjacent to the Santa Ana River has not adequately replenished the lower portion of the basin along the coast where the greatest pumping occurs because the transmission capacity of the basin is inadequate to move such large amounts of water. The district, therefore, has added new spreading grounds to increase its capacity to spread and to secure better underground distribution by dispersing its spreading areas.

A number of cities within the district's boundaries have long been connected to the Metropolitan Water District's lines which traverse the area. These cities have been purchasing a surface supply of as much as 80,000 acre-feet per year which has relieved the pumping load on the basin. In 1961 the district's act was further amended to permit levying an additional pump tax on the production of water for non-irrigation use. This additional assessment, when added to the old one, would provide a two-rate pump tax which would favor agricultural interests using ground water. It would also equalize the purchase price of imported water from the Metropolitan Water District with the cost of ground water for those cities connected to the Metropolitan Water District's lines and capable of securing imported water. The purpose of the second assessment is to shift more of the municipal water use from ground water pumping to a direct surface supply.

The amendments also increased the ad valorem tax used to purchase imported water to recharge the basin. The district expects to purchase and spread 210,000 acre-feet of water per year from the Metropolitan Water District as long as such water is available. This is the maximum amount deliverable by the Metropolitan Water District and is subject to future reduction as demands of Metropolitan's other customers increase. It is the intention of the Orange County Water District to refill its ground water basin in order to have a reserve to draw on in the interval between reduced availability of Colorado River water from the Metropolitan Water District and the importation of additional water from the State Water Facilities. The district is also considering the desirability of constructing a fresh water barrier to sea water intrusion along the coast. With such a barrier the district would have more latitude in operating the ground water basin.

The replenishment assessment in Orange County provides the only actual experience in California with this type of assessment. It has been judged by the committee to be a success both as a revenue-raising device and as a means of placing a positive emphasis on providing additional water supplies. In turn the emphasis on providing additional water supplies has de-emphasized conflicts and expensive litigation on water rights. Finally, it has been judged to be the most equitable means of assuring that those who pump from a common ground water supply will bear the proportionate cost of their pumping from that basin. The result is an economic incentive toward the wise and frugal use of water.

4. CENTRAL AND WEST BASIN WATER REPLENISHMENT DISTRICT

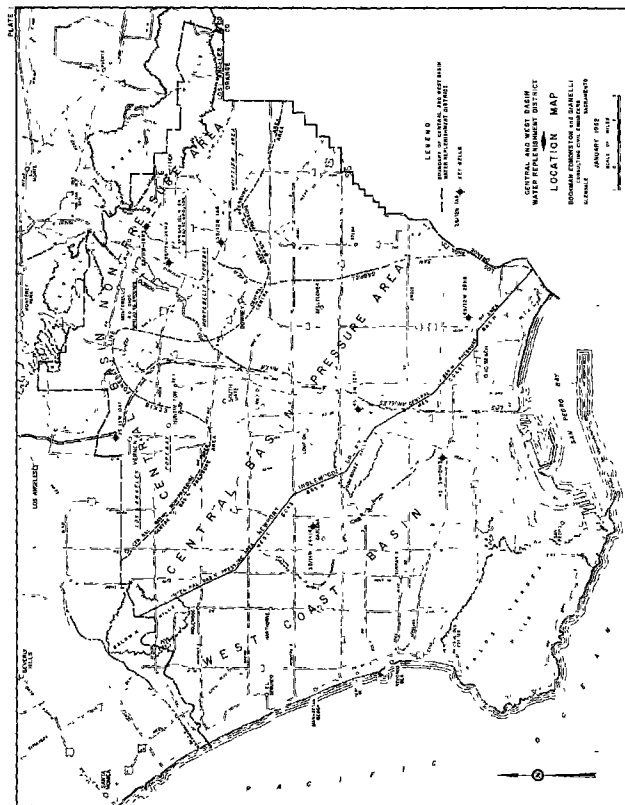
The area extending from Los Angeles City center southwest to the Pacific Ocean, south to Long Beach Harbor and southeast to the Orange county line is included in the Central and West Basin Water Replenishment District. In past years, the area contained substantial farmlands but farm operations have largely been displaced by urbanization. It is now generally an urban area heavily populated and containing both heavy and light industry with an assessed valuation in 1962-63 of \$4,118,107.710. The water supply has been secured principally from pumping excellent quality ground water. Only in recent years has there been a significant shift to use of surface water supplies furnished by the Metropolitan Water District and the City of Los Angeles.

The Newport-Inglewood Uplift is a faultline running from Long Beach to Inglewood which divides the coastal plain area into two ground water basins. To the west of the uplift lies the West Coast Basin while the Central Basin lies to the east of the uplift. The uplift restricts both natural ground water flow and artificial recharge into the West Coast Basin from the Central Basin. The Los Angeles, Rio Hondo and San Gabriel Rivers traverse the district from north to south, with flows intermittently occurring as a result of rainfall.

To the northeast of the Central Basin lies the San Gabriel Basin which is the natural source of most of the water supply for the Central Basin by means of surface and underground flows in the Rio Hondo and San Gabriel Rivers. The topographic constriction through which these two rivers pass as they leave the San Gabriel Basin and enter the Central Basin is called the Whittier Narrows. Immediately below the Whittier Narrows is the forebay area for the West Coast and Central Basins, known as the Montebello Forebay, and here are located the Rio Hondo and San Gabriel Spreading Grounds along their respective rivers. The remainder of the West Coast and Central Basins are pressure areas. The Los Angeles River is concrete lined through the Central Basin and without spreading grounds so that it is not a factor in ground water operations in the Central Basin. The Central Basin lies at the lower end of the Los Angeles, Rio Hondo and San Gabriel Rivers while the West Coast Basin is not traversed by these rivers. Because its natural underground supply is from the Montebello Forebay in the Central Basin, the West Coast Basin is one step removed from direct recharge by percolation along these rivers.

Overpumping in the West Coast and Central Basins has existed for many years with the overdraft estimated to be as high as 165,000 acre-feet in 1961-62. The total accumulated overdraft is about 1,000,000 acre-feet. This overpumping resulted in many corrective efforts beginning as early as 1943. In 1953 the Los Angeles County Flood Control District began replenishment activities and by 1961 had spread 482,000 acre-feet of imported water. Replenishment efforts reached maturity in 1959 when the people voted to organize the Central and West Basin Water Replenishment District under the Water Replenishment District Act.^a Since 1959 the replenishment district has organized itself, secured engineering studies and has an active recharge program underway. The district collected a replenishment assessment or pump tax on

^a Water Code Sections 60000 to 60449



the quantities of water pumped amounting to \$5.75 per acre-foot in 1961-62 with which it purchased 120,000 acre-feet of water from the Metropolitan Water District. The water was spread in the Montebello Forebay by the Los Angeles County Flood Control District at the latter district's Rio Hondo and San Gabriel spreading grounds. The replenishment assessment in 1962-63 is \$6.63 to purchase 155,000 acre-feet.⁶ During the first year and a half of its existence, the district collected \$2,500,000 to purchase water for replenishment.

Along the Pacific Ocean shores of the West Coast Basin, overpumping caused intrusion of sea water many years ago. This intrusion was sufficiently serious that its continuation was a threat to the water quality and continued pumping from the West Coast Basin. While more imported surface water could have been purchased from the Metropolitan Water District than was purchased by water using and distributing agencies, it was cheaper to pump ground water than to use an imported surface supply. The State appropriated \$750,000 in 1951, most of which was used by the Los Angeles County Flood Control District to construct a series of nine injection wells slightly inland near Manhattan Beach. These wells injected fresh water into the underground pressure aquifer to create a one-mile-long series of mounds of fresh water. These mounds successfully reversed the hydraulic gradient seawards and stopped the inflow of sea water into the West Coast Basin along the part of the intruded area they protect. Approximately 4,750 acre-feet of water per year is now injected at nine wells with a loss of only 5 percent of the water to the ocean.

The Los Angeles County Flood Control District is extending the barrier north and south to establish an 11-mile barrier along the West Coast Basin at an additional cost of \$5,200,000. The completed barrier will seal the West Coast Basin off from sea water and thereby protect its water quality while it is presently drawn down or during periods in the future if it is necessary to draw it down again. The flood control district is raising the funds to extend the barrier and paying for operating costs of the existing barrier by means of an assessment zone covering the West Coast Basin. The replenishment district is paying for the water used for injection from its pump tax revenues and the Metropolitan Water District is extending its feeder lines to assist in supplying the water for injection. A somewhat similar arrangement is being studied for construction of a \$2,000,000 barrier project at Dominguez Gap at the mouth of the Los Angeles River near San Pedro. At Alamitos just east of Long Beach, a third barrier project costing \$3,600,000 is being studied with the additional co-operation of the Orange County Water District.

Two important waste water reclamation projects are underway also.⁷ The Los Angeles County Flood Control District is experimenting with a pilot project to use reclaimed water from the Hyperion Sewage Treatment Plant for injection in the West Coast sea water barrier. This is being done in anticipation of future unavailability of imported water to operate the barrier. It is hoped that good quality reclaimed

⁶ See *Annual Survey Report on Ground Water Replenishment 1962*, by the Central and West Basin Water Replenishment District.

⁷ See transcript of Anaheim hearings, pages 84, 97 and 127, for more material on the proposed barriers and on experiments with the reclamation of waste waters.

waste water from the nearby Hyperion plant may be proved feasible if needed to supply both the existing barrier and the 65,000 acre-feet of water required to operate the extended barrier

At Whittier Narrows an historic waste water reclamation plant is being placed in operation by County Sanitation District No. 2. The plant was constructed with funds loaned by Los Angeles County. The replenishment district will purchase the 10,000 acre-feet of reclaimed water produced per year by the plant and will pay \$12.75 per acre-foot for it. This price will be adjusted to correspond with changes in rates for Colorado River water. The revenues are anticipated to cover operating costs of the plant and repay the loan from the county in 30 years. The reclaimed water will be spread by the Los Angeles County Flood Control District at its Rio Hondo and San Gabriel spreading grounds to increase the water supply in the West Coast and Central Basins. If this project is successful, it will demonstrate that up to 100,000 acre-feet of water may be feasibly reclaimed and spread at Whittier Narrows with smaller amounts being made available elsewhere. Reclaiming waste water which would otherwise waste to the ocean is an important means of making existing water supplies go as far as possible. When such waters are of good quality, returning them to the ground water basin is a practical and economical means of reusing them while simultaneously resupplying the basin.

In 1945 an adjudication action was filed in the superior court to curtail pumping in the West Coast Basin. The court's judgment was filed in 1961. The judgment established the parties with a right to pump water from the basin and reduced the right of each party, approximately 25 percent, on a pro rata basis. The judgment served (1) to preserve the West Coast Basin from damage due to overpumping, (2) to force pumpers with connections to the imported water supply of the Metropolitan Water District to use that supply, and (3) to reduce pumping of water in the West Coast Basin to the safe yield of the basin plus imported water being spread. An exchange pool was provided in the court's order to permit overpumping by water users without access to imported water to the extent those water users with access to imported water could reduce their pumping below their adjudicated rights by using surface supplies. The water user who overpumps is required to reimburse the surface supply user for the higher cost of a surface supply over the ground water.⁵ The court's order was a stipulated agreement by most of the litigants to a reduction in their pumping rights and to the operation of the exchange pool.

Following completion of the West Coast Basin adjudication the newly organized Central and West Basin Replenishment District, as empowered by the Replenishment District Law, brought action in the superior court during January 1962 to adjudicate the pumping rights in the Central Basin. This adjudication was sought because the ground water basin cannot transmit sufficient water spread at Whittier Narrows to satisfy the pumpers. The district hopes that a stipulated interim agreement can be prepared and put into operation by October 1962 providing for an adjudication of pumping rights, a pro rata cut-

⁵ Appendix page A-17 reproduces portions of the judgment which established the exchange pool.

back in pumping and an exchange pool. A final stipulated judgment is not expected for several years.

The Central and West Coast Basin Replenishment District offers a fascinating example of almost every aspect of ground water problems. Overpumping and sea water intrusion have led to adjudication, sea water intrusion barriers, spreading of imported water, reclamation of waste water and the use of a replenishment assessment. The accomplishments demonstrate effective action by private and public water interests in solving extremely complex water problems. The solution of the West Coast and Central Basin ground water problems is well underway.

5. UPPER SANTA ANA RIVER

For purposes of this discussion the Upper Santa Ana River area includes all of the watershed and ground water basins along the Santa Ana River and its tributaries upstream from Orange County. This is essentially the portion of San Bernardino and Riverside Counties west of the Coastal Range. Three main ground water basins are involved, the Bunker Hill Basin along the upstream portion of the Santa Ana River in the vicinity of San Bernardino City, the Riverside Basin along the middle reaches of the Santa Ana River in the vicinity of Corona and Riverside, and the Chino Basin to the north of the middle reaches of the Santa Ana River in the vicinity of Ontario. The large area overlying them is a mixture of agricultural, urban and industrial economies with a substantial assessed valuation.

The Upper Santa Ana River area actually contains 29 ground water basins having a total combined storage of about 24,000,000 acre-feet of water. The usable storage is about 8,400,000 acre-feet of which about 3,000,000 acre-feet have been extracted. The recent rate of overpumping is about 110,000 acre-feet per year out of 375,000 acre-feet used. It can be seen that shortages are developing but they have not yet become critical.

The Upper Santa Ana River area is a hydrologic unit with its principal ground water basins interconnected by means of both surface and underground movement of water. The water needs of the area are presently served by a complex of municipalities and local districts, most of which are limited in their ability to handle the problems of their respective ground water basins. There exists no overall district or agency which could manage the ground water of the area or could engage in any overall replenishment operations.

The lack of an overall district or agency does not mean that there is no interest in ground water problems. The San Bernardino County Flood Control District many years ago began acquiring land and constructing works to spread streamflows along the foothills of the San Bernardino and San Gabriel Mountains. The district as a result has an excellent start on facilities which could be used for spreading imported water. The Chino Basin Water Conservation District has acquired a number of spreading areas and is actively working towards a program to reduce or even replenish the overdraft in the Chino Basin by spreading imported water. In addition, since 1912 the San Bernardino Valley Water Conservation District has spread a total of 525,000 acre-feet of



local runoff. The Riverside County Flood Control and Water Conservation District has also been spreading some streamflows.

Spreading has essentially been limited to making the natural percolation of surface flows more effective. Although the Colorado River Aqueduct of the Metropolitan Water District traverses the area, no significant quantities of imported water has been spread as yet. About half of the area has annexed to the Metropolitan Water District, but these annexed areas use only about 65,000 acre-feet of imported water. Most of the water users continue to pump the cheaper ground water.

An important reason why more imported water is not used is that the ground water in the upper basins along the foothills is considerably better in quality than imported Colorado River water available from the Metropolitan Water District. These local water supplies are used upstream and the residual irrigation drainage or properly discharged waste water percolates back into downstream basins. Such a reuse cycle can occur several times before the water exceeds the permissible limits of salinity and mineral content and must be discharged to the ocean, usually after its final use in Orange County. Such a reuse pattern now takes place naturally along the Santa Ana River and is being encouraged by water districts and the regional water pollution control board in order to get the greatest use out of available water supplies. However, this reuse is desirable only if high quality water is initially used in the upstream areas. Some authorities feel that use of Colorado River water with its high salt content would seriously deteriorate the ground water basins and that only high quality local waters or imported state project water should be used upstream. As a consequence, there is limited advantage, if not an actual disadvantage, in spreading of presently available imported water, depending on the quantities spread.

Indicative of the intense interest in water quality in the Upper Santa Ana River area is the suit filed by certain Riverside water interests against San Bernardino water interests. San Bernardino has constructed facilities to pump treated sewage upstream into the Bunker Hill Basin and spread it in the channels of the Santa Ana River above the pumps which supply the Riverside water interests. Riverside water interests contend this action will impair the quality of their water supply by increasing the mineral content and adding foaming from detergents. The Riverside water interests have brought a court action and secured a restraining order to prevent spreading of San Bernardino's sewage upstream.

In the meantime, the Santa Ana Regional Water Pollution Control Board is preparing to issue a specific waste discharge requirement for the San Bernardino discharge upstream which is intended to protect the ground water supply while permitting a proper disposal of waste water to the ground water basin. The situation illustrates the great importance of the regional water pollution control boards in protecting ground water quality and raises the question whether a waste discharge requirement should be written by a regional board on the waste discharge itself, with monitoring at the point of discharge, rather than only

on the eventual effect of the waste discharge on receiving water quality measured at some distance downstream.⁹

The Santa Ana Regional Water Pollution Control Board has established objectives to protect the overall quality of waters in the ground water basins of its area, as have other regional boards.¹⁰ These objectives are set higher upstream to permit reuse of the waters downstream since each basin is both a water supply and sewer receptacle and each reuse adds about 300 parts per million of salt to the water. The board has also stressed the need for long-range planning in the Upper Santa Ana River area for isolation of poor quality waste waters so that these spent waters can be removed to the ocean by an outfall sewerage line, thus permitting the better quality water to be returned to the ground water basin for reuse. Looking to the future the board anticipates that it may be desirable to use saline conversion equipment to improve the quality of waste water so that it can be returned to the ground water basins. An outfall sewer would still be necessary to dispose of certain industrial wastes and the concentrated wastes or brine from the conversion plant.

Both San Bernardino and Riverside water interests have made application to the State Water Rights Board for a permit to use the Bunker Hill Basin for spreading and storing water imported by the State Water Facilities. These are the first applications received by the board for storage of purchased water underground. The applications pose a number of presently unanswered legal and technical questions such as whether the board has jurisdiction over the applications.

There has been no comprehensive adjudication of ground water rights in the Upper Santa Ana River area. However, the Orange County Water District brought suit against San Bernardino, Riverside, Colton and Redlands and secured a court order to limit their pumping in order to assure that sufficient water passed downstream to meet the rights of Orange County water users.¹¹ The curtailment of upstream pumping, which will be effective in 1963 pursuant to this court order, has stimulated efforts of the upstream cities to purchase or condemn adjacent water rights, to reclaim sewage and to secure imported water supplies. In 1950 an agreement was signed between the Chino Basin Water Conservation District and Orange County water users covering their respective rights to water. In 1957 the San Bernardino Valley Water Conservation District brought action to adjudicate the rights of agencies exporting water from the Bunker Hill Basin. A stipulated judgment was signed in 1959 which provided a flexible method over a 10-year period for computing the limitation on pumping for export.

The Upper Santa Ana River area, like the San Gabriel Basin immediately to its west, is an area of awakening interest in its ground water problems. The increasing overdraft in the area which has now reached 110,000 acre-feet annually has focused attention on the need to resupply the overpumped basins and/or to curtail pumping. How-

⁹ See report on *Recommended Requirements for the Discharge of Treated Municipal Sewage Into the Bunker Hill Basin* by Warren J. Kauffman, May 25, 1962, prepared for Santa Ana Regional Water Pollution Control Board. See statement of regional board in San Bernardino Transcript, page 65, for the board's views on reuse of waste water.

¹⁰ See Appendix pages A-17 to A-26 for material on protection of ground water by regional boards.

¹¹ An analysis of this action as contained on Appendix page A-27.

ever, a program to refill the basins or to spread imported water does not exist. Although it is not clear, it is doubtful that overpumping has yet progressed to the point that an overall adjudication of water rights is imminent. Furthermore, the complex interrelationship of the basins and the diversity of pumping interests raise questions whether a stipulated judgment in an adjudication could be successfully consummated at the present time. Some of the strongest statements to the committee both for and against a simplification and expediting of adjudication processes came from this area.¹²

Conspicuously absent in the area is a strong unifying agent or force to stimulate common ground water basin approaches, accentuate positive actions where common interests exist and to study or discuss areawide problems with a progressive orientation.

The Upper Santa Ana River area may in due time spread imported water on a voluntary piecemeal basis but the high cost of such imported water, compared to the much cheaper ground water, makes it doubtful that such action will occur soon. This area is in about the same stage of developing ground water management as the areas discussed in preceding sections were a number of years ago. Therefore, the conditions probably will become worse and the overdraft will increase to critical proportions before changes in attitude and actions occur.

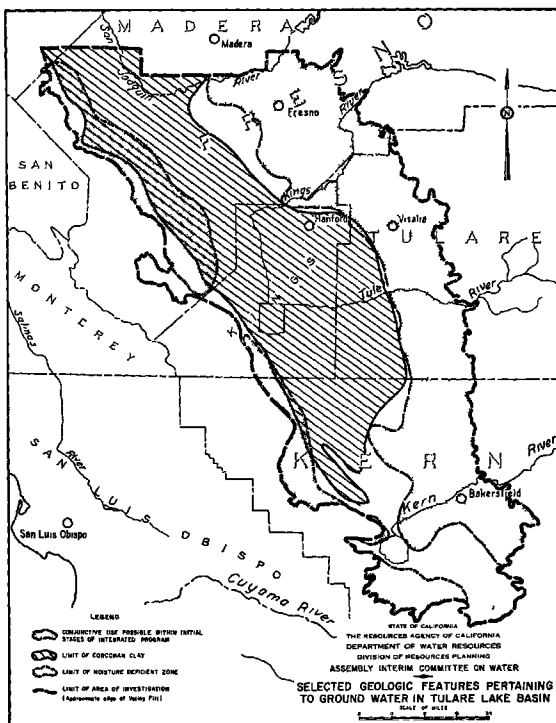
6 THE SAN JOAQUIN VALLEY

The largest area of the State containing specific ground water management problems is the San Joaquin Valley. The valley extends from the Sacramento-San Joaquin River Delta southward to the Tehachapi Mountains. An area approximating the northern half of the valley is drained by the San Joaquin River and its tributaries. The southern half, known as the Tulare Lake Basin, is drained to the San Joaquin River by the Fresno Slough. The valley contains vast deposits of ground water which have accumulated by percolation from rainfall and from the surrounding mountains, particularly the Sierra Nevada Range to the east. Much of the San Joaquin Valley contains fertile but dry soil which has been made highly productive by pumping ground water and diverting storage of flows in the Sierra Nevada Mountains through canals and aqueducts to water the valley.

The valley is largely agricultural but contains some large cities along the eastern side. The western side is very sparsely populated and contains large areas which presently have no water supply and therefore remain undeveloped. The U.S. Bureau of Reclamation has constructed major surface water supply facilities along the east side of the valley and plans to add more in the future through construction of the East Side Canal. The bureau also is providing a new surface supply to the northwestern part of the valley through construction of the San Luis Project, while the State Water Facilities are planned to supply the southwestern part of the valley.

The San Joaquin Valley is one vast interconnected ground water system. Most of the natural recharge originates along the eastern side of the valley where the major rainfall occurs and the runoff from the Sierra Nevada Mountains reaches the valley floor. This eastern part of

¹² See transcripts of Long Beach and San Bernardino hearings.



the valley floor is a forebay zone where water readily percolates through the porous soils and then moves westward under the Corcoran clays of the central and western part of the valley. The movement of natural replenishment water into the southern and western parts of the valley is slow and does not provide a major source of supply commensurate with the pumping. The Bureau of Reclamation anticipates that construction of the San Luis Project will reduce pumping along the west side sufficiently to beneficially effect recovery of water levels in the east side forebay.

In order to permit developing the western part of the valley, some means is required to remove highly mineralized irrigation drainage water. The Bureau of Reclamation and the Department of Water Resources have authorization and are planning to construct a master drain which will eventually run the length of the valley to remove highly mineralized water to the San Francisco Bay.

It is estimated that about 93,000,000 acre-feet of ground water space in the San Joaquin Valley between 10 and 200 feet in elevation is suitable for cyclic storage. The total amount of water in storage is much greater, being 240,000,000 acre-feet in the Tulare Lake Basin which is only the southern half of the valley. Even so, most parts of the valley are pumping amounts of water which exceed the natural recharge by 1,500,000 acre-feet per year. In some areas, particularly in spots along the east side of the valley, some farmers have run out of water and others have been financially unable to deepen their wells. However, most farmers have deepened their wells and have continued pumping out the ground water. Serious ground water problems exist but, on the whole, they have not become critical.

The available surface flows will be relatively well utilized after all currently authorized and planned federal and local projects are completed. In the Tulare Lake Basin the average annual runoff of the tributary streams is about 3,000,000 acre-feet with only about 100,000 acre-feet estimated to occur as wasted floodwaters. This represents from 95 to 99 percent efficiency in utilizing average annual flows. The principal tributaries of the San Joaquin River have an annual runoff of about 7,500,000 acre-feet of which about 1,100,000 acre-feet is expected to waste to the ocean as floodwaters. Thus, only about 12 percent of the average annual flows of the San Joaquin River will waste to the ocean. These peak floodflows are enormously difficult and expensive to conserve and percolate because they occur so infrequently and then usually at a time when all percolation facilities are in use.

The major effort to solve the water problems of the valley has been by construction of local surface projects or by importing surface supplies for irrigation purposes. These surface supplies have two effects, (1) they reduce ground water pumping and thereby permit the ground water levels to recover through natural recharge and (2) they increase the ground water levels by percolation of the irrigation water to the ground water table. Unlike urban and industrial areas which may have outfall sewers and where there is little opportunity for percolation of imported water, the introduction of imported water in an agricultural area usually has a beneficial indirect effect on ground water levels even though none of the imported water is spread.

A number of districts in the San Joaquin Valley have undertaken various efforts to improve ground water conditions. Frequently this is done not only to provide a reserve for dry periods but also because raising the ground water level reduces the pump lift and lowers the cost of pumping. The North Kern Water Storage District, Arvin-Edison Water Storage District, Delano-Earlhart Irrigation District, Lower Tule River Irrigation District, Chowchilla Irrigation District, Ivanhoe Irrigation District, Lindmore Irrigation District, Tulare Irrigation District, Kaweah-Delta Water Conservation District, Consolidated Irrigation District, the Fresno Irrigation District, and perhaps

others have attempted to improve their ground water conditions by shifting to imported surface supplies or spreading water. In past years some of these districts have been able to raise their ground water levels, but during the recent dry period most of their operations have been limited to slowing ground water level decreases. Some of these districts have been able to pump from the ground water reserve they created in past years.

Several San Joaquin Valley districts have found that their spreading operations built up a ground water mound which moved laterally to pumpers outside the district who were able to pump the water without paying for it. Their experience has emphasized the need either to control ground water storage or to assure that the spreading district covers the ground water basin or a sufficient portion of the basin to make its spreading operations feasible.

The southwestern and south-central portions of the valley are composed of fine soils which do not percolate water well, or are underlain by impermeable Corcoran clays, or have a dry soil mantle so deep that no excess irrigation water will percolate through it to the deep ground water levels for many decades. Spreading is not considered technically or economically feasible in these areas and they will probably develop using only a surface supply of water. In these and other areas the depth of the water table is 300 to 700 feet, or more, a depth which adds further to the infeasibility of placing expensive water underground and later relifting it to the surface by pumps. In general, the areas where spreading operations are now known to be most feasible are located along the eastern side of the valley. In these areas not only do more shallow aquifers and more porous soils exist, but Central Valley Project water is available at a price which permits districts to purchase the water for spreading.

An important role in facilitating spreading operations is played by the U.S. Department of Agriculture's Ground Water Recharge Research Project at Fresno which is jointly financed by the U.S. Department of Agriculture and the State Department of Water Resources.¹³ The project has made many technical studies of recharge operations. Much valuable information has been gathered on means to maximize the rate of acceptance of water in a spreading area and on other related matters. The project is optimistic that through proper studies of the specific conditions involved in each spreading operation more successful spreading programs can be undertaken in the San Joaquin Valley.

Data on San Joaquin ground water conditions is rather limited. Information on extractions by pumping is nearly nonexistent. Ground water level data is satisfactory in most of the valley except the north-eastern portion. Data on ground water quality is generally adequate. The most critical deficiency is in geologic information. The U.S. Geological Survey, with the financial co-operation of the Department of Water Resources, is conducting a long-term program of geologic mapping of the valley. Mapping in the southwestern end of the valley in Kern County will be completed in 1963 and work will be continued in new areas moving northward up the valley. It will be many years before this geologic mapping project is finished. The mapping is im-

¹³ See Fresno Transcript of September 21, 1961, page 4, for material on the project.

portant because it will provide fundamental information on geologic and hydrologic features that determine the occurrence and movement of ground water, the possibilities for recharge, an estimate of overdraft and the extent and nature of surface subsidence.

The philosophy of both the Bureau of Reclamation and the Department of Water Resources in planning major projects for importation of water into the San Joaquin Valley is to supplement ground water with a surface supply to furnish a stable, long-term water supply for each contractor in the service area. The bureau has constructed capacity in existing San Joaquin Valley aqueducts to provide both a firm supply (Class I water at \$3.50 per acre-foot) and large amounts of water with a variable occurrence (Class II water at \$1.50 per acre-foot, about 50 percent of which is useable for ground water recharge). By comparison, the Department of Water Resources proposed in 1961 to provide what the department classified as a "firm" supply (at an estimated average price of \$20 per acre-foot in Kern County) based on monthly demand schedules. In testimony before the committee the department indicated it expects part of the firm supply may be placed underground by contracting districts to be used for subsequent pumping during dry periods. However, the ability of water users to undertake any type of recharge or ground water activity is obviously related to the price they will have to pay for water.

Neither the Bureau of Reclamation nor the Department of Water Resources presented testimony which indicated any specific activity or more than limited interest in the San Joaquin Valley ground water problems other than in relation to the amount of surface supplies to be imported. The Bureau of Reclamation confines its interest in ground water primarily to the effect of ground water supplies on planning the size of projects to import water and to the protection of project repayment. The Department of Water Resources has made some extensive studies of the economics of pumping deep ground water in its proposed service areas. The local districts have made few studies of their ground water management problems. As a result, more study is needed regarding the possibilities of specific, as opposed to general, use of ground water basins in either storing or distributing imported water. In general, it is known that many unfavorable factors exist, such as a deep, dry soil mantle, great depth to ground water, and impervious clays and fine silts. However, it is not clear that careful consideration of specific ground water operation techniques in specific and defined areas will not produce beneficial results. Some of the technical problems may be resolved by the Ground Water Recharge Research Project in Fresno, working in co-operation with the geologic mapping program of the U.S. Geological Survey. A joint program seems desirable between these two federal agencies and the Department of Water Resources to explore and resolve these technical problems in specific areas where possibilities of recharge and spreading appear to have elements of feasibility.

Throughout the San Joaquin Valley there exists a variety of views on the need for additional action leading toward strengthening management of ground water. Some districts with practical experience in spreading operations feel a need for protection to keep adjacent pumpers from drawing off their water. Other areas without practical experience in spreading, without presently contemplated plans to spread

water, or without important ground water problems, feel that no action is needed. The discussion of a master district to spread water does not receive sympathetic support in the valley.

In general, water users in the San Joaquin Valley emphasize developing or importing more surface supplies of water. If these new surface supplies are no more expensive than pumping, past experience indicates there will be a tendency to use the surface supplies rather than to pump. In addition, as the pumping levels become deeper, the pumping costs will increase and the incentive to use surface supplies will become greater. In the meantime, a reduction in the economy of the area would result from a current reduction in pumping unless surface supplies are increased.

IV. CONSIDERATIONS IN GROUND WATER MANAGEMENT

1 LEGAL PROBLEMS¹⁴

In California "rights to the use of percolating ground waters consist of correlative rights and appropriative rights. Against either, prescriptive rights may vest." The rights of overlying landowners are correlative, or "coequal" among themselves. They exist "solely by reason of the situation of the land" over the ground water basin and are obtained "by acquiring title to the land." If there is any surplus ground water "above the aggregate quantities required for the reasonable beneficial use of the overlying" landowners, the surplus may be appropriated for nonoverlying uses, such as devotion to a public use by a public utility or municipality or for exportation beyond the basin.

If there is no surplus with the result that "the common supply of (ground water in the basin) is not adequate for the needs of all overlying land, each landowner is entitled to an equitable portion." When there has been surplus water but the surplus ceases to exist because of

¹⁴ The first two paragraphs of the section on legal problems reflect the committee's understanding of the law as it pertains broadly to ground water basin management. The two paragraphs have been reviewed by the legal staff of the State Water Rights Board. The quotations have been taken from Wells A. Hutchins, *Irrigation Water Rights in California*, California Agricultural Experiment Station Extension Service, Circular 452.

The Legislative Counsel Bureau drafted paragraphs 4 through 6, in addition to reviewing the remainder of Section 1, and has furnished the committee with the following extract from the decision of the California Supreme Court in *City of Pasadena v. City of Alhambra*, 33 Cal. 2d, 903, 925-927:

Generally speaking, an overlying right, analogous to that of a riparian owner in a surface stream, is the right of the owner of the land to take water from the ground underneath for use on his land within the basin or watershed; the right is based on ownership of the land and is appurtenant thereto. The right of an appropriator depends upon an actual taking of water. Where a taking is wrongful, it may ripen into a prescriptive right.

Although the law at one time was otherwise, it is now clear that an overlying owner or any other person having a legal right to surface or ground water may take only such amount as he reasonably needs for beneficial purposes.

"It is the policy of the state to foster the beneficial use of water and discourage waste, and when there is a surplus, whether of surface or ground water, the holder of prior rights may not enjoin its appropriation. Proper overlying use, however, is paramount and the right of an appropriator, being limited to the amount of the surplus, must yield to that of the overlying owner in the event of a shortage, unless the appropriator has gained prescriptive rights through the taking of nonsurplus waters. As between overlying owners, the rights like those of riparians, are correlative and are referred to as belonging to all in common; each may use only his reasonable share when water is insufficient to meet the needs of all. As between appropriators, however, the one first in time is the first in right, and a prior appropriator is entitled to all the water he needs, up to the amount that he has taken in the past, before a subsequent appropriator may take any.

"Prescriptive rights are not acquired by the taking of surplus or excess water, since no injunction may issue against the taking and the appropriator may take the surplus without giving compensation; however, both overlying owners and appropriators are entitled to the protection of the courts against any substantial infringement of their rights in water which they reasonably and beneficially need. Accordingly, an appropriative taking of water which is not surplus is wrongful and may ripen into a prescriptive right where the use is actual, open and notorious, hostile and adverse to the original owner, continuous and uninterrupted for the statutory period of five years, and under claim of right. To perfect a claim based upon prescription there must, of course, be conduct which constitutes an actual invasion of the former owner's rights so as to entitle him to bring an action. Appropriative and prescriptive rights to ground water, as well as the rights of an overlying owner, are subject to loss by adverse user."

overpumping and an overdraft is developing, the overlying landowners must act to protect their rights. As between such overlying landowners and appropriators, the rights of overlying landowners are paramount and an overlying landowner if he seeks it, is entitled to court protection against any appropriation that results in such a lowering of the ground water level in his existing wells as to render inadequate his means of utilizing the water in a reasonable manner. However, if the basin has actually become overdrafted by continual pumping in excess of the safe yield, prescriptive rights may be established by extractions made after the commencement of the overdraft and both overlying landowners and prior appropriators may lose all or part of their rights. Prescription occurs when the extraction is open, adverse to owners of prior rights, continuous for the statutory period of five years and under claim of right. Acquisition of rights by prescription is involved in the ground water adjudications to date in Southern California as discussed below.

The case of *City of Pasadena v. City of Alhambra* is an important example of a judicial solution to ground water management problems by adjudication. This case involved the Raymond Basin, which had been overdrafted for many years. Notwithstanding this fact, the parties, both overlying owners and appropriators, had continued their pumping, thereby continuing the overdraft and lowering of the water table. All of the parties entered into a stipulation that "all of the water taken by each of the parties to this stipulation and agreement was, at the time it was taken, taken openly, notoriously, and under a claim of right, which claim of right was continuously and uninterruptedly asserted by it and was adverse to any and all claims of each and all of the other parties joining herein."

The court held that there was an invasion, to some extent at least, of the rights of both overlying owners and appropriators when the overdraft first occurred, that each taking of water beyond the safe yield, whether by subsequent appropriators or by increased use by prior appropriators, was wrongful and injured the then existing owners of water rights by gradually reducing the water supply so as to eventually render the supply insufficient to meet the needs of the rightful owners. Thus, prescriptive rights were gained by the wrongful takers to the extent the rights of the rightful owners had been invaded throughout the statutory five-year period.

However, because the overlying owners and prior appropriators had also continued at all times to pump all of the water they needed, the court held that the invasion of their rights was only partial, and that by their acts they either retained or acquired rights to continue to take some water in the future. Thus, the prescriptive rights against them were limited to the extent that they retained or acquired rights by their pumping.

The judgment of the court limited the production of water in the basin by a proportionate reduction in the amount which each party had taken during the statutory period, with the total annual pumpage from the basin being limited to the safe yield. Each party was allowed about two-thirds of the amount of water he had taken over a five-year period prior to the filing of the complaint, as to which there had been no cessation of use for any subsequent five-year period.

The result reached in *City of Pasadena v. City of Alhambra* has been commonly referred to as the "doctrine of mutual prescription." Although the court did not use that term and expressly declined to decide whether the overlying owners retained simply a part of their original overlying rights or whether they obtained new prescriptive rights to use water, the procedures used in the Raymond Basin have been similarly applied by the courts in the West Coast and Central Basins to reduce proportionally the pumping by all pumpers.¹⁵

The amount of water which may be pumped from an underground basin, in the absence of a court action to limit pumping, is not fixed. Existing pumpers may increase their pumping, or new pumpers, whether overlying landowners or appropriators, may drill new wells, even though the basin is overdrafted. As a result, each pumper in an overdrafted basin is actually competing with other pumpers for his supply of water. Eventually the declining water level reduces pumping from some wells and intruding sea water salinates others. The lowering of wells becomes increasingly expensive, if not prohibitive, and the value of a water right is diminished. This is the situation in varying degrees in the six areas discussed above and in several other ground water basins in the State.

Adjudication of water rights in an underground basin is often a lengthy and costly proposition. The *Raymond Basin* case took 12 years of litigation. A superior court action involving the West Coast Basin, which pioneered in solving many legal problems, took 16 years of litigation, cost \$165 per acre-foot of annual yield, and the case may still be appealed. In a current action involving the Central Basin, a stipulation on an interim judgment among certain of the parties will be achieved in nine months, with a final judgment expected in several years.

Because the hydrology of ground water is so complex, the use of stipulations in cases adjudicating ground water rights may shorten the length of time it might otherwise take to identify all of the various types of rights involved and to determine the relative priorities. Certain of the stipulations in the *Raymond Basin* case have already been mentioned. In the superior court action involving the West Coast Basin, some of the parties entered into a stipulation for judgment in order to allocate the water and to restrict the total production to the safe annual yield.

With regard to the *Raymond Basin* case, an "exchange agreement" was worked out by all the parties except one, and this agreement was approved by the court.

The stipulation for judgment in the *West Coast Basin* case provided for an exchange pool. Pumpers who were required by the judgment to reduce their pumping below their needs may overpump to the extent that pumpers with alternative sources of water correspondingly decrease their pumping below the allowed amount and release water to the exchange pool. The costs of importing water to replace the water so released are to be paid by those benefiting from the overpumping. The

¹⁵ An article in the March 1982 edition of the *California Law Review* entitled "Ground Water Basin Management," by James H. Krieger and Harvey O. Banks, discusses the case of *City of Pasadena v. City of Alhambra* and other matters. Also see Legislative Counsel's analysis on Appendix page A-45.

Watermaster Service of the Department of Water Resources was designated to administer the judgment for the courts in the Raymond and West Coast Basins and the courts retained jurisdiction to revise the judgments if changed conditions warranted.¹⁶

The cost, the complex legal procedures, and time involved in the West Coast Basin adjudication have resulted in proposals for speeding up the adjudication processes. A number of proposals, such as A B 3042, or the proposal advanced by the Southern California Water Coordinating Conference, appeared to have substantial merit.¹⁷ However, almost all of these proposals were vigorously opposed at committee hearings as being good in principle but not worked out in detail, as unnecessary on the basis of the limited experience with adjudications to date, or were contested both by parties having been litigants in adjudications or parties who feared that they would be litigants under the proposals. The committee, therefore, found no consensus on the details of legislation to change adjudication procedures.

Only three basins in Southern California have been completely or partially adjudicated. On the basis of this experience, testimony was offered that adjudication should be undertaken in other basins either voluntarily or perhaps required by state action. The supporters of adjudication claim that without it a basin may be damaged or destroyed. The committee examined the case for adjudication carefully, but found no satisfactory basis to determine when an adjudication is necessary or should be undertaken. No objective criteria have been advanced to measure the degree a basin is being damaged and no basin has yet been destroyed. In fact, the committee found approximately the same degree of protection being given by the Orange County Water District and the United Water Conservation District to their basins, which have had no adjudication, as in the West Coast or Raymond Basins which have been adjudicated.

Two forms of permanent damage which might occur to a basin are the intrusion of salt water and subsidence. Recharging a basin with fresh water will probably force the salt water back towards the ocean in a manner similar to the operation of sea water barriers. Subsidence apparently cannot be reversed but also occurs for several reasons other than overpumping water. The major impact of destroying a basin beyond any possible use is that all the water supply will have to be imported. Even in the West Coast Basin about 70 percent of the water used is now imported so that a shift of the remaining 30 percent from ground water to an imported supply would not be catastrophic, provided the surface supply is available.

The State should not condone any abuse or waste of its ground water supplies. Yet this is apt to happen when water users anticipate a possible pro rata reduction in pumping under an adjudication which may be based on the use of water for a five-year period. If there is a prospect of adjudication in an overdrawn basin, pumpers are encouraged to pump as much as possible as soon as possible in order to build up a pumping record which will be the base from which the court reduces their pumping. Thus, the possibility of a pro rata reduction based on

¹⁶ See Appendix page A-17 for extracts from the West Basin judgment, and page A-33 for a statement on the computation of rights under the five-year rule.

¹⁷ See Long Beach Transcript, July 19, 1962, page 7.

a five-year period discourages both use of imported water in lieu of pumping and conservation of pumped supplies.

Careful overdrafting of a ground water basin has proven to be a feasible method of developing an economy which can subsequently pay for a more expensive imported supply of water and replenish the overdrafted basin. The unknown factor is whether in the future the overdraft will be terminated by the water users and the basin recharged when conditions permit. This involves the willingness of the people to pay the costs involved. No evidence was offered to the committee that any basin is currently being overdrafted with a prospect that the ground water supply will be exhausted before an imported supply is anticipated to be available or that serious work is not underway to replenish the seriously overdrafted basins.

An adjudication may be desirable where there is need for a rigid reduction in pumping irrespective of the impact on the local economy or where pumpers desire to establish their individual pumping rights to the safe yield of the basin. However, because other areas of the State have been able to establish effective and sound ground water management programs without adjudication, the committee studied carefully the experience of these other areas.

2. ECONOMIC CONSIDERATIONS

A water right is a legal means of protecting the economic value derived by a pumper from the extraction and use of water. The lower the cost of a water supply, the greater is its value when used, all other things being equal. A low cost water supply will be used in preference to a higher cost supply to the greatest extent possible because its use maximizes profits either to the pumper or persons purchasing water from the pumper. Probably the only restraint on individual wasteful use of cheap water in an overdrafted basin is the certainty that it will eventually have to be replaced by much higher cost imported supplies. An individual pumper could voluntarily use high cost imported supplies but he is anxious to keep his costs low. Normally, the pumper has no middle ground or reasonable alternative except continued over-pumping until the underground water supply nears exhaustion and his economic cost from switching to higher cost imported water becomes an absolute necessity. The individual water user must await group action.

The development of the replenishment assessment or pump tax has provided a middle ground or reasonable alternative for the pumper. He pays a moderate tax to a replenishment district on each acre-foot of water he pumps which, along with the revenues from all other pumpers, is used to purchase higher cost imported water to replenish the basin. The amount of the pump tax he pays each year will vary with changes in the cost of imported water, with the amount of water pumped, and with annual variations in the amount of rainfall or natural replenishment to the basin.

In its simplest form the pump tax can be used to purchase imported water to replace the water pumped in excess of natural replenishment. However, this can occur only when the basin has the geologic conditions to permit spreading the quantities of water needed for replenish-

ment and the aquifers can transmit the water to the pumps. At present this condition most nearly exists in Orange County.

If it is not possible to spread all the water needed for replenishment or for the aquifer to transmit all the water to the pumper, spreading can be utilized to the maximum possible and then supplemented by surface deliveries. At present no district is using pump tax revenues to pay for such transportation in lieu of pumping but the Santa Clara and United Water Conservation Districts are using ad valorem tax revenues for this purpose. Similarly, pump tax revenues can be used to equalize the price of imported water with pumped water by payment of the incremental cost of imported water over pumped water. This practice is being followed by the Santa Clara Valley Water Conservation District using ad valorem tax revenues. A variation on this approach was authorized by amendments to the Orange County Water District Act which authorized a two-rate pump tax to encourage use of imported water.

The committee believes the pump tax is effective because it applies to the crux of the water use problem, that is, the cheapness of ground water compared to imported water. The pump tax distributes the cost of imported water to replenish the basin among pumpers of ground water in proportion to their pumping. Even though those who pump large quantities of water from the ground water basin pay a correspondingly large pump tax to replenish the common supply of ground water, the actual cost of the imported water is distributed over such a large base that it is not a serious burden on any pumper or water user. The pumper is offered a "middle ground" or reasonable basis to co-operate in conserving the basin water supply.

Wasteful use of the common supply is discouraged if the pump tax is applied to all water pumped because wasteful use becomes relatively self-defeating since it only increases the total amount of water that must be imported and the pump tax will have to be adjusted upward accordingly. In fact, the experience of Orange County has been that the increase in costs of water due to the addition of the pump tax has resulted in more efficient and careful use of water which conserved the entire ground water supply.

Logically, it appears preferable to apply a pump tax on all water pumped from the basin. If it is applied only to water pumped in excess of an adjudicated right, there may still be wasteful use of water under the adjudicated right. Many of the results obtained by a pump tax can be obtained by an ad valorem tax, but the ad valorem tax is based on all land in the basin and does not provide a direct economic restraint on wasteful uses of water or excessive pumping.

In practice, the pump tax is collected in the form of an assessment levied on each acre-foot of water pumped but it is not a tax in the usual sense. In essence it is a toll or fee for imported water pumped in excess of the safe yield of the basin. The district levying the pump tax assumes an obligation to provide a supply of water for replenishment as though it were supplying electric power or any other utility service. The water is therefore being supplied to pumpers by the district with emphasis being placed on adequacy of supply. In an adjudication the emphasis is on dividing up a shortage of a common ground water sup-

ply and establishing individual rights to a limited supply. After a pump tax has become established and replenishment is begun, it is doubtful that an adjudication of the basin would be undertaken because the adjudication would accomplish little. The adjudication would only affirm the right of a pumper to a supply of ground water which is inadequate to meet his total demands without replenishment by a managing district. The pumper has become part of a water supply system from which he cannot afford economically or physically to remove himself, even if he can legally.

Under the pump tax approach it has not been necessary so far to adjudicate rights to pump from the basin and no individual rights have been defined. The district does no pumping and does not control or restrict pumping except through the economic restraints of the pump tax. Instead, each pumper continues to pump his needs and pays his pump tax. If a dry period occurs the pumpers draw down the basin, but since they, themselves, rather than the district or an outside agency, are doing the pumping, under the doctrine of mutual prescription they are damaging only themselves. After the dry period has ended the district continues to recharge the basin and the water levels recover until the basin is recharged and ready for drawdown during the next dry period. If water for replenishment is temporarily unavailable, the pump tax can still be levied and pump tax revenues representing the amount of the overdraft can be set aside to be expended at a later date to recharge the basin when water is available. The inherently equitable and automatic features of the pump tax are among its best features.

In application of a pump tax there are no objective guidelines to establish a condition in a given ground water basin when such action should be taken. In particular, it should be noted that a pump tax and an adjudication are not mutually exclusive approaches. They can be undertaken simultaneously and on occasion perhaps should be undertaken simultaneously. The significant consideration is that an adjudication is normally not necessary if a replenishment program financed by a pump tax is adopted.

3. GROUND WATER BASIN INVESTIGATIONS

Adequate knowledge of a ground water basin is essential to its proper management. Knowledge is important to determine the correct technical solutions to a ground water problem but it should also be available to serve as a guide in the timing of efforts to establish ground water management. To date, most basin management activities in California have been on a pioneering basis, which means that a certain element of experimentation or trial and error has been involved because adequate data, comprehensive studies and the benefits of experience have been lacking.

This condition is changing in California. The Legislature has for several years been providing funds for the Department of Water Resources to make comprehensive studies of ground water basins in Southern California and to determine the optimum plan for management of these basins. Investigations are being completed on the West Coast and Central Basins. Work is underway on the San Gabriel and Chino Basins. Additional work was authorized in 1961 by the Porter-Dolwig Act.

The completion of these basin management studies should contribute substantially to the improved management of the basins studied. For the first time, a complete collection of necessary data on the basin will be available, the optimum plan of management will be outlined, and the people of the basin will be fully informed of the nature and extent of their problem. The management of ground water basins involves education of the public as well as determining wise courses of action to solve the problems. Thus the people will be in a better position to evaluate and establish the best basin management program which they can finance.

4. DATA COLLECTION

Closely associated with any ground water investigation is the collection of data. The committee's hearings showed a substantial variation in the level of data collection throughout the State, but there is also a substantial variation in the need. The most complete data collection programs are in the Los Angeles area where the need is the greatest. Another area of need is in the San Joaquin Valley and here the data is not yet fully available. Northern California has a minimum need for ground water data.

Testimony presented to the committee indicates that Water Code Sections 4999 to 5008, requiring pumpers in Los Angeles, Ventura, Riverside and San Bernardino Counties to file a statement of the amounts of water they have pumped, has been highly beneficial. The two problems presented to the committee regarding this ground water recordation program are whether the recordation programs should be extended to other areas of the State and whether these records of extraction should be prima facie evidence in an adjudication.

Recommendations were made to the committee for extension of the recordation program to other basins being overpumped. The recordation data is historically valuable for ground water basin investigations but not indispensable. Its original purpose and greatest use to date has been in adjudications. The record of the committee's hearings indicates no interest in, or developments toward adjudications in the Santa Clara Valley or the San Joaquin Valley which are the areas with significant ground water problems that are not now within the recordation program. The committee, therefore, finds no need to extend the recordation program until an area requests to be included within the recordation program.

Regarding the question whether the recordation data should be made prima facie evidence in any adjudication, the Water Code now provides that the recordation data is prima facie evidence only after the State Water Rights Board has determined its accuracy. The cost of the determination is borne by the party making the request for the determination. At present, the Water Code makes the filing of a statement by a pumper mandatory, it virtually extinguishes the rights in a given year if a pumper fails to file, it requires the statement filed to be sworn, it makes any willful misstatement a misdemeanor, and finally it requires the pumper to pay a pro rata portion of the costs of the State Water Rights Board incurred for the recordation program. Presumably, the object of the recordation program is to collect data to

help the pumper determine and protect his water right. Since the pumper has no real choice, but must file his statement of extraction, the committee does not feel that the data collected in the recordation program should be made prima facie evidence so that it might be freely used adversely by others against the pumper who filed the data. In addition, the recordation program loses significance when a pump tax is levied because the same information is the basis for payment of the pump tax. This is apparent in Orange County which is exempt from the recordation program.

Probably the field of data collection most deficient throughout the State as a whole is the geologic and hydrologic mapping of the ground water basins. The ground water basin investigations of the Department of Water Resources in Southern California are filling gaps in this data as each basin is studied. The program of the U.S. Geologic Survey to map the San Joaquin Valley is underway with the State contributing a share of the funds. Some consideration might well be given to the question whether priority areas of the San Joaquin Valley are being mapped first. In view of the committee's hearing at Fresno, special attention might be given to the central portion of the eastern side of the San Joaquin Valley to expedite the geologic mapping program. The committee was not advised of other fields of data collection which constituted special problems or required special attention.

5. STORAGE OF IMPORTED WATER

A problem of great concern and interest in ground water basin management is the expectation that certain basins in the State will some day be used for terminal storage or cyclic storage. The Department of Water Resources anticipates that at some future time Northern California water will be stored in the San Joaquin Valley ground water basins for later pumping and future transportation to areas of need. Neither the Department of Water Resources nor the federal agencies have a specific plan for the physical facilities needed to accomplish such underground storage and none of the works they are currently constructing or contemplating include such an operation.

The use of the San Joaquin Valley or other areas of the State for storage may be valuable in the future and become a reality within several decades. In the meantime, discussion of such a possibility has been disturbing to the landowners and pumpers. It has also tended to create confused thinking because a future problem which currently lacks definition and is incapable of legal, engineering, or economic analysis has been superimposed on more tangible problems of today which can be studied and resolved. For this reason, the committee has passed by the storage of imported water in the San Joaquin Valley ground water basins and will await specific data and plans for such storage.

The problem currently confronting a number of areas in the San Joaquin Valley and Southern California is the terminal storage of imported water. The legal difficulties and questions of impact on pumpers caused by calculated manipulation of ground water levels through wholesale storage and extraction of water are almost unlimited if an outside agency, that is, anyone other than a local district spreading

water, attempts to store water in a basin¹⁸ These difficulties seem to become minimal and may become nonexistent if a district covering a manageable portion of the basin assumes the responsibility for terminal storage When this happens the terminal storage becomes identical to recharging the basin and, as already discussed, it is not generally necessary for the storing district to control or allocate the storage space in the basin The water stored by the local spreading district can be protected by the economic restraints of the pump tax and, if necessary, by action of the storing district to enjoin the exportation of the imported water by new pumpers As noted in the discussion of the pump tax, special pump tax rates or use of pump tax revenues to equalize imported water costs with pumping costs can also be used to shift water use from the ground water basin in order to facilitate recharge or storage

No solution other than adjudication appeared from the testimony presented to the committee for the problem of an outside party which wishes to store water in a basin for later pumping This condition has arisen in the Bunker Hill Basin, where the San Bernardino Valley Municipal Water District and the Western Municipal Water District have made application to the State Water Rights Board for a permit to store water from the State Water Facilities No decision has been reached by the board on whether it has jurisdiction in the circumstances involved since the applicants are not diverters of surface flows to which the permit process applies, but rather are purchasers of water diverted by the Department of Water Resources under another permit¹⁹

The equities involved in the case are difficult to assess and the amount of information available is limited Perhaps some of this information is not necessary since the most important question is whether the basin will be approached on a piecemeal basis or whether overall management will be undertaken by joint exercise of powers among existing districts or the formation of a basinwide district to manage the basin Not to be separated from the storage of imported water are questions of water quality, reuse of waste waters, means of recharging the basin as opposed to its more limited use for storage, construction of an outfall sewer, location and timing of distribution facilities for imported water as well as eventual decisions on the relative use of pumped and imported water in various portions of the basin

The problems of storage in the Bunker Hill Basin are actually the problems of replenishing the basin Based on the record of committee hearings, co-operation of all agencies in managing the basin on a basinwide scale would be the most desirable approach Whether the Bunker Hill Basin or the whole upper Santa Ana River area is the proper area for basin management appears to be a matter requiring study, perhaps by the Department of Water Resources in its ground water basin investigation program.

Economic analysis is needed to determine whether the use of high cost water from the State Water Facilities for recharge is economically

¹⁸For an example of the operation of such storage in the adjudicated Raymond Basin, which is a small basin, see *Report of Watermaster Service on Determinations of Credit for Water Salvaged by the City of Sierra Madre*, Department of Water Resources, August 1959

¹⁹Pages 4 to 26 of the Sacramento Transcript of August 2, 1962, contain some discussion of the legal problems involved in these applications

feasible. Based on past experience with the use of Colorado River water for surface delivery or recharge in lieu of pumping ground water, the prospect that expensive imported water from the State Water Facilities will be used is debatable, even after recognizing that high quality imported water should be used for recharge. More study and cost analysis of this problem appear to be needed. The results may indicate the pricing policies which might be established by the Metropolitan Water District if it is found state project water should be favored for recharge operations.

6. ORGANIZATION FOR REPLENISHMENT

There are presently two proven methods available to water users to manage their ground water basins. One is to utilize the general legislation already available for formation of a replenishment district in Southern California. The Central and West Basin Water Replenishment District is the only district formed under that general act to date. The second method is to amend existing acts to add replenishment powers. This has been done with three special acts, the Orange County Water District, the Santa Clara County Flood Control and Water Conservation District and the Alameda County Water District. The Legislature may be requested to add replenishment powers and especially pump tax powers to more district acts in the future.

From the record available to the committee there is no basis to conclude that the formation of a replenishment district is preferable to adding replenishment powers to an existing district, other factors being equal. Where the addition of replenishment powers to an existing district may eliminate the need for creating another district, it would be preferable to use the existing district. However, it is of utmost importance that the district, no matter what its type, should exercise its replenishment powers over the entire ground water basin or at least a manageable portion of it. An excellent precedent has been included in the Replenishment District Act which requires the Department of Water Resources to determine the boundaries of a replenishment district at the time of its formation. The Legislature might wisely ask the department to make a similar finding, even if an informal finding, before it adds replenishment or pump tax powers to existing districts.

Consolidation of a number of smaller districts or the joint exercise of powers by several districts overlying a basin may be feasible approaches to replenishment. It is difficult to justify more than one pump tax in any given basin unless the pump tax is levied for different supplies of water. Even then it is logically preferable that the simplest approach be followed, that is, one district should administer the tax for all interests.

Water agencies expressed a strong desire to solve their problems themselves and to manage ground water basins locally. The committee agrees that local management is desirable and, as noted earlier in this report, provides simplified solutions to many of the ground water basin management problems. The water users have a choice of solutions available to solve their problems, and their preferences in choosing solutions will assist them in fashioning a management program that will be locally acceptable and financially within their means.

V. SUMMARY

In California, about half of the water used is pumped from the supplies available in the vast underground reservoirs known as ground water basins. Percolation of rainfall and water in rivers are the main sources of natural supply or replenishment for these underground basins. When more water is pumped from the basin than naturally percolates into it, a condition of overdraft exists which will eventually result in loss of the ground water supply to the area if such overpumping continues.

Overpumping of a ground water basin can be alleviated by (1) providing a surface supply to be used in lieu of pumping, (2) a court action or adjudication to reduce pumping, (3) resupplying the ground water basin with imported water artificially percolated or spread on porous soils of the basin, or (4) a combination of these approaches. In addition, the quality of the ground water must be protected from improperly discharged sewage, poor quality drainage water, intrusion of sea water into overpumped basins and accumulation of salts in the water from reuse.

The committee found well-developed programs underway by the Santa Clara Valley Water Conservation District in Santa Clara County, the United Water Conservation District in Ventura County, the Central and West Basin Water Replenishment District in western Los Angeles County and the Orange County Water District. These four agencies cover the basins where critical overpumping has occurred and the committee has concluded that they have made substantial and promising progress toward acceptable programs for ground water basin management. Continuation of such progress should solve the critical existing problems and provide the experience to solve similar future problems in these four areas and elsewhere.

The Upper Santa Ana River area, the San Joaquin Valley and a number of other ground water areas have significant overpumping which may develop critical proportions in the future. Additional water supplies are being planned for these areas, replenishment programs are being studied in some instances and, in general, steps are now being taken looking toward future solution of these problems. Ground water problems in most of these areas will probably become worse and in a few instances become critical before public attention will be focused on them sufficiently to stimulate the local expenditures for necessary programs. The committee has found from experience to date that as ground water management problems become critical, their critical nature is recognized by the people involved and local corrective actions are taken.

The degree of success that has been achieved so far in the solution of problems in the four critical areas and the extent of need for immediate action in noncritical areas is a matter of individual opinion. Some people who are closely associated with ground water problems,

particularly technically oriented persons, are inclined to be dissatisfied with the progress to date. Such views are valuable and desirable to provide the stimulus for continued progress and to point the way towards early recognition and solution of water problems.

The committee conducted its ground water study during part of a very dry three-year period. Ground water levels had been falling rapidly, but this is the function of a ground water basin if used as a long-term reservoir. The important factor in judging current replenishment programs will be the extent to which the basins will recover through planned natural recharge or artificial replenishment when the dry period ends. Present indications are that the replenishment programs recently undertaken will result in major recoveries of water levels if several rainy winters occur.²⁰

In the areas of the Santa Clara Valley and the United Water Conservation Districts most notably, but also in the Central and West Basin Water Replenishment District as well as in Orange County, the committee found a public and private desire to enhance the common supply of water. This attitude recognizes that reuse of water moving through interconnected basins constitutes a common supply having interrelated problems of water quality whether upstream or downstream, and that the addition of new water supplies in one part of the basin is beneficial to the whole basin even to the extent, in some cases, of sharing the added costs. The areas with the most successful programs tend to de-emphasize both water rights and allocation of shortages. They accentuate mutual benefits and cost sharing which bring expensive corrective actions within the realm of financial feasibility.

Although the committee found that a pump tax solves many replenishment problems directly by economic rather than legal persuasion, this does not rule out the use of adjudication as a ground water management tool. Adjudication may be necessary on occasion. The committee only found that other methods could accomplish substantially the same public purposes in an easier, more direct manner. In any event, the choice of approaches and the timing of action can best be made by the local interests involved who must be willing to pay the costs of solving the problems.

In general, the committee has found no clear need for major statewide legislation at this time, but finds instead there will be a continuing need for adjustment of statutes and correction of problems as experience indicates and specific difficulties can be defined and resolved. Most of the recommendations made to the committee to expedite initiation of ground water basin management, while seeking worthy objectives, appeared to create as many problems or inequities as they resolved. If, in the future, there are indications of major failure in any of the local ground water management programs, and it can be determined that local negligence or inaction was the cause, the Legislature would then have a basis to take major corrective action.

²⁰ Correspondence with the four districts having replenishment programs has indicated that the above-normal rainfall and the lower temperatures occurring in 1962 have contributed to a substantial recovery of ground water levels compared to the previous dry years.

APPENDIX

Transcripts of hearings held by the Assembly Interim Committee on Water pursuant to House Resolution 179 were mimeographed and distributed as hearings were held. The Appendix to this report contains only material which was not included in the transcripts and has value for reference purposes.

AMENDED IN ASSEMBLY MAY 29, 1961
CALIFORNIA LEGISLATURE, 1961 REGULAR (GENERAL) SESSION
ASSEMBLY BILL **No. 3042**

Introduced by Mr. Porter

April 21, 1961

REFERRED TO COMMITTEE ON WATER

An act to add Chapter 5 (commencing with Section 3000) to Part 3, Division 2 of the Water Code, relating to the preservation of underground basins.

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

1 SECTION 1. Chapter 5 is added to Part 3, Division 2 of the
2 Water Code, to read:

3
4 CHAPTER 5 UNDERGROUND BASINS

5
6 Article 1. Declaration of Policy

7
8 3000 The Legislature finds and declares that it is neces-
9 sary in carrying out the mandate of Section 3 of Article XIV
10 of the Constitution in providing for the preservation and
11 utilization of the water resources of the State to the fullest
12 extent, that means be provided to protect underground waters
13 and water basins from being destroyed or irreparably injured.

14
15 Article 2 Description of Basins

16
17 3010. The Legislature establishes the following under-
18 ground watershed drainage areas and ground water basins in
19 the State of California: Those areas set forth as Regions Nos
20 4, 6, 7, 8 and 9, and those basins set forth in each of said re-
21 gions as shown, delineated and described in the publication of
22 the Department of Public Works, Division of Water Resources,
23 dated November, 1952, entitled "Water Quality Investiga-
24 tions, Report No. 3, Ground Water Basins in California "

25 The description of a ground water basin in this section shall
26 be presumed to be sufficient in an action.

Article 3. Recordation of Ground Water Rights

3019. As used in this chapter, "board" means the State Water Rights Board

3020. Any person who takes underground water from within the boundaries of an underground water basin established by this chapter may, on or before the first day of ~~February~~ ~~July~~ of each year, file with the board on forms furnished by that board, a sworn statement as to the amount of water he has so taken from the underground water basin during the preceding calendar year. The statement shall include such information as the board may require in addition to the following:

(a) The amount and use of water taken

(b) The basis on which the quantity was determined.

(c) The property on which the water is taken.

(d) The place of use.

The board may require with respect to any statement such additional information as may be necessary to substantiate the claim of use, and may reject any statement which in its judgment is not supported

3021. Any person who, under Section 3020, files a statement for the 1962 calendar year, may also file, at the same time, a similar sworn statement as to the water taken from the same underground basin for the nine-year period (or any portion thereof) next preceding the 1962 calendar year

3022. A separate statement shall be filed ~~with respect to each basin~~ *for each point of extraction of ground water*.

3023. The statement shall be accompanied by a filing fee which shall be fixed by the board. The filing fees shall be so fixed as to reflect the quantity of water taken and be sufficient to pay the administrative expenses in processing and recording the statements filed pursuant to this chapter

3024. Any person who knowingly files a false statement under the provisions of this chapter is guilty of a misdemeanor.

3025. A statement filed pursuant to this article shall constitute prima facie evidence of the facts stated therein in any action brought under the provisions of this chapter

Article 4. Investigations and Surveys

3040. The board shall conduct continuing studies and surveys to determine the annual safe yield of each underground water basin and whether or not the rate of taking therefrom is such that if continued, would destroy or irreparably injure the basin and the water thereof for future use

Article 5. Adjudication

3050. Upon the petition for the adjudication of the rights to the use of the waters of the basin established by this chapter, signed by one or more persons who have filed statements

1 recording their taking of water from such basin and whose
2 recorded taking is equal to 10 percent or more of all the re-
3 corded taking of the water of such basin, the board shall, if,
4 upon investigation it finds that the water is being taken from
5 the basin at a rate which has, or if continued will, irreparably
6 injure or destroy the basin and the waters thereof for future
7 use, *and that the facts and conditions are such that the public*
8 *interest will be served by a determination of the water rights*
9 *involved*, enter an order granting the petition and file an
10 action in the superior court in *the county in which the basin*
11 *or the greater portion thereof is located* to adjudicate the
12 rights to the use of the waters of such basin, and to limit the
13 taking of the water therefrom to the quantity of water which
14 the court finds can be taken without irreparable injury to, or
15 destruction of, the basin or the waters thereof

16 3051 The action shall be initiated by the board by a com-
17 plaint, which shall set forth in addition to other matters -

18 (a) The order of the board granting the petition and the
19 finding of the board that the water is being taken from the
20 underground water basin at a rate which, if continued, will
21 irreparably injure or destroy the basin and the waters thereof
22 for future use, and

23 (b) The rights claimed by any person in statement filed
24 under this chapter for the five-year period next preceding the
25 date of the filing of the action.

26 3052 Within 10 days after the filing of the complaint the
27 board ~~shall~~ *may* file or cause to be filed in the office of the
28 county recorder of the county or counties in which the area or
29 any part thereof is situated, a notice of the pendency of the
30 action, containing the matters required by Section 409 of the
31 Code of Civil Procedure

32 3053 Jurisdiction of all parties, having any title, interest,
33 or claim to the waters of any area in which the basin is lo-
34 cated, or to the right to the use thereof, may be had either by
35 publication of summons for at least once a week for four con-
36 secutive weeks in a newspaper of general circulation published
37 in the county or counties in which the area or any part thereof
38 is located or by personal service. In addition to publication of
39 summons as herein provided, the board may, at or near the
40 time of the first publication of summons, send said summons
41 by registered mail to each claimant to the waters in the area or
42 basin insofar as such claimants can be reasonably ascertained
43 at his last known address.

44 3054 Jurisdiction is complete 60 days after the completion
45 of publication of summons or personal service

46 3055 Any person claiming any right, title or interest in
47 the ground waters within the basin other than those set forth
48 in the complaint filed by the State shall, within 30 days after
49 completion of the publication of summons or personal service,
50 appear by answer setting forth the rights claimed.

1 3056. In this action the court shall first receive evidence
2 and make its determination of the boundaries of the basin or
3 basins, the water rights of which are sought to be adjudicated
4 and, based on the evidence so received, the court may exclude
5 or include property from the boundaries of the basin or basins
6 described in the complaint

7 3057 Any person who in their answer contests or opposes
8 any claim set forth in the complaint shall serve a copy of the
9 answer on the claimant or claimants of such right by personal
10 service

11 3058 Any complainant whose claim is set forth in the com-
12 plaint which claim is contested by answer, may within 60 days
13 after completion of publication of summons either rely upon
14 the recorded rights as set forth in the complaint of the State or
15 may file such supplemental complaint as he deems necessary or
16 proper in support of his claim as stated in the complaint.

17 3059 The proceedings in the trial of the action, shall, ex-
18 cept as otherwise provided by this chapter, be conducted in the
19 manner provided by law for the adjudication of water rights

20 3060 Any judgment in an action brought pursuant to this
21 chapter shall restrict the exercise of adjudicated rights to the
22 taking of water in an amount which the court finds will prevent
23 the irreparable injury or destruction of the basin and the water
24 thereof

25 Article 6 Preliminary Injunctions

26
27 3070 At any time after 90 days following the completion
28 of publication of summons, the board, if it finds that water is
29 being taken from the basin in an amount which, if not re-
30 stricted immediately, would destroy or irreparably injure the
31 basin and the waters thereof, shall petition the court for a pre-
32 liminary injunction restricting the taking of water from the
33 basin to an amount the taking of which will not result in the
34 irreparable injury or destruction of the basin and the waters
35 thereof and the court, if it finds the petition true, shall issue
36 the injunction subject to the provisions of Section 3071 of this
37 chapter, without any bond being required

38 3071 Where a preliminary injunction has been granted in
39 connection with an action brought under this chapter, the final
40 judgment shall provide for an adjustment in quantities of
41 water so that the rights of the respective parties as determined
42 in the final judgment shall be as though they had been deter-
43 mined at the time of the issuance of the preliminary in-
44 junction

AMENDED IN ASSEMBLY MAY 26, 1961

AMENDED IN ASSEMBLY APRIL 4, 1961

CALIFORNIA LEGISLATURE, 1961 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 1995

Introduced by Mr. Porter
(Coauthor: Senator Richards)

March 1, 1961

REFERRED TO COMMITTEE ON WATER

An act relating to the protection of quality of underground waters TO ADD CHAPTER 7.5 (COMMENCING WITH SECTION 12920) TO PART 6 OF DIVISION 6 OF THE WATER CODE, RELATING TO PROTECTION OF GROUND WATER BASINS, and making an appropriation therefor.

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

1 ~~SECTION 1. The sum of seven million five hundred thousand~~
2 *SECTION 1. Chapter 7.5 (commencing with Section*
3 *12920) is added to Part 6 of Division 6 of the Water Code, to*
4 *read:*

5
6 *CHAPTER 7.5. PROTECTION OF GROUND WATER*
7 *BASINS*

8
9 *Article 1. Short Title*

10 *12920. Chapter 7.5 of this part shall be known and may be*
11 *cited as "The California Ground Water Basin Protection*
12 *Law."*

13
14 *Article 2. Definitions*

15
16 *12921. The definitions in this article govern the construc-*
17 *tion of this chapter.*

18 *12921.1. "Department" means the Department of Water*
19 *Resources.*

1 12921.2. "Local agency" means any county, city, state
2 agency or public district, excluding agencies which are a part
3 of the executive department of the State Government.
4 12921.3. "Project" means any physical structure or facil-
5 ity proposed or constructed under this chapter for the con-
6 servation, storage, regulation, reclamation, treatment or trans-
7 portation of water to replenish, recharge, or restore a ground
8 water basin, or to prevent, stem, or repel the intrusion of sea
9 water therein, or to improve the quality of the waters thereof,
10 when such basin is relied upon as a source of public water
11 supply.

12 Article 3 Declaration of Policy

13
14 12922 It is hereby declared that the people of the State
15 have a primary interest in the correction and prevention of
16 irreparable damage to, or impaired use of, the ground water
17 basins of this State caused by critical conditions of overdraft,
18 depletion, sea water intrusion or degraded water quality.
19 12922.1. The Legislature finds and declares that the greater
20 portion of the water used in this State is stored, regulated,
21 distributed and furnished by its ground water basins, and
22 that such basins are subject to critical conditions of overdraft,
23 depletion, sea water intrusion and degraded water quality
24 causing great detriment to the peace, health, safety and welfare
25 of the people of the State. The correction and prevention of
26 such critical conditions and the damage and economic loss
27 caused thereby and the conservation and protection of the
28 public water supply are proper functions and activities of the
29 State, in co-operation with local agencies of the State
30

31 Article 4 Declaration of Intent

32
33 12923 It is the intention of the Legislature that it be the
34 policy of the State, acting through the department, to pay a
35 portion of the capital costs of projects to be constructed in
36 co-operation with local agencies for the purpose of replenish-
37 ment, recharge, or restoration of critically overdrawn or de-
38 pleted ground water basins, or improving the quality of the
39 waters thereof, or preventing the intrusion of sea water
40 therein. Such capital costs may include providing of water
41 injection wells, observation wells, water spreading grounds,
42 pipelines, equipment, rights-of-way and other facilities neces-
43 sary to introduce water into water bearing aquifers of such
44 ground water basins, or to prevent, stem, or repel the intru-
45 sion of sea water therein, or to improve the quality of the
46 waters thereof. Such capital costs shall not include the pur-
47 chase of acquisition of water nor shall they include expendi-
48 tures for operating or maintaining any projects.

49 12923.1. It is the further intention of the Legislature that
50 upon a showing to the department by any local agency, or
51 agencies, of ability and desire to comply with the limitations

1 and condions imposed by Section 12924, the department shall
2 then initiate investigations, studies, plans and design criteria
3 for construction of any project, or projects, deemed by the
4 department to be practical, economically feasible and urgently
5 needed to accomplish the purposes of this chapter. Upon sub-
6 mission by such agency, or agencies, to the department of plans
7 and design criteria for any project, or projects, a review,
8 evaluation and any necessary revision of such plans and de-
9 sign criteria shall be made by the department to insure that
10 construction of such project, or projects, will accomplish the
11 purposes of this chapter.

12 Article 5. Conditions and Limitations

13
14 12924. Moneys equal to or in excess of the amounts ex-
15 pended by the department under this chapter for capital costs
16 or for costs of investigations, studies, plans and design criteria
17 for any project, or projects, shall be made available by one,
18 or more, local agencies for such costs.

19
20 12924.1 Expenditures by the department under this chap-
21 ter shall be subject to such further conditions as the depart-
22 ment may prescribe as necessary to protect the interests of the
23 State. The department is authorized to co-operate and contract
24 with local agencies and any public or private corporations or
25 agencies to accomplish the purposes of this chapter.

26 Article 6. Financing

27
28 12925. The sum of three million dollars (\$3,000,000) is ap-
29 propriated from the General Fund in the State Treasury to
30 the department to be expended by it during the 1961-1962
31 fiscal year for assistance to local agencies in the planning, de-
32 sign and construction of projects deemed by the department to
33 be practical, economically feasible and urgently needed to ac-
34 complish the purpose of this chapter.

35
36 12925.1. Out of moneys appropriated by Section 12925, two
37 hundred fifty thousand dollars (\$250,000) or so much thereof
38 as may be necessary, is hereby made available without regard
39 to fiscal years for the expenses of the department in evaluating
40 the effectiveness of and in publishing reports on completed
41 projects Expenditures made pursuant to this section shall not
42 be subject to the conditions and limitations imposed by Sec-
43 tion 12924.

Assembly Concurrent Resolution No. 120

Adopted in Assembly June 15, 1961

Adopted in Senate June 14, 1961

CHAPTER 262

Assembly Concurrent Resolution No. 120—Relative to requesting a joint interim study of the feasibility of using regulated floodwaters and released surplus waters by joint action of the State Department of Water Resources and the Bureau of Reclamation and the Corps of Engineers for the purpose of recharging the underground reservoirs of the Central Valley

WHEREAS, There is a continuing and alarming average ground water overdraft of 5 million acre-feet annually in the San Joaquin Valley, and

WHEREAS, This annual overdraft is menacing the billion-dollar agricultural production of this valley by increasing the pump relocation and pumping requirements of thousands of small family-size farms, and

WHEREAS, These family-size farms lack sufficient income to provide necessary capital for increased pumping costs, and

WHEREAS, It will be years before relief for this crisis can be expected from the San Luis Project and Eastside Canal of the Central Valley Project, and

WHEREAS, There is an average annual waste into the Pacific Ocean of 10 million acre-feet high-quality irrigation waters resulting from flood year wastes of up to several times the average; and

WHEREAS, It is physically possible for this water to be diverted from existing and proposed storage facilities into Central Valley regulating pools; and

WHEREAS, Such water supplied to regulating pools could be further diverted to various seepage inlets using the Kings, Fresno, and San Joaquin Rivers, and various other rivers, irrigation ditches, creeks, flats, and basins for percolation and recharge of the San Joaquin Valley underground reservoir; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring. That the Senate Factfinding Committee on Water Resources and the Assembly Interim Committee on Water shall co-operate in the holding of hearings during the interim between the 1961 and 1963 Regular Sessions for the purpose of holding hearings to ascertain the feasibility of a joint project by the State Department of Water Resources, the Bureau of Reclamation and the Corps of Engineers for the purpose of utilizing surplus waters now wasting into the Pacific Ocean to recharge the underground water reservoirs of the Central Valley and thereby greatly increasing the beneficial yield from flood control capacities; and be it further

Resolved, That the Chief Clerk of the Assembly be directed to transmit copies of this resolution to the Rules Committees of both houses for proper implementation.

Extracts from

SALT WATER INTRUSION IN GROUND WATER SUPPLIES

By Harvey O. Banks, Director

California Department of Water Resources

August 13, 1958

The serious nature of the problem of sea water intrusion is demonstrated by Department of Water Resources studies which identify 260 ground water basins along the coast in which water-bearing deposits are apparently open to the the ocean or to saline inland bays. All of these basins must be considered as potential areas for intrusion of sea water as and when the ground water resources are developed.

A thorough understanding of the problem must begin with a study of the physical characteristics of sea water intrusion into aquifers. This intrusion is governed by physical laws which are relatively simple in theory but difficult to apply because of the inherent complexities of ground water basins.

There are two fundamental conditions prerequisite to intrusion of a ground water basin by sea water. First, the water-bearing materials comprising the basin must be in hydraulic continuity with the ocean, and second, the normal seaward ground water gradient must be reversed or at least be too flat to counteract the effects of the greater density of sea water.

GEOLOGIC CONDITIONS

Ground water supplies in coastal basins in California are stored mainly in the large alluvium-filled valleys. These valley fill areas, which are of variable depth, are composed of unconsolidated alluvial fan, flood plain, and shallow marine deposits. Extensive sand and gravel deposits occur in the large coastal plain areas in Orange, Los Angeles, Ventura, Monterey, Santa Clara, Napa, and Sonoma Counties. These deposits extend to many hundreds of feet below sea level along the coast, and may extend for some distance beneath the floor of the Pacific Ocean and under San Francisco Bay.

In addition to the extensive ground water supplies in these large coastal plain areas, limited quantities of ground water occur in numerous shallow alluvium-filled valleys along the coast. These small valleys, and the several known buried channels filled with sand and gravel, represent buried coarse-grained deposits in ancestral channels of Pleistocene streams. The base of these old buried stream channels adjacent to the coast is quite shallow, generally 150-200 feet below sea level. In a few isolated areas, however, the base approaches 300 feet below sea level.

Geologic evidence indicates that the water-bearing deposits along the seaward and bayward margins of these coastal ground water basins either may be in direct contact with the ocean or bay floor at the shoreline, or may extend beneath the floor as confined pressure aquifers in contact with sea water at some distance offshore. Numerous submarine canyons are incised into the continental shelf, resulting in relatively close-in exposure of the fresh water-bearing sediments to sea water.

HYDRAULIC CONDITIONS

Sea water intrusion can occur only when the pressure head of sea water exceeds that of the fresh ground water, a condition which usually results when ground water levels are lowered to or below sea level by excessive pumping of wells. When the hydraulic gradient within a coastal basin slopes seaward, ground water is moving toward the ocean, and conversely when the slope is reversed, sea water is moving landward. It should be noted that under very small seaward gradients of the fresh water, both conditions can exist simultaneously. In practice, the slope of the hydraulic gradient is established from measurements of depth to water in observation wells.

Here a word about fresh water-salt water relationships is appropriate. Sea water weighs 1.025 times as much as fresh water and, therefore, when the two come in

contact within a permeable formation, there is a tendency for the lighter fresh water to override the heavier sea water.

The theoretical sea water front in an intruded aquifer assumes the shape of an inclined surface which always slopes landward, and which advances or recedes in response to changes in the hydraulic gradient. Because of its shape, this prism of ocean water has been called the sea water wedge.

Advance and retreat of the wedge commences at the toe, the position of the upper end of the interface remaining fixed at the shoreline until all fresh water near the coast is depleted to sea level, at which time the upper end of the interface commences its advance and the entire wedge moves as a body. If on its landward advance, the toe of the wedge extends into a water table depression, an upwelling of sea water occurs. Where the depression is conical as in the case created by a pumping well, the upwelling assumes the shape of an image cone, the surface of which theoretically becomes 40 times as steep as the sides of the overlying pumping depression.

An increase in the salinity of ground water within a coastal basin does not necessarily establish the existence of sea water intrusion. Such increase may be attributable entirely or in part to other factors. Some of the more significant causes of ground water degradation other than sea water intrusion include the following:

1. Degradation of ground water through its use and reuse. Without sufficient outflow, this may result in adverse salt balance.
2. Degradation through lateral or upward migration of brines or degraded waters contained in the formations flanking or underlying the ground water basin.
3. Degradation through downward seepage of sewage or industrial waste.
4. Degradation through downward seepage of mineralized surface waters from streams, lakes and lagoons.
5. Degradation through the migration of saline water from one water-bearing zone to another either through natural breaks in impermeable layers or through defective, improperly constructed, or abandoned wells.

It is often difficult to fix the true causes for rises in salinity of ground water. With present knowledge, it is exceedingly difficult, if not impossible, to distinguish sea water from certain oil field brines or connate waters by means of chemical analyses. A need for additional research in this field is clearly indicated.

In California, the deep aquifers of many ground water basins extend offshore, in some instances for several miles. Many of these extensions are overlain by materials of low permeability, and are in contact with the ocean only at their seaward extremities. Under conditions of surplus ground water supply and seaward sloping hydraulic gradients, these extensions transmit fresh water to the ocean under artesian pressure. The quantity of fresh water stored offshore within them is often considerable. The effort of this offshore storage is to postpone the arrival of sea water into the basin proper until long after landward sloping hydraulic gradients are established. In certain instances, ground water levels in confined aquifers have been lowered and remained below sea level for lengthy periods without chemical evidence of sea water intrusion becoming apparent. At West Coast Basin near Wilmington and at Goleta Basin near Santa Barbara, fresh water levels have dropped to 104 and 70 feet below sea level respectively and have remained below sea level for many years with no chemical evidence of intrusion. In these and other similar instances, it is exceedingly difficult to determine whether sea water intrusion is being delayed due to the effects of offshore storage or whether hydraulic connections between the aquifers and ocean are poor or nonexistent. Obviously, the transmissibilities and storage capacities of the seaward extensions of pressure aquifers are not amenable to accurate determination. Because of such complexities, the application of theoretical equations to the estimation of rate of intrusion or to the prediction of the time of arrival of the sea water interface is generally difficult and uncertain.

The sediments comprising free ground water aquifers generally occur as interfingering lenses of fine and coarse sediments. Sea water advances more rapidly through the coarser, more permeable members and less rapidly through the finer deposits. Thus, sea water intrusion ordinarily does not advance as a uniform sloping front as assumed in most theoretical discussions.

PRESENT STATUS OF SEA WATER INTRUSION

As previously noted, there are 260 coastal ground water basins in California which are potential areas for intrusion of sea water. These basins are grouped into four categories:

1. Areas of known sea water intrusion
2. Areas of suspected sea water intrusion and areas where chlorides in the ground waters now exceed 100 parts per million
3. Areas of no apparent sea water intrusion.
4. Areas where the status of sea water intrusion is unknown.

Existence of the following characteristics and conditions is presumed to constitute positive evidence of the intrusion of sea water:

1. Water-bearing deposits at the coastline extend to considerable depths below sea level;
2. Water-bearing deposits are either in direct contact with the ocean or bay floor, or they extend beneath the floor as confined pressure aquifers and at some distance offshore may be in contact with sea water;
3. There is moderate to extensive development of ground water, as compared with the water resources of the basin;
4. Ground water levels in the coastal areas have been below sea level for considerable periods of time, and the normal seaward hydraulic gradient has been reversed so that ground water moves inland from the coast;
5. Coastal ground waters now contain chlorides in excess of 100 parts per million and these high chloride waters are moving landward in the direction of the reversed hydraulic gradient

At present (1958), sea water intrusion is a critical water quality problem in nine coastal ground water basins. The most serious invasion to date has occurred in the overdrawn West Coast Basin in Los Angeles County, where intrusion was first noted in 1912, and in the adjacent coastal plain pressure area in Orange County. Draft on ground water supplies exceeds replenishment in these basins, water levels along the entire 39 miles of coastline are and have been for some years below sea level; the ground water gradients slope inland to pumping troughs, and there are no continuous barriers in the aquifers to landward movement of saline water.

Other critical areas in which sea water has encroached include (1) San Luis Rey Valley, San Diego County, (2) Oxnard Plain, Ventura County, (3) Salinas Valley, Monterey County; (4) Pajaro Valley, Monterey and Santa Cruz Counties; (5) Santa Clara Valley in the San Francisco Bay area, (6) Napa-Sonoma Valley, Napa and Sonoma Counties, and (7) Petaluma Valley, Sonoma County. Draft on ground water supplies in these basins exceeds replenishment, especially during the critical summer months.

Continued pumping at present rates will allow further encroachment of sea water into these basins. In addition to direct encroachment of sea water into fresh water-bearing deposits, intrusion may now be occurring, or may occur in the future, in these areas due to percolation of saline or brackish perched or tidal waters through natural or manmade breaks in the clay layers overlying pressure aquifers.

There are 70 ground water basins in which chlorides in the coastal segments exceed 100 parts per million. It is believed that degradation in many of these basins is due to direct lateral movement of sea water; however, degradation could be due, at least in part, to other factors including

1. Direct infiltration of saline or brackish tidal waters through natural breaks in silt or clay layers, or through improperly constructed, defective or abandoned wells;
2. Upward or lateral movement of saline or brackish connate waters into fresh water-bearing deposits from adjacent and underlying older geologic formations;
3. Interchange between aquifers of waters of differing mineral quality through natural breaks in silt and clay layers, or through improperly constructed, defective, or abandoned wells;
4. Downward movement of perched waters of poor quality;
5. Percolation of water from highly mineralized springs, streams or both;
6. Downward seepage of industrial wastes and sewage;
7. Adverse salt balance.

In general, most of the basins in this category are small, narrow, alluvium-filled valleys in which there is now only limited development of ground water. Historical data pertaining to water quality, water level measurements, hydraulic gradients, and fluctuations of piezometric surfaces or of the free ground water table are usually not available, other than field measurements and analyses made during the course of the department's investigation. A positive determination that sea water intrusion is the cause of degradation in these coastal areas cannot be made until additional water level measurements and water quality data are obtained through continuing basic data collection programs.

There are seven basins of the 70 identified in this category in which there has been moderate to extensive development of ground water, ranging from Mad River Valley in Humboldt County to Tia Juana Basin in San Diego County.

Draft on ground water supplies in these basins is generally fairly extensive in comparison to the resources of the basin, in some instances ground water levels in the coastal areas have been below sea level for varying periods of time, and a landward hydraulic gradient exists at least during the heavy pumping season. Unfortunately, the available longtime hydrologic and water quality data for most of these basins are not adequate to positively identify the source of observed ground water degradation.

There are 47 ground water basins where there is no apparent sea water intrusion. Most of these basins are small, narrow, alluvium-filled valleys in which there has been only limited development of ground water. However, any appreciable increase in pumping in the coastal segment of these basins could induce sea water intrusion by lowering water levels and reversing the existing seaward hydraulic gradient. To obviate the possibility of future widespread degradation, effective controls and safeguards should be instituted if ground water development reaches the point where sea water intrusion is threatened.

Areas where the status of sea water intrusion is unknown number 134 ground water basins in which there is little or no development of ground water. Here it may be assumed that, with little or no development, encroachment is restrained for the present due to ground water levels in the coastal area being at or above sea level. However, there is danger that sea water intrusion would occur if ground water supplies were overdeveloped.

In the light of present knowledge and experience there are five possible methods for the prevention and control of sea water intrusion. These are:

- 1 Raising of ground water levels to or above sea level by reduction in extractions and/or rearrangement of areal pattern of pumping draft,
- 2 Direct recharge of overdrawn aquifers to maintain ground water levels at or above sea level,
- 3 Maintenance of a fresh water ridge above sea level along the coast;
- 4 Construction of artificial subsurface barriers,
- 5 Development of a pumping trough adjacent to the coast.

Implicit in all methods of control is the necessity for elimination of overdraft on the ground waters of the basin by some means. Assurance of an adequate water supply to support the economy of lands now dependent upon the local basin water supplies, without impairment, must be a primary consideration in any program for control of sea water intrusion. This may involve importation of supplemental water from nontributary sources, or additional conservation of local supplies, or both. Maintenance and, if possible, increased conservation of locally available water resources must be a major factor in the formulation and application of a program for control of sea water intrusion.

The objectives of any control program should be to prevent further encroachment and if possible to reduce the area already affected by sea water intrusion. A comprehensive engineering, geologic, hydrologic, and water quality investigation must be undertaken to obtain the information necessary for a proper determination of the method or methods of control to be used. This investigation must be programed to delineate the characteristics of the water-bearing formations, evaluate ground water conditions, and to examine the engineering and economic problems associated with changing the regimen of ground water extractions and development of supplemental supplies.

In evaluating the economic feasibility of the various methods of control the following factors, among others, must be taken into account. The cost of obtaining and

distributing supplemental water including the expense of any necessary treatment, the value of storage capacity in the ground water basin, the cost of necessary physical works, the cost of pumping water from the basin; and, in some instances, the value of the ground water basin as a source of emergency supply and as a distribution system. The total net costs of preventing sea water intrusion by one or a combination of methods involving the construction and operation of physical works must be balanced against the cost of decreasing extractions from the basin to the necessary extent and using supplemental water directly on the surface.

The first control method noted above requires that the pumping draft be altered sufficiently either by reduction in extractions or by rearrangement of areal pattern of pumping, or both, so that ground water levels will rise to or above sea level and be maintained there except possibly for infrequent periods of short duration. A seaward hydraulic gradient must be established and maintained. Insofar as is now known this method, while not necessarily the most desirable from the standpoint of the water user, would probably always be effective in any coastal ground water basin.

An essential step in any program involving reduction in pumping draft and/or relocation and rearrangement of pattern of pumping must be the determination of the basic water rights of the individual water users of ground water in the basin. Under present California law, reduction in pumping or rearrangement of pumping pattern can be achieved only by agreement or under a court decree. A necessary prerequisite to initiation of this method of control, where total draft on ground water is to be reduced, is the existence of a source of supplemental water supply at reasonable cost, sufficient in quantity to equal reduction in ground water draft and to provide for future expansion, and of suitable quality.

In some instances, this method would not allow the full development and utilization of the available ground water storage capacity. In some basins, raising the water levels would decrease the inflow or supply to the basin, and escape from the basin, particularly floodwaters, might be increased.

The second control method requires that ground water levels in the overdrawn aquifers be raised and maintained above sea level by artificial recharge, utilizing surface spreading or injection wells, or both. In most instances, supplemental water from nontributary sources would be necessary, although for some basins additional conservation of tributary runoff could be achieved by providing sufficient upstream regulatory storage to permit artificial recharge. Rearrangement of the pattern of pumping might, under certain circumstances, facilitate use of this method and reduce the total cost involved.

This method requires that water be made available for recharge in sufficient quantity and of a suitable quality over a continuing period of time and at a reasonable cost. Where injection through wells is necessary, quality is a consideration of primary importance. Although the total cost of this method of control would probably be high for many coastal ground water basins, due to the high cost of project works, rights-of-way, operating expense, necessity for providing expensive storage and distribution systems, and need for treating recharge water, particularly if injection wells were used, it does offer certain advantages to the water users in the basin. If it is found feasible to maintain ground water levels above sea level by artificial recharging without any change in pumping draft, it is possible that no control of pumping would be necessary. One additional advantage gained by this procedure is that in or near metropolitan areas such as San Francisco, Los Angeles and San Diego, reclaimed waste waters of suitable quality could be utilized.

There are several other disadvantages in addition to high initial cost and operating expense. The usable storage capacity of a ground water basin is decreased if water levels throughout the basin are continuously maintained above sea level by artificial recharge. In addition, the same basic problem exists as in the previously discussed method involving decrease in extractions, in that in some ground water basins raising of water levels would decrease the inflow or supply to the basin, while outflow or escape from the basin might be increased.

The third control method would require the continuous maintenance of a fresh water ridge in the principal water-bearing deposits along the coast through the application of water by surface spreading or injection wells or both. This method is predicated upon the assumption that a source of water supply of sufficient quantity and quality for recharge could be made available over a continuing period of time and at reasonable cost. In general, this would necessitate the importation of water from nontributary sources. However, where additional conservation of local water resources could be achieved by increase in availability of ground water storage, at

least a portion of the water required for maintenance of the ridge might be obtained by pumping from the ground water basin.

The actual formation of a ridge along the coastal segment of a ground water basin by the use of injection wells or by surface spreading, or a combination of both methods, would depend on whether free ground water or pressure conditions exist, as determined by detailed engineering and geologic investigation. In basins where free ground water conditions exist along the site of the proposed ridge, a mound of more or less uniform height could probably be maintained by continuous application of water in spreading grounds. In basins where pressure conditions exist and injection wells are utilized, the ridge would consist of a series of peaks with saddles between. In either case, the required elevation of the ridges and saddles above sea level would be determined by the distance of the base of the aquifer below sea level, its transmissibility, the height of fresh water head necessary to displace sea water to the base of the fresh water-bearing deposits and the existing hydraulic gradient in the aquifer.

This method of control offers many advantages. If continuously maintained, such a fresh water ridge just inland from the coast would be as effective in repelling sea water intrusion as would a seaward hydraulic gradient extending entirely across the basin. There would, of course, be some waste of water to the ocean. In some basins such as Tin Juana Basin, San Luis Rey and Santa Margarita Valley, where the safe yield from natural sources under present conditions is limited by the storage capacity available above sea level, it would permit greater lowering of the water table landward from the ridge, thus adding to the usable underground storage capacity and making possible the salvage of water now wasting after the basin fills. In West Coast Basin and similar basins this method would be advantageous since the differential in head across the Newport-Inglewood fault zone, which induces inflow from Central Basin, could be maintained indefinitely. In some basins, interference with the existing pattern of extractions might not be great.

Initial expenditures and operating costs would be high, but probably not as great as would be incurred in attempting to maintain water levels above sea level throughout the entire basin by direct recharge of aquifers. It is possible that reclaimed waters of suitable quality could be used to maintain such a mound or ridge. Use of such waters may be the only economically feasible solution in many ground water basins where intrusion has already occurred or may soon occur. Where injection wells are used, quality is of primary importance.

The fourth control method involves the establishment of a subsurface barrier to reduce the permeability of the water-bearing deposits sufficiently to prevent the inflow of sea water into the fresh water strata. This reduction in permeability could be achieved by the construction of a subsurface barrier composed of sheet piling, a puddled clay cutoff wall, or some other form of physical structure. Emulsified asphalt, cement grout, bentonite, silica gel, calcium acrylate, plastics and other materials might be injected to form a vertical zone of reduced permeability which would retard or prevent intrusion of sea water. Implementation of this method of control would require a detailed engineering and geologic investigation of location, extent, thickness, depth and physical characteristics of water-bearing deposits adjacent to the coast. It would be necessary to determine total cross sectional area of cutoff wall and characteristics of the materials involved.

This method of control would appear to offer many advantages, particularly for the numerous narrow coastal ground water basins where the principal aquifers occur at relatively shallow depths. A subsurface barrier would probably be permanent, no operation would be required, and maintenance costs would be low. A major advantage is that the locally available ground water resources, ground water storage capacity and tributary surface runoff could be exploited to a maximum degree. The requirement for supplemental water from nontributary sources could thus be held to a minimum. Use of the barrier method would cause minimum interference with existing rights since major changes in pumping pattern and/or reduction of ground water extractions would not necessarily be required, although a change in pumping pattern might be desirable to maintain quality in the lower portions of the basin and/or to prevent waterlogging of lands immediately upstream from the barrier. Such a barrier would permit greater development and utilization of the storage capacity of the basin and thus increase the yield.

There are several disadvantages to this method of control, including high initial construction costs; physical limitations on depths to which it is possible to construct barriers; need for exportation of some water from the basin to maintain favorable salt balance, since comparatively little flushing of the basin would occur

even during wet periods; and reduction in fresh water supply available to wells downstream from the barrier.

Aquifer permeability has been reduced through grouting with cement, chemicals, silts, and asphalts, but cost data for such projects are either not available or are not considered applicable to sea water intrusion barriers. However, it has been reported that, in general, costs of grouting with chemicals is approximately two to three times the costs of cement grouting. It has been further reported that costs of materials and placement for grouting at Great Falls Reservoir, Tennessee, averaged \$1.19 per cubic foot and \$1.85 per cubic foot for cement and asphalt, respectively.

A fifth control method would require the continuous maintenance of a pumping trough along the coast in order to create a seaward hydraulic gradient over most of the ground water basin. The required installation and operation would be costly, and unless there was a demand for the mixed ocean and fresh water which would be pumped, considerable quantities of usable water would be wasted. It is believed that the only situation where permanent utilization of this method might be justified would be in a ground water basin where the recharge in itself is sufficiently saline to require the waste of substantial amounts of water for maintenance of salt balance. This procedure might be applied temporarily where encroachment of sea water is far advanced, to stop further intrusion before applying a more permanent method of control.

For comparison purposes, the general orders of magnitude of costs of the five methods of control have been estimated for a one-mile reach of coast, assuming that the depth of the base of the aquifer to be protected averages about 225 feet. Estimates show that control by reduction of the pumping draft would require no direct capital cost although some capital expenditure might be required to develop and distribute a substitute supply, but operation and maintenance would be higher than for some other methods. Control by means of a pumping trough would require a capital cost nearly twice that of a fresh water barrier, and twice that of direct recharge. Operation and maintenance costs of a pumping trough also would be double that of recharge and of a fresh water barrier. The capital cost for artificial subsurface barriers would be extremely high—about six times that for a pumping trough, but there would be no cost for annual operation and maintenance.

WEST COAST BASIN ADJUDICATION

Judgment entered
August 22, 1961
Book 4291,
Page 62

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

CALIFORNIA WATER SERVICE COMPANY, et al, *Plaintiffs*

vs.

CITY OF COMPTON, et al, *Defendants*

No. 506,806
JUDGMENT

The above-entitled matter came on regularly for further trial before the Honorable George Francis, Judge of the Superior Court of the State of California, assigned by the Chairman of the Judicial Council to sit in this case on Friday the 21st day of July, 1961. Thereupon plaintiffs filed a dismissal of the action as to certain defendants named in the Complaint, and in the amended Complaint herein who are not mentioned or referred to in Paragraph IV of this Judgment, and the further trial of the action proceeded in respect to the remaining parties.

Oral and documentary evidence was introduced, and the matter was submitted to the Court for decision. The Court having made and filed its Findings of Fact and Conclusions of Law.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS.

I

There exists in the County of Los Angeles, State of California, an underground water basin or reservoir known and hereinafter referred to as "West Coast Basin," or the "Basin," and the boundaries thereof are described as follows:

(Two pages describing the boundary of the basin have not been reproduced here.)

The area included within the foregoing boundaries is approximately 101,000 acres in extent

II

A water year, as that term is used herein, is a twelve-month period beginning October 1 and ending September 30.

III

The Watermaster shall be the Department of Water Resources of the State of California, to serve at the pleasure of the Court, and said Watermaster shall administer and enforce the provisions of this judgment and the instructions and subsequent orders of this Court, and shall have the powers and duties hereinafter set forth. If any such provisions, instructions or orders of the Court shall have been disobeyed and disregarded, said Watermaster is hereby empowered to report to the Court such fact and the circumstances connected therewith and leading thereto.

IV

Certain of the parties to this action have no right to extract water from the Basin. The name of each of said parties is listed below with a zero following his name, and the absence of such right in said parties is hereby established and declared. Certain of the parties to this action and/or their successors in interest are the owners of rights to extract water from the Basin, which rights are of the same legal force and effect and without priority with reference to each other, and the amount of such rights, stated in acre-feet per year, hereinafter referred to as "Adjudicated Rights" is listed below following such parties names, and the rights of the last-mentioned parties are hereby declared and established accordingly. Provided, however, that the Adjudicated Rights so declared and established shall be subject to the condition that the water, when used, shall be put to beneficial use through reasonable methods of use and reasonable methods of diversion; and provided further that the exercise of all of said rights shall be subject to a pro rata reduction, if such reduction is required, to preserve said Basin as a common source of water supply. The parties hereinafter listed whose names are preceded by an asterisk (*) have approved the Exchange Pool Provisions contained in paragraphs 7 to 14, both inclusive, of the Agreement and Stipulation for Judgment filed herein.

(Twenty pages listing parties and their adjudicated rights have not been reproduced here.)

V

Each of the parties hereto, their successors and assigns, and each of their agents, employees, attorneys, and any and all persons acting by, through, or under them or any of them, on and after October 1, 1961, are and each of them is hereby perpetually enjoined and restrained from pumping or otherwise extracting from the Basin any water in excess of said party's Adjudicated Rights, except as provided in paragraphs VI and VII hereof.

VI

In order to add flexibility to the operation of this judgment, each of the parties to this action who is adjudged in paragraph IV hereof to have an Adjudicated Right and who, during a water year, does not extract from the Basin all of such party's Adjudicated Right, is permitted to carry over from such water year the right to extract from the Basin in the next succeeding water year an amount of Water equivalent to the excess of his Adjudicated Right over his extraction during said water year not to exceed, however, 10% of such party's Adjudicated Right or two acre-feet, whichever is the larger.

In order to meet possible emergencies, each of the parties to this action who is adjudged in paragraph IV hereof to have an Adjudicated Right is permitted to extract from the Basin in any water year for beneficial use an amount in excess of each such party's Adjudicated Right not to exceed 2 acre-feet or ten per cent (10%) of such party's Adjudicated Rights, whichever is the larger, and in addition thereto, such greater amount as may be approved by the Court. If such greater amount is recommended by the Watermaster, such order of Court may be made *ex parte*. Each such party so extracting water in excess of his Adjudicated Rights shall be required to reduce his extractions below his Adjudicated Rights by an equivalent amount in the water year next following. Such requirement shall be subject to the proviso that in the event the Court determines that such reduction will impose upon such a

party, or others relying for water service upon such party, an unreasonable hardship, the Court may grant an extension of time within which such party may be required to reduce his extortions by the amount of the excess theretofore extracted by such party. If such extension of time is recommended by the Watermaster, such order of Court may be granted *ex parte*.

VII

The parties hereto whose names are preceded by an asterisk (*) in paragraph IV hereof are signatories to the Agreement and Stipulation for Judgment and have not specifically excepted to the Exchange Pool Provisions thereof. The provisions of this paragraph VII shall be binding upon and applicable to such signatory parties and to such other parties as may elect to be bound hereby, as hereinafter provided.

1. Not less than sixty (60) days prior to the beginning of each water year, each party having water available to him through then existing facilities, other than water which any such party has the right to extract hereunder, shall file with the Watermaster the offer of such party to release to the Exchange Pool the amount by which such party's Adjudicated Right exceeds one-half of the estimated total required use of water by such party during the ensuing water year, provided that the amount required to be so offered for release shall not exceed the amount such party can replace with water so available to him.

Such estimate of total required use and such mandatory offer shall be made in good faith and shall state the basis on which the offer is made, and shall be subject to review and redetermination by the Watermaster, who may take into consideration the prior use by such party for earlier water years and all other factors indicating the amount of such total required and the availability of replacement water.

Any party filing an offer to release water under the mandatory provisions of this paragraph VII may also file a voluntary offer to release any part or all of any remaining amount of water which such party has the right under this judgment to pump or otherwise extract from the Basin, and any party who is not required to file an offer to release water may file a voluntary offer to release any part or all of the amount of water which such party has the right under this judgment to pump or otherwise extract from the Basin. All such voluntary offers shall be made not less than sixty (60) days prior to the beginning of each water year.

2. Each offer to release water under the foregoing subparagraph shall be at the price per acre-foot declared and determined at the time of the filing of such offer by the releasing party, provided:

- (a) That such price per acre-foot shall not exceed the price which the releasing party would have to pay to obtain from others, in equal monthly amounts, through existing facilities, a quantity of water equal in amount to that offered to be released, or
- (b) If any such releasing party has no existing facilities through which to obtain water from others, such price shall not exceed the sum of the price per acre-foot charged by The Metropolitan Water District of Southern California to West Basin Municipal Water District plus the additional amount per acre-foot charged by the latter to municipalities and public utilities for water received from The Metropolitan Water District of Southern California.

3. In the event of a dispute as to any price at which water is offered for release, any party affected thereby may, within thirty (30) days thereafter, by an objection in writing, refer the matter to the Watermaster for determination. Within thirty (30) days after such objection is filed the Watermaster shall consider said objection and shall make his finding as to the price at which said water should be offered for release and notify all interested parties thereof. Any party to these Exchange Pool Provisions may file with the Court, within thirty (30) days thereafter any objections to such findings or determination of the Watermaster and bring the same on for hearing before the Court at such time as the Court may direct, after first having served said objection upon each of the interested parties. The Court may affirm, modify, amend or overrule such finding or determination of the Watermaster. Pending such determination if the water so offered has been allocated the party making the offer shall be paid the price declared in his offer, subject to appropriate adjustment upon final determination. The costs of such determination shall be apportioned or assessed by the Watermaster in his discretion between or to the parties to such dispute, and the Watermaster shall have the power to require, at any time prior to making such determination, any party or parties to such dispute to deposit with the

Watermaster funds sufficient to pay the cost of such determination, subject to final adjustment and review by the Court as provided in this paragraph.

4 Not less than sixty (60) days prior to the beginning of each water year any party whose estimated required use of water during the ensuing water year exceeds the sum of the quantity of water which such party has the right under this judgment to extract from the Basin and the quantity available to him through then existing facilities, may file with the Watermaster a request for the release of water in the amount that his said estimated use exceeds his said available supply. Such request shall be made in good faith and shall state the basis upon which the request is made, and shall be subject to review and redetermination by the Watermaster. Within thirty (30) days thereafter the Watermaster shall advise, in writing, those requesting water of the estimated price thereof. Any party desiring to amend his request by reducing the amount requested may do so after the service of such notice. Prior to the first day of each water year the Watermaster shall determine if sufficient water has been offered to satisfy all requests. If he determines that sufficient water has not been offered he shall reduce such requests pro rata in the proportion that each request bears to the total of all requests. Thereupon, not later than said first day of each water year, he shall advise all parties offering to release water of the quantities to be released by each and accepted in the Exchange Pool and the price at which such water is offered. Simultaneously, he shall advise all parties requesting water of the quantities of released water allocated from the Exchange Pool and to be taken by each party and the price to be paid therefor.

5 In allocating water which has been offered for release to the Exchange Pool under subparagraph 1, the Watermaster shall first allocate that water required to be offered for release and which is offered at the lowest price pursuant to subparagraph 2, and progressively thereafter at the next lowest price or prices. If the aggregate quantity of water required to be released is less than the aggregate quantity of all requests for the release of water made pursuant to subparagraph 4, he shall then allocate water voluntarily offered for release and which is offered at the lowest price and progressively thereafter at the next lowest price or prices, provided that the total allocation of water shall not exceed the aggregate of all requests for the release of water.

Any water offered for release under subparagraph 1 hereof and not accepted in the Exchange Pool and not allocated therefrom shall be deemed not to have been offered for release and may be extracted from the Basin by the party offering such water for release as if the offer had not been made.

Each party requesting the release of water for his use and to whom released water is allocated from the Exchange Pool may thereafter, subject to all of the provisions of this judgment, extract such allocated amount of water from the Basin, in addition to the amount such party is otherwise entitled to extract hereunder during the water year for which the allocation is made.

6 From and after the first day of each water year, all water extracted from the Basin by any party requesting the release of water and to whom water is allocated shall be deemed to have been water released until the full amount released for use by him shall have been taken and no such party shall be deemed to have extracted from the Basin any water under his own right so to do until said amount of released water shall have been extracted. Water extracted from the Basin by parties pursuant to their request for the release of water shall be deemed to have been taken by the offerors of such water under their own rights to extract water from the Basin.

7 All parties allocated water under subparagraph 4 shall pay a uniform price per acre-foot for such water, which price shall be the weighted average of the prices at which the water allocated was offered for release.

Each party shall pay to the Watermaster, in five equal installments, an amount equal to the quantity of water allocated to him multiplied by said uniform price. The Watermaster shall bill each such party monthly for each such installment, the first such billing to be made on or before the first day of November of the water year involved, and payment therefor shall be made to the Watermaster within thirty (30) days after the service of each such statement. If such payment be not made within said thirty (30) days such payment shall be delinquent and a penalty shall be assessed thereon at the rate of 1% per month until paid. Such delinquent payment, including penalty, may be enforced against any party delinquent in payment by execution or by suit commenced by the Watermaster or by any party hereto for the benefit of the Watermaster.

Promptly upon receipt of such payment, the Watermaster shall make payment for the water released and allocated, first, to the party or parties which offered such water at the lowest price, and then through successive higher offered prices up to the total allocated.

8 Parties to this action who are not signatories to said Agreement and Stipulation for Judgment, or who having signed said Agreement have specifically excepted to the Exchange Pool Provisions thereof, shall upon filing with this Court and with the Watermaster their agreement to be bound by this paragraph VII, be entitled to the benefits of and be obligated by the provisions of this paragraph VII.

VIII

No taking of water under paragraph VII hereof, by any party to this action shall constitute a taking adverse to any other party; nor shall any party to this action have the right to plead the statute of limitations or an estoppel against any other party by reason of his said extracting of water from the Basin pursuant to a request for the release of water, nor shall such release of water to the Exchange Pool by any party constitute a forfeiture or abandonment by such party of any part of his Adjudicated Right to water, nor shall such release in anywise constitute a waiver of such right, although such water, when released under the terms of this judgment may be devoted to a public use; nor shall such release of water by any such party in anywise obligate any party so releasing to continue to release or furnish water to any other party or his successor in interest, or to the public generally, or to any part thereof, otherwise than as provided herein.

IX

In order to assist the Court in the administration and enforcement of the provisions of this judgment and to keep the Court fully advised in the premises, the Watermaster shall have the following duties in addition to those provided for elsewhere herein.

1. The Watermaster may require each party, at such party's own expense, to measure and record not more often than once a month, the elevation of the static water level in such of his wells in the Basin as are specified by the Watermaster.

2. The Watermaster may require any party hereto owning any facilities for pumping or otherwise extracting water from the Basin, at such party's own expense, to install and at all times maintain in good working order mechanical measuring devices approved by the Watermaster, and keep records of water production required by the Watermaster through the use of such devices. However, if in the opinion of the Watermaster such mechanical devices are not practicable or feasible, the Watermaster may require such party to submit estimates of his water production, together with such information and data as is used by such party in making such estimate. Upon the failure of any party to install such device or devices on or before the date the Watermaster shall fix for such installation, or to provide the Watermaster with estimates of water production and information on which such estimates are based, the Watermaster may give the Court and the party notice of such failure for proper action in the premises.

3. The Watermaster shall collect and assemble the records and other data required of the parties hereto, and evaluate such records and other data. Such records and other data shall be open to inspection by any party hereto or his representative during normal business hours.

4. The Watermaster shall prepare a tentative budget for each water year, stating the estimated expense for administering the provisions of this judgment. The Watermaster shall mail a copy of said tentative budget to each of the parties hereto having an Adjudicated Right at least sixty (60) days before the beginning of each water year. If any such party has any objection to said tentative budget or any suggestions with respect thereto, he shall present the same in writing to the Watermaster within fifteen (15) days after service of said tentative budget upon him. If no objections are received, the tentative budget shall become the final budget. If objections to said tentative budget are received, the Watermaster shall, within ten (10) days thereafter, consider such objections, prepare a final budget, and mail a copy thereof to each such party, together with a statement of the amount assessed to each such party, computed as provided in subparagraph 5 of this paragraph IX. Any such party whose objections to said tentative budget are denied in whole or in part by the Watermaster may, within fifteen (15) days after the service of the final budget upon him, make written objection thereto by filing his objection with

the Court after first mailing a copy of such objection to each such party, and shall bring such objection on for hearing before the Court at such time as the Court may direct. If objection to such budget be filed with the Court as herein provided, then the said budget and any and all assessments made as herein provided may be adjusted by the Court.

5 The fees, compensation or other expenses of the Watermaster hereunder shall be borne by the parties hereto having Adjudicated Rights in the proportion that each such party's Adjudicated Right bears to the total Adjudicated Rights of all such parties, and the Court or Watermaster shall assess such costs to each such party accordingly.

Payment thereof, whether or not subject to adjustment by the Court as provided in this paragraph IX, shall be made by each such party, on or prior to the beginning of the water year to which said final budget and statement of assessed costs is applicable. If such payment by any party is not made on or before said date, the Watermaster shall add a penalty of 5% thereof to such party's statement. Payment required of any party hereunder may be enforced by execution issued out of the Court, or as may be provided by any order hereinafter made by the Court, or by other proceedings by the Watermaster or by any party hereto on the Watermaster's behalf.

All such payments and penalties received by the Watermaster shall be expended by him for the administration of this judgment. Any money remaining at the end of any water year shall be available for use the following year.

6 The Watermaster shall prepare an annual report within ninety (90) days after the end of each water year covering the work of the Watermaster during the preceding water year and a statement of his receipts and expenditures.

7 The Watermaster shall report separately, in said annual report, all water extractions in the Basin by producers who have no "Adjudicated Right."

8 The Watermaster shall perform such other duties as may be provided by law.

X

Any party hereto having an Adjudicated Right who has objection to any determination or finding made by the Watermaster, other than is provided in paragraphs VII and IX hereof, may make such objection in writing to the Watermaster within thirty (30) days after the date the Watermaster gives written notice of the making of such determination or finding, and within thirty (30) days thereafter the Watermaster shall consider said objection and shall amend or affirm his finding or determination and shall give notice thereof to all parties hereto having Adjudicated Rights. Any such party may file with the Court within thirty (30) days from the date of said notice any objection to such final finding or determination of the Watermaster and bring the same on for hearing before the Court at such time as the Court may direct, after first having served said objection upon each of the parties hereto having an Adjudicated Right. The Court may affirm, modify, amend or overrule any such finding or determination of the Watermaster.

XI

The court hereby reserves continuing jurisdiction and, upon application of any party hereto having an adjudicated right or upon its own motion, may review (1) its determination of the safe yield of the basin, or, (2) the adjudicated rights, in the aggregate, of all of the parties as affected by the abandonment or forfeiture of any such rights, in whole or in part, and by the abandonment or forfeiture of any such rights by any other person or entity, and, in the event material change be found, to adjudicate that the adjudicated right of each party shall be ratably changed, provided, however, that notice of such review shall be served on all parties hereto having adjudicated rights at least thirty (30) days prior thereto. Except as provided herein, and except as rights decreed herein may be abandoned or forfeited in whole or in part, each and every right decreed herein shall be fixed as of the date of the entry hereof.

XII

The court further reserves jurisdiction so that at any time and from time to time, upon its own motion or upon application of any party hereto having an adjudicated right, and upon at least thirty (30) days notice to all such parties, to make such modifications of or such additions to, the provisions of this judgment, or make such further order or orders as may be necessary or desirable for the adequate enforcement, protection or preservation of the rights of such parties as herein determined.

XIII

The objections to the Report of Referee and to all supplemental reports thereto, having been considered upon exceptions thereto filed with the clerk of the court in the manner of and within the time allowed by law, are overruled

XIV

All future notices, requests, demands, objections, reports, and other papers and process in this cause shall be given, made and/or served as follows

1. Any party herein who, as hereafter provided, has designated or who designates the person to whom and the address at which all said future notices, papers, and process in this cause shall be given, shall be deemed to have been served therewith when the same has been served by mail on such party's designee

(a) All parties herein who have executed and filed with the court "Agreement and Stipulation for Judgment" and have therein designated a person thereafter to receive said notices, papers and/or process, have therein and thereby made such designation for said purpose, and such designation shall become effective upon the entry of this judgment

(b) All other parties who desire to name a designee for the aforesaid purpose, or any party once having named a designee who desires to change his designee, shall file such designation or change of designee with the clerk of this court and shall serve a copy thereof by mail on the watermaster

2. Parties hereto who have not entered their appearance or whose default has been entered and who are adjudged herein to have an adjudicated right, shall be served with all said future notices, papers and process herein by publication of a copy of such said notice, paper or process addressed to, "Parties to the West Basin Adjudication", said publication shall be made once each week for two successive weeks in a newspaper of general circulation, printed and published in the County of Los Angeles, State of California, the last publication of which shall be at least two weeks and not more than five weeks immediately preceding the event for which said notice is given or immediately preceding the effective date of any order, paper or process, in the event an effective date other than the date of its execution is fixed by the court in respect of any order, paper or process, or said last publication shall be made not more than five weeks following an event, the entry of an order by the court, or date of any paper or process with respect to which notice is given

3. All parties not specifically referred to in subparagraphs 1 and 2 above who are required by law to be served with future notices, papers and/or process in this cause shall be served therewith in the manner provided by law

XV

None of the parties hereto shall recover his costs as against any other party.

Dated: August 18, 1961

/s/ GEORGE FRANCIS

Judge Assigned by the Chairman of the
Judicial Council to Sit in This Case

August 16, 1962

Honorable CARLEY V. PORTER, *Chairman*
Assembly Interim Committee on Water

Dear Mr. Porter

Although the State Water Pollution Control Board does not have the primary responsibility for the protection of ground waters by the regulation of waste discharges (this being the statutory function of the regional boards), the State Board has recognized the importance of ground water supplies in the State's water resource program and has sponsored a number of research projects designed to assist the regional boards in their regulatory activities in this field. The following paragraphs contain a brief explanation of those research projects which may be of interest to your committee

Waste Water Reclamation in Relation to Ground Water Pollution This investigation was primarily concerned with the subject of waste water reclamation. However, it also related to ground water considerations in that it involved studies of

rates of percolation of wastes through various types of soils and the chemical and bacteriological changes in the wastes when percolated through the soil. The research was conducted in 1950-52 at Lodi by the University of California and is reported in State WPC Board Publication No. 6.

Travel of Pollution In 1951 the State Board contracted with the University of California to conduct a four-year study at the Richmond Field Station to obtain technical information on the artificial recharge of ground water basins by injection of sewage effluent. Objectives of this research was to investigate (1) the extent and rate of travel of pollution with ground water movement, (2) the use of recharge wells, (3) methods of operating injection wells, and (4) the economic aspects of recharge through wells. The contractor's report on this work appears in State Board Publication No. 11.

Leaching of Ash Dumps This research was undertaken in 1950-52 under contract with the University of Southern California and covers the field investigation of an actual dump. It was primarily concerned with the possibility of ground water pollution resulting from alkalies and salts leached from incinerator ash dumps by rainfall or by ground water movement through a dump. The study is reported in Publication No. 2.

Leaching of a Sanitary Landfill Following completion of the ash dump investigation, research was continued by the same contractor on dumps handling garbage and mixed refuse. Extensive studies of a typical sanitary landfill, located at Riverside, were undertaken during 1953-54. The report on this project has been printed as Publication No. 10. Two of the major conclusions of the researcher are (1) that a sanitary landfill will not cause impairment of ground water for domestic or irrigation use if no portion of the dump intercepts the ground water basin and (2) that a sanitary landfill, if so located as to be in contact with a ground water aquifer, will cause the waters in the immediate vicinity to be grossly polluted.

Effects of Refuse Dumps on Ground Water Quality By 1960 it became apparent to the State and Regional WPC Boards that there was a pressing need for more factual information pertaining to the effects of refuse dumps on the quality of adjacent ground waters. Because of this need, the State Board contracted with Engineering-Science, Inc., to undertake a research project for the collation, evaluation and presentation of technical data relative to the effects of dump operations on ground water quality. The contractor's report has been reproduced as Publication No. 24.

Gas Production in Refuse Dumps One of the important findings in Publication No. 24 (see above) was that gases produced in a dump during refuse decomposition could have an adverse effect on ground water quality. The report recommended that top priority be given to research aimed at studying the production and movement of such gases. In the 1961-62 fiscal year, the State Board contracted for two research projects in this field. The first, contracted with the University of Southern California, is aimed at determining the quantity and quality of gases produced during refuse decomposition. The second, contracted with Engineering-Science, Inc., is designed to obtain fundamental information on the vertical and horizontal movement of refuse dump gases passing through soils adjacent to and underlying refuse dumps. Both contracts are scheduled to be completed in fiscal year 1963-64.

Waste Water Reclamation—Whittier Narrows The Los Angeles County Sanitation Districts' sewage reclamation plant at Whittier Narrows will use plant effluent to recharge ground waters. Because this project presents an ideal situation for a cooperative study of the effects of reclaimed sewage on ground waters, the state board in 1961-62 contracted with California Institute of Technology for a 24-year research investigation at Whittier Narrows.

Detergent Study—Colton Narrows In 1961-62, the State Board also contracted for a 24-year investigation on the dispersion and persistence of synthetic detergents in the ground waters of the Colton Narrows area of San Bernardino and Riverside Counties. Although designed principally to assist the Santa Ana Regional Board in the conduct of its regulatory responsibilities, this research project is also aimed at developing fundamental data that will aid in the evaluation of mixing and dispersion of synthetic detergents in any ground water basin.

Very truly yours,

PAUL R. BENDERSON
Executive Officer
State Water Pollution Control Board

August 14, 1962

HONORABLE CARLEY V. PORTER, *Chairman*
Assembly Interim Committee on Water

DEAR MR. PORTER:

The West Coast Basin, Central Basin, San Fernando Valley Basin, and the San Gabriel Basin located in Los Angeles County, and the basins located along the Santa Clara River in Ventura County are all within the boundaries of this Region.

It is the policy of this Board in all its actions to establish waste discharge requirements to protect these great ground water basins from deterioration. As an example of a typical application of these controls, there is enclosed a copy of this Board's Resolution 60-78, prescribing requirements for the disposal of sewage treatment plant effluent from the Whittier Narrows Water Reclamation Plant by the Los Angeles County Sanitation Districts. It will be noted that these requirements are established to protect the ground water of the General and West Coast Basins.

To serve as guides to governmental agencies and to industry, this Board has adopted Long-Range Waste Disposal and Water Quality Objectives for various areas of our Region. As typical examples of these actions there are enclosed copies of this Board's Resolution 57-61 (Adopting Long-Range Waste Disposal and Water Quality Objectives for San Fernando Valley) and Resolution 53-2 (Adopting Water Quality Objectives for the Los Angeles River, Its Tributaries, and Tidal Prism).

One of the most perplexing problems facing this Board is the disposal of refuse upon land. To control this type of disposal, the Board has adopted Resolution 55-1 (Adopting Objectives for Prevention and Control of Water Pollution with Respect to Disposal of Wastes on Land in the South Coastal Basin within the Los Angeles Region). A copy of this Resolution is enclosed.

As you know, in Los Angeles County there are two large sewage disposal systems with ultimate disposal into the Pacific Ocean. These two big systems receive a considerable amount of industrial wastes for disposal into the ocean.

One of the problems about which this Board has been concerned is the damage to the quality of underground waters that may be caused by improperly constructed, abandoned, defective water wells through the interconnection of strata, or the introduction of surface waters into the underground waters.

In 1949, when the Water Pollution Control Act was adopted by the Legislature, Section 231 was also added to the Water Code, requiring the Department of Water Resources to study this problem and report to the appropriate regional water pollution control board its recommendations for minimum standards of well construction, and to report to the Legislature from time to time, its recommendations for proper sealing of abandoned wells. The Department has issued several reports on this problem.

This Board over the years has, on several occasions, recommended to the Legislature that legislation be adopted for the regulation of the construction of water wells, and the abandonment and sealing of water wells.

We believe that the reports issued by the Department of Water Resources now contain sufficient information upon which legislation can be based. We strongly urge that the Legislature consider adequate legislation for the construction and abandonment of water wells.

Respectfully yours,

LINNE C. LARSON
Executive Officer
Los Angeles Regional Water Pollution Control Board

August 16, 1962

HONORABLE CARLEY V. PORTER, *Chairman*
Assembly Interim Committee on Water

DEAR MR. PORTER:

The Central Valley Regional Water Pollution Control Board has been quite interested in the matter of ground water quality deterioration in the Central Valley, especially in the San Joaquin Valley where the universal method of waste water

disposal is to land. This is necessary in the Tulare Lake and Buena Vista Lake basins as there are no surface waters suitable for waste disposal purposes. Disposal of liquid wastes is accomplished by combined evaporation and percolation from ponds or by means of evaporation, transpiration and percolation from irrigated plots reserved for waste disposal purposes. The Regional Board has been concerned over the possibility of ground water quality deterioration from percolating waste waters of poor quality.

In order to exercise maximum control over waste discharges of this nature in the San Joaquin Valley, the Regional Board has established waste discharge requirements for most all significant land disposals in the Valley. Where insufficient information on ground water conditions and geology was available special studies have been made on specific waste disposal problems. Of special note has been the control of waste waters from oil production operations in the San Joaquin Valley. Initial attempts at control led to a special study of the problem as a whole under an inter-agency agreement with the Department of Water Resources at a cost of about \$65,000 in 1956-57. Following this study requirements were established on the waste discharges in some 60 oilfields on the basis of threatened ground water pollution. Disposals of poor quality waste water are now accomplished by deep injection into unusable waters, by percolation into deep marine formations, by irrigation use after chemical treatment or by removal of disposal areas to regions well removed from areas of current ground water use. Special studies have been made of unusual situations such as at Fruitvale and the Mountain View and Edison Oil Fields. Requirements will be established for Fruitvale on the basis of the recently completed joint study of this field by Water Resources, Public Health, and U. S. Geological Survey. Studies on the use of agents to sequester boron have been underway in the Mountain View and Edison Fields by operators whose waste waters are of fair quality except for boron. The disposal of about 50,000 acre feet of oil field waste waters per year have been brought under control.

In addition, the Regional Board has succeeded in controlling high boron content waste waters from the citrus packing industry. Through Board efforts a survey of this industry was made and requirements established for control of these wastes. The industry has now shifted to other products for processing operations and the boron problem from this industry no longer exists. Studies have now been completed on the olive processing industry and a solution to the problem of waste water disposal for this industry is being sought. It might be mentioned here that the cooperation of industry has been very good. Oil producers, citrus pickers, and olive packers have worked diligently towards a solution for their respective waste disposal problems. Other industries have cooperated equally well.

In Shasta County a significant flow of saline water from a private well was controlled through efforts of the Regional Board in 1959. The well has been sealed and the flow has now ceased.

Very truly yours,

JOSEPH S. GORLINSKI
Colonel USA. (Ret.)
Executive Officer
Central Valley Regional
Water Pollution Control Board

October 8, 1962

HON. CARLEY V. PORTER, *Chairman*
Assembly Committee on Water

DEAR SIR:

This Regional Water Pollution Control Board over the years has been greatly concerned with the problem of maintaining or restoring the quality of our underground waters. You will recall that largely through our urging the Legislature in 1957, at the instance of Assemblyman Carlos Bee, authorized funds for an investigation of salt water intrusion into the ground water basins of Southern Alameda County. A summary of the findings of that work was published in 1960 as Bulletin No. 81 of the Department of Water Resources and copies were distributed to the Governor and Members of the Legislature.

The investigation disclosed that at least 20 water wells were so constructed as in such condition as to allow saline water from the upper aquifer to pass into the hitherto non-saline aquifer below.

All but five of the defective wells discovered were voluntarily sealed or repaired by their owners at the request of the Department of Water Resources. Action by the Regional Board (including one citation before the District Attorney) secured correction of the remaining five. Thus, all defective wells discovered in that particular investigation have now been sealed or repaired.

There is nothing under existing State law, however, to prevent the construction of such defective wells in the future. It is a very time-consuming and expensive process to prove beyond reasonable doubt that a particular well is causing the degradation of ground water by allowing interchange of water between various gravel strata. It seems to us that the only practical way to prevent such hazards is to insure that water wells are properly constructed in the first place and that they are properly sealed before abandonment.

We have recommended to the Alameda County Board of Supervisors that they undertake a program for protection of ground water basins in Southern Alameda County—including regulation of the construction and abandonment of water wells. Notwithstanding this, the San Francisco Bay Regional Water Pollution Control Board would appreciate your Committee's looking into the matter from the point of view of the State's interest and responsibility in the matter. Ground water basins are obviously not related to the boundaries of political subdivisions. At the present time we are not suggesting any specific type of legislation since we felt that this might better be considered by your Committee after you have concluded your hearings throughout the State.

Sincerely,

GRANT BURTON
Chairman
San Francisco Bay Regional Water
Pollution Control Board

SACRAMENTO, CALIFORNIA
September 12, 1962

HONORABLE CARLEY V. PORTER
Compton, California

GROUND WATER—No. 4746

DEAR MR. PORTER:

Pursuant to your request we have prepared and enclose our opinion on three questions relating to ground water.

In accordance with your directions we have also enclosed an analysis of the decisions in *Orange County Water District v. City of Riverside* (154 Cal. App. 2d 345, 173 Cal. App. 2d 137, 188 Cal. App. 2d 506).

Also, in accordance with your instructions, we have enclosed a short summary of the facts in *Board of Water Commissioners of the City of Long Beach, et al v. San Gabriel Valley Water Co., et al*, which was obtained from the special counsel for the plaintiffs in that case.

Very truly yours,
A. C. MORRISON
Legislative Counsel

By ALAN W. STRONG
Deputy Legislative Counsel

SACRAMENTO, CALIFORNIA
September 14, 1962

**SUMMARY OF FACTS IN BOARD OF WATER COMMISSIONERS OF THE
CITY OF LONG BEACH ET AL. v. SAN GABRIEL WATER
COMPANY ET AL. *—No. 4746**

An action was filed on May 12, 1959 by the City of Long Beach, the City of Compton, and the Central Basin Municipal Water District against 25 water producers who extracted ground water from that portion of the San Gabriel River System located above Whittier Narrows. These defendants represented the principal producers of ground water in that area.

The status of this case, and a comparison with a similar case, has been characterized by the special counsel for the plaintiffs, as follows:

"The complaint recited the claim of the plaintiffs to water rights, alleged the subordinate nature of the defendants' rights, set forth the interference by the defendants with the plaintiffs' claimed rights, and recited the irreparable damage to the plaintiffs. Based on these allegations, the plaintiffs sought a declaration of the rights of the parties in and to the common water supply of the San Gabriel River System and sought to enjoin the defendants from further production in excess of their rights as determined by the court.

"Subsequently, the defendants filed demurrers to the complaint which were sustained in certain particulars. An amended complaint was then filed and the demurrers to the amended complaint were overruled. During the time of the hearings on the demurrers, the plaintiffs and defendants appointed committees which met in an effort to explore the possibilities of settling the dispute without the necessity of further litigation.

"Following the overruling of the defendants' demurrers, at the request of the named defendants, the plaintiffs joined additional producers in the area in an effort to include within the action all persons with substantial claims to the ground water supply. After the joinder of these additional parties, all of the defendants filed answers to the amended complaint.

"Concurrent with the litigation, the parties are continuing to explore settlement possibilities. Various proposals for settlement are now under consideration by committees representing the plaintiffs and defendants.

"In your letter of August 15th you stated that it was your understanding that production information filed under the Recordation Act was being used as the basis for the settlement of this action. Actually, the data is not being relied upon for settlement purposes at this time. All parties are studying the available information but it has not been considered as the basis for any settlement proposal to this date.

"Perhaps there is some confusion in regard to this matter which arises from the pendency of another action involving water rights in the same general area. In the action entitled 'Central & West Basin Water Replenishment District v. Charles E. Adams, et al', Los Angeles Superior Court Case No. 786656, the production information filed in compliance with the Recordation Act is being used. In that action the City of Long Beach is one of the defendants. The case was commenced in order to adjudicate all the rights to produce ground water from the Central Basin in the Southeast portion of Los Angeles County. In an effort to obtain control over ground water extractions, an Interim Agreement has been prepared and submitted to the parties which allocates their production rights. The information filed under the Recordation Act by producers which are parties to this adjudication action was used in determining production rights to be apportioned under the proposed Interim Agreement."

A. C. MORRISON
Legislative Counsel

By ALAN W. STRONG
Deputy Legislative Counsel

* The information contained in this summary has been furnished by the special counsel for the plaintiffs.

SACRAMENTO, CALIFORNIA
September 13, 1962

ANALYSIS OF ORANGE COUNTY WATER DISTRICT v. CITY
OF RIVERSIDE—No. 4746

This was an action by the Orange County Water District to have declared the rights of the defendant cities of San Bernardino, Redlands, Colton, and Riverside to the surface and underground flows of the Santa Ana River System, and to enjoin the taking of water from such system in excess of their rights as determined by the court. Due to the various procedural and evidentiary problems inherent in a ground water basin controversy and the somewhat voluminous nature of the opinions, we shall attempt to confine our analysis to the essentials of the dispute.

Plaintiff Water District brought this action for declaratory relief and for an injunction. The original judgment in the trial court is discussed in *Orange Co. Water District v. City of Riverside* (1957), 154 Cal. App. 2d 345*. The complaint alleged, in brief, that the action was brought for the benefit of the water users and inhabitants within the district, that each of the defendants for many years has taken water from basins in the Santa Ana River watershed for use within its respective boundaries, that the right of any defendant is subordinate to the rights of the district and its inhabitants, and that unless restrained each defendant will continue to take increasing amounts of such water to the damage of the district and its inhabitants (1957 case, *supra*, pp. 346-347).

The lower court's judgment declared, among other things, that each of the defendant cities has a prescriptive right to take and divert a certain quantity of water as set forth in the findings, that the rights of the plaintiff and the persons whom it represents are paramount to any right of the defendants, and that each of the defendants is enjoined from taking or diverting from the Santa Ana River System in excess of its prescriptive rights as determined by the court. The judgment also provided that in order to give the defendants a reasonable time within which to acquire a supplementary supply of water from other sources, each defendant, for a period not exceeding three years from the date of the judgment, could continue to produce water from its respective facilities in excess of the amount allowed by the judgment, on condition that it pay the plaintiff the cost of purchasing a like amount of water from the Metropolitan Water District, or that each defendant deliver to plaintiff during the next succeeding year an amount of water equal to the amount of such excess water thus taken (1957 case, *supra*, pp. 347-348).

The upper court in the 1957 case ordered that a writ of supersedeas issue staying enforcement of the original judgment and all proceedings in the trial court, and provided that none of the petitioners [defendant cities in the original suit] need be required to take any affirmative act required by said judgment until the final determination of the cause on appeal [i.e., the decision in the 1959 case discussed herein].

The lower court's judgment was appealed by the defendants. The Fourth District Court of Appeal, in *Orange County Water District v. City of Riverside* (1959), 173 Cal. App. 2d 137,** characterized the case as follows:

"What was sought in the complaint and what the judgment undertook to award, was, first, a declaration and definition of the extent of the respective rights of the defendant cities to take water from the surface and underground flows of the Santa Ana River and its tributaries and from the underground basins, reservoirs or lakes into which these flows diffuse themselves in their descent from the mountainous area where the streams have their origin to the several points where they are diverted by the defendant cities, and, second, injunctive relief forbidding the defendant cities severally, except for certain temporary arrangements, to divert such waters to any extent in excess of their rights as there declared." (p. 152)

On appeal, the defendants urged that the complaint was insufficient in that it did not show that the district was entitled to maintain the action (1959 case, *supra*, p. 159). The court disposed of the various contentions made on this point

* This case will hereafter be referred to as the "1957 case."

** Hereafter referred to as the "1959 case."

(1959 case, supra, pp 159 to 172, incl) and, in general, held that the power of the states' duly authorized public agencies to undertake the representation in the courts of interests common to great numbers of its inhabitants, though the particular character and extent of then water rights may greatly differ as between themselves, is generally recognized (1959 case, supra, p 169)

The court found that the district had established affirmative rights in those whom it undertook to represent and for which it was entitled to invoke the court's protection (1959 case, supra, p 186) The court found that these rights had been infringed, and that the production of water by the appellant cities, in excess of their prescriptive rights, was wrongful and causing irreparable damage (1959 case, supra, pp 215-217) The upper court then held that the plaintiff district was entitled to an injunction restraining the defendant cities from extracting as appropriators from the Santa Ana River System any water in excess of that which their prescriptive rights entitled them to take (1959 case, supra, p 222)

The upper court differed with the trial court, however, as to the computation of the prescriptive rights of the defendant cities The court said, in 173 Cal App 2d, at pages 192 and 193

" the proper method of arriving at the measure of the prescriptive right of the appropriating city, is to take the whole of its production from all its wells and other municipal facilities used in producing appropriated water, including discontinued wells and wells in service for less than five years, and to use as the final result the highest total production shown to have been continuously maintained through the necessary five years From this computation there should be excluded all waters obtained by a city in the exercise of riparian or overlying rights "

Again, at page 193, the court stated

"It is also our opinion that the trial court should have excluded from its measure of the prescriptive right of any city to take water from the river system all appropriated water obtained by such city through its ownership of stock in a mutual water company or obtained by it from any other agency not a part of its municipal organization, and that in failing to make such exclusion in dealing with the prescriptive rights of the cities of Riverside and Redlands it (the trial court) again fell into error "

The court also found other errors in the lower court's computation of the prescriptive right (1959 case, supra, pp 199 to 212, incl)

Primarily because of the trial court's error in computing the prescriptive rights of the defendant cities, the upper court reversed the judgment for the plaintiff and remanded the case to the trial court with instructions to make new findings and to enter a new judgment not inconsistent with the views expressed by the upper court (1959 case, supra, pp 224, 225)

The upper court's opinion also gave instructions as to what the judgment of the trial court should contain, including, among other things, a measure of relief from the injunction to allow the appellants reasonable time to acquire supplementary supplies of water from sources outside the Santa Ana River watershed (1959 case, supra, pp 223, 224)

In outlining its instructions to the trial court the upper court stated as follows.

"The judgment should ascertain in acre feet per annum, recomputed according to the principles hereinbefore laid down, the amount of the prescriptive right of each of appellant cities to produce water from the Santa Ana River System, and subject to the court's reservation of jurisdiction hereinafter stated, perpetually enjoin it from producing water therefrom in excess of such prescriptive right except for the temporarily permitted excess production above mentioned The judgment should exclude from the computation of such prescriptive rights all production by appellants or any of them, made in the exercise of riparian or overlying, as distinguished from prescriptive rights, and make it clear that its inhibitions do not extend to such exercise of such riparian or overlying rights It should also exclude from this computation of the prescriptive rights of appellant cities the amounts of all appropriated water obtained or that may be obtained by any of them by virtue of stock in mutual water

companies or other nonmunicipal agencies having prescriptive rights to produce water from the river system, and should make it clear that the inhibitions imposed by the judgment have no application to acquisition by appellant cities of additional water from such mutual water companies or other non-municipal agencies, provided that, in furnishing such water, such mutual water companies or other agencies do not withdraw from the river system more water than their own prescriptive rights entitle them to withdraw.

"The judgment should reserve to the court full jurisdiction, power and authority to modify, amend or amplify any of its provisions whenever climatic changes or other developments affecting the physical, hydrological or other conditions, therein dealt with, may in the court's opinion justify or require such modification, amendment or amplification of its terms, and to make and enter all supplemental orders and take all supplemental proceedings which the court may deem necessary or proper to enforce its provisions or the provisions of any modification, amendment or amplification thereof, either upon the court's own motion or upon the application of any of the parties to this action.

"There need not be any retrial of this action *in extenso*" (1950 case, *supra*, pp 224, 225).

The trial court rendered a second judgment in this case. The trial court's decision was again appealed, however, and another decision rendered in *Orange County Water District v. City of Riverside* (1961), 188 Cal App 2d 586 ***.

On this appeal, the upper court upheld the lower court's findings with respect to the purported overdrafts in the water district basin (1961 case, pp 574-583).

The upper court also held that the fact that certain water users within the district may have acted beyond their rights in pumping water from the district's supply did not stop the district from bringing the action on behalf of overlying owners within the district who had not acted beyond their rights (1961 case, *supra*, p 584).

The upper court, however, did reverse the trial court's second judgment, and remanded the case to the trial court with specific instructions (see 1961 case, *supra*, pp 584-590).

In brief, the upper court reversed for the following two reasons:

(1) The judgment granting injunctive relief in favor of all water users within the district was too broad and required reversal for correction where only the rights of overlying landowners within the district had been *puna facie* or otherwise measured and defined and the rights of other users had been left without quantitative determination or definition (1961 case, *supra*, pp 586-587).

(2) A finding fixing the defendant City of Redland's total of its prescriptive right at a certain number of acre-feet per year instead of at a larger figure which included quantities of water which the city, over the years, had agreed to furnish to "prior right" holders in payment for wells, water-producing plants, pumps, facilities and water rights acquired from such persons by the city in building up its water system was incorrect and should have included the acre-feet per year the city was obligated to furnish to the "prior right" holders, there being no showing that the acquisition of such facilities by the city was illegal or that the mingling of the water since derived from the "prior right" holders' former facilities with other water of the city, or the change in the places of its use, had injured anyone (1961 case, *supra*, pp 589, 590).

A. C. MORRISON
Legislative Counsel

By ALAN W. STRONG
Deputy Legislative Counsel

*** Hereafter referred to as the "1961 case"

SACRAMENTO, CALIFORNIA

September 12, 1962

HONORABLE CARLEY V. PORTER
Compton, California

GROUND WATER—No. 4746

DEAR MR. PORTER:

You have asked us three questions relating to ground water. These questions are set forth and considered separately below.

Question No. 1

Could a court issue an injunction restricting either a new or an existing pumper from pumping from an overdrafted ground water basin without first adjudicating all rights to pump from the basin?

Opinion and Analysis No. 1

Generally speaking, the authority of the courts, by the use of the injunctive process, to safeguard the integrity of ground water rights, has been consistently recognized (See Hutchins, *The California Law of Water Rights*, pp. 488 to 494, incl.)

An injunction may issue to limit or prohibit the exportation of water from a ground water area in order to preserve the supply from destruction or danger (*Allen v. California Water & Telephone Co.* (1946), 29 Cal. 2d 466, 485-486; *Corona Foothill Lemon Co. v. Lillibridge* (1937), 8 Cal. 2d 522, 525); to restrain the ascertainment of a right of use adverse to the holder of the paramount or prior ground water right which might otherwise ripen into a prescriptive right (*Burr v. MacLay Rancho Water Co.* (1908), 154 Cal. 428, 435-437), or, when the natural supply is not sufficient for all overlying lands, to restrain injurious and unreasonable taking of the water and to regulate the uses of the overlying landowners in order to prevent unnecessary injury and to restrict each to his reasonable share (*San Bernardino v. Riverside* (1921), 186 Cal. 7, 15).

The California Supreme Court in *City of Pasadena v. City of Alhambra* (1949), 33 Cal. 2d 908, at page 924, specified the power of the trial court to issue injunctions in this regard:

"There can be no question that the trial court had authority to limit the taking of ground water for the purpose of protecting the supply and preventing a permanent undue lowering of the water table."

Thus, as a legal proposition, the injunction is available to a party entitled to relief in a ground water basin controversy (see *Corona Foothill Lemon Co. v. Lillibridge*, supra, 52 Cal. Jur. 2d, Waters, Sec. 460). The issuance of an injunction, however, is largely discretionary with the court; it depends upon a consideration of all the equities between the parties, and must be determined upon the peculiar facts of each case (*Pahl v. Ribero* (1961), 193 Cal. App. 2d 154, 161).

We are unaware, however, of any legal authority requiring that all rights to pump from an overdrafted ground water basin be first adjudicated before a court could issue an injunction restraining either a new or existing pumper from pumping from the basin.

The case of *City of Pasadena v. City of Alhambra* (1949), 33 Cal. 2d 908 (the "Raymond Basin" case) involved an adjudication of ground water rights in an overdrafted basin. The court expressly held that all parties need not be joined in the action, and at page 920 the court stated:

"No request was made by appellant for the inclusion of any party who had not been joined, and there is no showing that its interest was injuriously affected by the failure to require the joinder of all possible claimants [citation]. The line must be drawn somewhere in order to bring the proceeding within practical bounds, and it would have been impossible to reach a solution of the problems involved and to render a valid judgment if jurisdiction to make an allocation depended upon the joinder of every person having some actual or potential right to the water in the basin and its sources of supply. The persons not made parties are, of course, not bound by the judgment, nor are they injured by the injunction."

In a more recent case, although not all of the pumpers on the stream were made parties, an injunction was granted against certain upstream pumpers who were parties restricting the amount of water such pumpers could take (*Orange County Water Dist v City of Riverside* (1961), 173 Cal App 2d 137-172, see also Kueger and Banks, Ground Water Basin Management, 50 Calif L Rev 56, 63).

Thus, in our opinion, there is no legal requirement that all rights to pump from an overdrafted basin be first adjudicated before a court could issue an injunction restricting a pumper from pumping from the basin.

Question No. 2

(a) Can a pumper in Orange County secure a prescriptive right to water which has been imported and spread by the Orange County Water District?

For the purposes of this question, we are to assume instances in which the pumper can and cannot prove how much of the water he pumps is native water and how much is imported water.

(b) If a prescriptive right can be secured in either instance, can the district act to prevent such a right from being secured?

Opinion and Analysis No. 2

(a) Rights in ground waters may be lost by prescription or adverse use (*Hudson v Dady* (1909), 156 Cal 617). The general rule applicable to rights in underground water is that an appropriative taking of water that is not surplus is wrongful and may ripen into a prescriptive right where the use is open and notorious, hostile and adverse to the original owner, continuous and uninterrupted for the statutory period of five years, under claim of right (*Alpaugh Irr. Dist v County of Kern* (1952), 113 Cal App 2d 286, 292-293).

The law of prescription upon water rights in an overdrafted ground water basin stems largely from the California Supreme Court's decision in *City of Pasadena v City of Alhambra*, supra (popularly known as the *Raymond Basin* case). * In that case the trial court found that because of the overdraft each pumper had been pumping adversely against all other pumpers. It concluded, and the Supreme Court affirmed, that each party owned by prescription the right to withdraw an amount of water equal to the maximum continuously pumped over any five-year period (see 50 Calif L Rev, supra, pp 50-61, see also 45 Calif L Rev 688, 690-691). This case, however, was not concerned with water which had been imported and spread.

It is a matter of common knowledge that the basin underlying Orange County is overdrafted. The Orange County Water District, however, constitutes a unique entity. Its operations have been described as follows:

"In an attempt to stop the critical overdraft in Orange County, the legislature revised the Orange County Water District Act in 1953. The district was armed with extensive powers to purchase and spread supplemental water and at the same time impose a replenishment assessment, or pumping tax, on all persons operating water producing facilities. The pumping tax and an ad valorem real property tax operated in tandem to institute and maintain a program of purchasing supplemental water, which was either spread and later pumped from the underground, or turned directly into municipal mains by entities that found it economically advantageous to discontinue pumping from the underground. The result was a successful rehabilitation of a basin faced with eventual destruction due to sea water intrusion. From a county whose very existence was threatened by loss of its water supply, the area has become one of the fastest growing and most prosperous in California.

"In contrast to the approach used by the water interest in the Raymond Basin, the interests in Orange County have deliberately avoided an adjudication of their respective rights. Even though the basin was overdrafted and the mutuality of prescription rule might well have been applied to the pumpers with matured prescriptive rights, the area took a non-litigious approach to the problem. Overlying rights and priorities were all set aside in favor of a physical solution. The community used its resources to purchase supplemental water, and immediately put it to work. When the powers of the Orange County Water

* It should always be kept in mind that this case involved certain stipulations between the parties to the suit, and it is difficult to evaluate the effect that these stipulations had upon the decision of the court.

District were drastically changed in 1953, no power to initiate actions to adjudicate water rights within the district was included. No property owner or water user has seen fit to institute a basin adjudication on his own initiative. Even if such an action were commenced, there is nothing in the statute requiring the district to recognize prescriptive pumping rights as there is in the Water Replenishment District Act of 1955. *Whether such an adjudicated right in the local supply would have to be recognized as a matter of law appears to be an academic question.* The community is managing its water affairs to the apparent satisfaction of water users, taxpayers, and public officials. " (50 Calif L Rev, supra, pp. 62-63, emphasis added)

As can be seen from the above, the Orange County Water District presents a unique situation. In view of this, and in view of the lack of precedent with regard to the adjudication of ground water rights in basins where water has been spread, we can only speculate on what the courts might do. In our opinion, however, a court might take the approach that if the requisites of the *Raymond Basin* case are met, a pumpier could secure a prescriptive right to pump ground water, even though a portion of such water has been imported and spread by the district and infiltrated into the basin.

It is a matter of common knowledge that the Orange County Water District purchases water and spreads it for use by all the pumpiers in the district, with no attempt to store it underground for itself. The district is not a pumpier itself and claims no proprietary interest in the water in the underground basin which it has spread (see *Orange County Water District v. City of Riverside* (1959), 173 Cal App 2d 137, 159 and 172). In effect, the district "abandons" this water underground for the use of the pumpiers in the district. Since the district has "abandoned" its water to all users, the taking by any particular user could not be adverse to the district and no prescriptive right against the district could arise.

On the other hand, assuming that the prerequisites for a prescriptive right existed, it would appear that any pumpier pumping water in the district could acquire prescriptive rights as against other pumpiers with respect to the water in the underground basin. While this would include the water so imported and "abandoned" any prescriptive right would by necessity apply to the imported water only when and to the extent that it is placed in the underground basin by the district.

(b) Since we have concluded that a prescriptive right could not be secured against the district, the only question remaining is whether the district may act to prevent a prescriptive right against other pumpiers within the district from being secured.

A district has only those powers which are expressly conferred upon it or implied as necessary to carry out the main purpose of the act (see *Stinson v. Alessandro* 111 Dist. (1902), 135 Cal 389). Paragraph 7 of Section 2 of the Orange County Water District Act (Stats. 1933, Ch. 924, as amended) relates to the power of the district to maintain suits. This paragraph provides as follows:

"7 To carry out the purposes of this act, to commence, maintain, intervene in, defend and compromise, in the name of said district, or otherwise, and to assume the costs and expenses of any and all actions and proceedings now or hereafter begun to prevent interference with water or water rights used or useful to lands within said district or diminution of the quantity or pollution or contamination of the water supply of said district, or to prevent unlawful exploitation of water from said district, or to prevent any interference with the water or water rights used or useful in said district which may endanger or damage the inhabitants, lands or use of water in said district; provided, however, that said district shall not have power to intervene or take part in, or to pay costs or expenses of actions or controversies between the owners of lands or water rights all of which are entirely within the boundaries of said district and which do not involve pollution or contamination of water within said district or exporting water outside of said district's boundaries or any threat thereof." (Emphasis added)

In view of the last proviso in paragraph 7, it would appear that the district could not bring an action to prevent one user from securing a prescriptive right as against other users where the rights of the water district are not involved, for the district has no general power to initiate actions to adjudicate water rights within the district (see 50 Calif L Rev, supra, p. 62-63, cf. *Orange County Water District v. City of Riverside*, 173 Cal App 2d 137, 159-162).

Question No. 3

Is there any basis to determine whether the concept of "mutual prescription" and a pro rata reduction in pumping would applied by the courts to an area in which there is a lack of alternative water supplies available to the ground water basin involved?

Opinion and Analysis No. 3

The so-called doctrine of "mutual prescription" stems from the decision in *City of Pasadena v. City of Alhambra*, supra.

The effect of that decision was that where overlying landowners and appropriators had been pumping from a ground water basin for many years after the safe yield had been overdrown, no overlying owner or appropriator could claim a paramount right to the full quantity of water he had been pumping, nor had he fully lost his right to pump by reason of the continued pumping by others. All parties were restricted to a proportionate reduction in the quantities of water they had been pumping, the total annual pumpage from the basin being limited to the safe yield (see *The California Law of Water Rights*, supra, pp. 444-446).

With respect to this case it has been stated

" [T]he *Raymond Basin* case affords the key to ground water basin management. By reducing the amount each party could extract, the decline of ground water levels in the basin was halted. *The availability of water from the Metropolitan Water District made the physical solution workable*" (50 Cal. L. Rev., supra, p. 60, emphasis added.)

The court in the *Raymond Basin* case did not appear to take into consideration the availability of alternative supplies of water in reaching its decision. The court did, however, recognize that alternative supplies of water were available (*City of Pasadena v. City of Alhambra*, supra, p. 934).

In a more recent case the district court of appeal held that the defendants should be allowed a reasonable time (in this case three years) to acquire supplementary supplies of water from sources outside the Santa Ana River watershed, and thus afforded the defendants some temporary relief from the strict limitation of their prescriptive rights (*Orange County Water District v. City of Riverside* (1959), 173 Cal. App. 2d 187, 222-224, see also *Orange County Water District v. City of Riverside* (1961), 188 Cal. App. 2d 566).

In conclusion, we are unaware of any case which would indicate that the courts would apply the doctrine of "mutual prescription" and a pro rata reduction in pumping to a ground water basin on the basis that there is no alternative supply of water available. Recent cases do, however, show a disposition on the part of the courts to allow pumpers a reasonable time to find alternative supplies before the restrictive injunction is to take effect.

Very truly yours,

A. C. MORRISON
Legislative Counsel

By ALAN W. STRONG
Deputy Legislative Counsel

SACRAMENTO, CALIFORNIA
January 23, 1962

HONORABLE CARLEY V. PORTER
Compton, California

WATER' (H.R. 179, 1961 REG. SESS.)—No. 285

DEAR MR. PORTER:

Pursuant to your request we have prepared and enclose an analysis of the so-called "mutual prescription doctrine" established in the case of *City of Pasadena v. City of Alhambra* (1949), 33 Cal. 2d 908, and its contribution toward solution of future underground basin problems.

Very truly yours,

A. C. MORRISON
Legislative Counsel

By RAY H. WHITTAKER
Deputy Legislative Counsel

SACRAMENTO, CALIFORNIA

January 22, 1962

**ANALYSIS OF THE SO-CALLED "MUTUAL PRESCRIPTION DOCTRINE"
ESTABLISHED IN CITY OF PASADENA v. CITY OF ALHAMBRA
(1949), 33 CAL. 2D 908, AND ITS CONTRIBUTION
TOWARDS SOLUTION OF FUTURE UNDER-
GROUND BASIN PROBLEMS—No. 285**

Background of Case

This case involved the adjudication of the ground water rights in a 40 square-mile basin known as the Raymond Basin Area.

Plaintiff city instituted the proceeding to determine the water rights and to enjoin an alleged overdraft in order to prevent the eventual depletion of the supply.

So far as we are aware, this was the first basinwide adjudication of ground water rights to reach the Supreme Court.

The case involved a basin where an overdraft existed that is, where the average annual withdrawal of water exceeded the average annual replenishment.

The parties to the suit were all of the principal users of water from the basin. They included persons asserting overlying rights, that is the right to use water on land overlying the ground water basin, and persons asserting appropriative rights, that is the right to use water on non-overlying lands or upon overlying lands for non-overlying purposes.

The sole appellant was the California-Michigan Land and Water Company, a public utility. It claimed overlying rights as to some water and appropriative rights to other water which it exported beyond the basin.

The trial court referred the matter to the Division of Water Resources, Department of Public Works, and after a lengthy investigation the division rendered its report.

In its report the division found the highest continuous production for beneficial use in any 5 year period prior to the suit by each user as to which there had been no cessation of use during any subsequent continuous 5 year period.

This was denominated the "present unadjusted right." The division also found that such production was greater than what it found constituted the "safe yield."

The "present unadjusted rights" were thereupon limited by reducing them in the proportion that the safe yield bore to the total of such rights, each party thus receiving about two-thirds of the amount it had been pumping.

The parties, excepting the appellant, entered into a stipulation for judgment allocating the water and restricting the total production to the safe annual yield. The trial court entered judgment substantially enforcing the terms of the stipulation against all parties, including the appellant.

The parties, including the appellant, also entered into a stipulation that "all of the water taken by each of the parties to this stipulation and agreement was, at the time it was taken, taken openly, notoriously, and under a claim of right, which claim of right was continuously and uninterruptedly asserted by it to be and was adverse to any and all claims of each and all of the other parties joining herein" (see P 822).

Mutual Prescription Doctrine

The appellant argued that the trial court erred in placing the burden of curtailing the overdraft proportionally upon all parties.

The appellant had sought, unsuccessfully, in the trial court to have the rights of each user determined as to each other user as to amounts and relative priorities.

Appellant's contention was based upon the theory that rights to ground water should be determined in accordance with the same rules that apply to the determination of rights to surface streams.

The trend of the decisions prior to this decision was that way (see *Peabody v. City of Vallejo*, 2 Cal. 2d 251, *Lodi v. East Bay Municipal Utility District*, 7 Cal. 2d 336). Thus the rights of overlying owners were considered to be comparable to those of riparians, and rights of appropriators of ground water comparable to those of appropriators of water from surface streams.

The appellant's position therefore was that as to the overlying owners its rights were prescriptive and as to the other appropriators its rights were prior in time.

The court held, however, that because of the continued existence of the overdraft, the rights of all of the parties had become prescriptive.

In arriving at this conclusion the court starts out with the fact that an overdraft had existed since the years 1913-1914. The court then says:

"Each taking of water in excess of the safe yield, whether by subsequent appropriators or by increased use by prior appropriators, was wrongful and was an injury to the then existing owners of water rights, because the overdraft, from its very beginning, operated progressively to reduce the total available supply. Although no owner was immediately prevented from taking the water he needed, the report demonstrates that a continuation of the overdraft would eventually result in such a depletion of the supply stored in the underground basin that it would become inadequate. The injury thus did not involve an immediate disability to obtain water, but, rather, it consisted of the continual lowering of the level and gradual reducing of the total amount of stored water, the accumulated effect of which, after a period of years, would be to render the supply insufficient to meet the needs of the rightful owners." (P 929) (Emphasis added)

Later in the opinion the court says:

"There is, therefore, no merit in the contention that the owners of water rights were not injured by the additional appropriations made after all surplus waters were taken and they clearly were entitled to obtain immediate relief to terminate all takings in excess of the surplus as soon as it became apparent from the lowering of the well levels that the underground basin would be depleted if the excessive pumping were continued." (P 929) (Emphasis added)

The court then refers to the fact that the water level in the appellant's well for a period of years had shown a decline which charged it with notice that there was no "surplus" and that the overdraft was an invasion of its rights.

The court, in referring to the cases holding that the rights of an appropriator from a surface stream are not invaded so long as he received the water to which he is entitled, says:

"The type of injury there considered would immediately deprive the owner of water, and the language in the opinions does not apply to an invasion of rights in a stored water supply to be used only in future years." (P 931)

The court then adverted to the fact that all parties, including the original owners and the wrongdoers, had continued to pump all the water they needed as follows:

"The pumping by each group, however, actually interfered with the other group in that it produced an overdraft which would operate to make it impossible for all to continue at the same rate in the future." (P 931)

Since none of the users had sued any other user, the statute of limitations had run on all of the users. This, however, is qualified by the following:

"The running of the statute, however, can effectively be interrupted by self help on the part of the lawful owner of the property right involved. Unlike the situation with respect to a surface stream where a wrongful taking by an appropriator has the immediate effect of preventing a riparian owner from receiving water in the amount taken by the wrongdoer, the owners of water rights in the present case were not immediately prevented from taking water, and they in fact continued to pump whatever they needed. The owners were injured only with respect to their rights to continue to pump at some future date." (P 913, 931)

The result of the continued pumping by the original owners was that they retained or acquired a right to continue to take some water in the future. The wrongdoers also acquired prescriptive rights to continue to take water, but their rights were limited to the extent that the original owners retained or acquired rights by their pumping. (P. 932)

Therefore, all of the rights were prescriptive and the trial court properly concluded that the production should be limited by a proportionate reduction in the amount each party had taken for the statutory period. (P 933)

The effect of this decision is to depart from the trend of considering ground water problems in terms of the law applicable to surface waters when ground water basins in which overdrafts have existed are concerned.

Contribution of Mutual Prescription Doctrine Towards Solution of Future Underground Basin Problems

It is difficult to predict with any degree of certainty the extent to which the doctrine of mutual prescription will affect the solution of future underground basin problems.

In the first place, it is probable that each underground basin is to a large extent unique, in that the same factual circumstances and legal relationship between the various water users are unlikely to be present with respect to any two basins. Thus, whether the same circumstances which gave rise to the application of the mutual prescription doctrine to water users in the Raymond Basin would be in existence in any other basin is, at least to some extent, problematical.

In the second place, it is difficult to evaluate the effect that the stipulations involved in *City of Pasadena v. City of Alhambra*, supra, had upon the decision of the court. Whether or not similar stipulations would be made by water users in another basin in the event of litigation to determine the respective rights of such users would, of course, depend upon the particular facts involved and the willingness of the users to enter into stipulations.

We might make two observations, however, in connection with the case and the doctrine of mutual prescription.

First, it is clear that the history of water levels in an underground basin is of prime importance. The application of the mutual prescription doctrine was hinged upon the existence of an overdraft in the basin. Thus, a continuing surveillance of the water level in a water user's well would tend to show the development and existence of a condition of overdraft in the basin and would put the water user on notice as to whether action by him is necessary in order to protect the priority of his water right.

Second, the case illustrates a method which may be used under certain circumstances to solve a complex problem as to relative water rights in an extensive underground basin. It would appear that stipulations by the water users in the basin and application of the mutual prescription doctrine would probably shorten immeasurably the length of time it might otherwise take to identify all of the various types of rights involved and to determine the relative priorities thereof.

A. C. MORRISON
Legislative Counsel

By RAY H. WHITAKER
Deputy Legislative Counsel

COMPUTATION OF RIGHTS UNDER THE FIVE-YEAR RULE

The rights to the use of ground water in a basin such as the Central Basin, where a condition of overdraft of the natural supplies exists, would be determined, if brought before the court, by the decision in the *Raymond* case. In such a case, the pumping of each producer is considered adverse to the pumping of all other producers, and if continued for five years, prescriptive rights arise.

The rule laid down in the *Raymond* case was that under such conditions the water right of a pumpier is the highest continuous pumping of water in any five-year period prior to the date of filing the action in court, to which there was no cessation of use by the pumpier during any subsequent continuous five-year period prior to the date of filing of suit.

In accordance with this rule, in instances where the annual pumping is steadily increasing, the water right during any five-year period prior to the date of filing the action would be equal to the amount pumped during the first year of the five-year period. That year would be the maximum continuous pumping during the five years.

Where the annual pumping begins to decrease, the right established is not lost for a period of five years. After five years, if the pumping continues to decrease, the right is reduced to the amount next highest to the right previously existing.

SOURCE: Control and Reduction of Ground Water Pumping in the Central Basin, Published by Central Basin Water Association, Downey, California, October 10, 1961.

WESTERN UNION TELEGRAM

HONORABLE CARLEY V. PORTER

Capitol Bldg., Sacramento, Calif

The volume 46 interim agreement to curtail pumping in Central Basin will be effective next Monday, October first 46 producers in Central Basin have signed representing 77.6 percent of total assumed relative rights. The pumping cutback for the first year will be on the order of 50,000 acre-feet. The agreement has been prepared, circulated, discussed and finally approved within the short period of 9 months following at the filing of the action on January 2nd 1962. To adjudicate water rights in Central Basin. We believe the signers have established a record unequalled elsewhere in the history of major water litigation.

CARL FOSSETTE

Executive Secretary Central Basin Water Assn

o

ASSEMBLY INTERIM COMMITTEE REPORTS

1961-1963

VOLUME 26

NUMBER 5

STUDY OF WATER DISTRICT LAWS

A REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON WATER
TO THE CALIFORNIA LEGISLATURE
(House Resolution 434, 1961)

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November 1962



Published by the

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OF THE STATE OF CALIFORNIA**

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PLATE

Location of Selected Water Districts in California	In pocket
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LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON WATER
October 5, 1962

HONORABLE JESSE M UNRUH
Speaker of the Assembly

MEMBERS OF THE ASSEMBLY
State Capitol, Sacramento 14, California

GENTLEMEN Your Assembly Interim Committee on Water herewith submits its report, *Study of Water District Laws*, which was prepared pursuant to House Resolution 434 (1961).

The report represents a comprehensive summary of selected provisions of major water district laws. Although this report is primarily intended to serve as a background reference for use of the Legislature in considering district bills, it is hoped it will also be of value to the many water districts of the State.

Beside the reference material the report also includes a number of recommendations relating to water districts which may help the Legislature in further improving the quality of district legislation.

Respectfully submitted,

CARLEY V. PORTER, *Chairman*

PAUL J LUNARDI, *Vice Chairman*

JACK A BEAVER
FRANK P BLOTTI
JOHN L E COLLIER
PAULINE L DAVIS
HOUSTON I FLOURNOY
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HAROLD T SEDGWICK
BRUCE SUMNER
JOHN C WILLIAMSON
EDWIN L Z'BERG

By Mr. Porter.

HOUSE RESOLUTION No. 434

*Relative to an interim study of laws relating
to water districts*

WHEREAS, At each general session a large number of bills are introduced which amend various provisions of the Water Code and special district acts pertaining to the organization, powers, and duties of water districts, and which provide for the organization of new water districts; and

WHEREAS, The Members of the Legislature are in need of information to permit wise action upon these proposed changes in water district acts and proposed new water districts, which information is not now readily available, now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is requested to assign to the appropriate interim committee for study the subject of the laws relating to the organization, powers, and duties of water districts and to direct the committee to submit an analysis of existing district laws and the reasons for their variations to the Assembly no later than the fifth calendar day of the 1963 Regular Session

(Adopted unanimously by the Assembly June 16, 1961)

FINDINGS AND RECOMMENDATIONS

The authorizing resolution for this study of water district acts calls for "... an analysis of existing district laws and the reasons for their variation." Since the Legislature is continually faced with amending existing district acts and creating new ones, the compilation of this information is primarily intended to serve as a source document to provide guidance in the evaluation of the many bills affecting districts.

However, the compilation of the detailed data of the text and accompanying tables brought to the attention of the committee several general trends and problems concerning which the following recommendations are made:

UNIFORMITY OF DISTRICTS

Findings

The committee recognizes that the tremendous agricultural and industrial development of California could not have been possible were it not for the public water districts of this State. This study has revealed many carefully worked out general district acts¹—the products of years of experience and trial and error and extensive litigation.

More than half of the general act districts included in this study were formed under acts originally enacted before 1915. Through the years, as conditions in local areas have changed, general district acts have been amended often to meet the challenges of new conditions in this rapidly growing State.

The construction of the State Water Facilities (as authorized by the Burns-Porter Act), the existence of many areas of the State which are virtually "saturated" with public districts, cities, and other public agencies, and the burgeoning growth of our State's urban areas, are just some of the changing situations which today place even greater challenges before water districts.

Although this study reveals a great many variations in language and provisions within district acts and between various district acts, from time to time uniform procedures have been included by many district acts. For example:

(1) Uniform procedures in other codes have been incorporated by reference in general and special district acts. For example, in 1959 the uniform claims procedures of the Government Code (Sections 700-730) were added to most acts. In 1961, uniform validation procedures in the Code of Civil Procedure (Sections 860-870) were similarly added to most district acts. Many acts use the eminent domain procedures set forth in the Code of Civil Procedure (Sections 1237-1266.2).

(2) Complex procedures in one district act have been incorporated by reference in other acts. The Irrigation District Act is the most frequent source of such procedures. For example, procedures for (a)

¹ Enabling acts setting forth procedures for formation of districts on the local level (for definition see Introduction, page 16)

contracting with the federal government under reclamation law; and (b) formation of improvement districts, were added to the Irrigation District Act well before other district acts and other district acts now utilize these procedures

Recommendations

The Legislature should continue to examine and study water district acts carefully, emphasizing its desire to bring about uniformity of language and procedures whenever possible and consistent with the different purposes of these acts.

As a means of accomplishing this objective (a) the extension of well-established procedures of general district acts and, (b) the utilization of already proven procedures wherever possible in the enactment of new special district acts should be considered.

USE OF SPECIAL DISTRICT ACTS ²

Findings

The number of special act water districts created in recent years has increased at approximately the same rate as the formation of water districts at the local level under general district acts, however, the number of special act water districts created each year greatly exceeds the number of special act districts enacted for other purposes. In fact, through the years water districts have always been the most numerous of special act districts.

The brief table below indicates the relationship between the number of general and special district acts during a recent six-year period

Year	Total Number of District Acts			
	Water districts		Other districts *	
	General act	Special act †	General act	Special act †
1954 -----	28	35	51	12
1960 -----	33	62	57	19

* Includes Fire and Police Protection, Harbor, Health and Safety, Municipal Improvement, Recreation and Park, Streets and Highways, and miscellaneous types of districts

† Excludes districts enacted prior to 1915

Many times districts organize by special district act due to difficulties in organizing on the local level under general district acts. Many times the formation of a new, and perhaps larger, general act district in an area would have conflicted with some of the smaller districts there and, therefore, a special act district, which has no overlap problems, was formed. At times special act districts resulted which, with certain local adjustments, could have been formed under general district acts.

The passage of a large number of special water district acts brings about certain problems.

(1) Since special district acts must include all provisions for the operation of a district, they usually are at least as lengthy as general district acts. The consideration by the Legislature of a 50-page bill involving complex provisions for bonding, annexation, levying of taxes,

² Acts of the Legislature creating a specific local district (for definition see Introduction, page 17).

etc., is necessarily limited.³ The committee has discovered a number of technical errors in special district acts which resulted, for example, from copying the act from a general district act.

(2) The committee found a number of special district acts which were virtually identical to general district acts. Instead of organizing under such a general district act, however, the passage of voluminous statutes was necessary.

(3) The differences between special district acts are often very minor. The basic similarity of all special district acts is exemplified by the fact that most of them can be divided into three general categories. In many cases these acts are copied directly from each other and are identical. In other cases only minor differences between special district acts are discernible. Nonetheless, lengthy statutes were required in these instances.

Recommendations

Formation of districts under general district acts, rather than by special district act, should be encouraged whenever practicable, considering fully local needs. If existing general district acts prove to be consistently inadequate, resulting in the use of special district acts, consideration should be given to the enactment of new general district acts or the modification of existing acts to provide more flexibility.

CONSOLIDATION OF DISTRICTS

Findings

Only 3 of the 10 general district acts in this study include provisions for consolidation or merger on the local level of two or more districts formed under the *same* general district act. No general district acts incorporate the uniform consolidation procedures of the District Organization Law (Sections 58260-58309, Government Code).

In addition, there are no existing procedures (except by special act) whereby two or more districts formed under *different* general district acts may be consolidated or merged.

As a result, it is necessary to utilize special district acts to effect these mergers. Examples of past mergers by special act include Coachella District Merger Law, 1937 (county water district and storm water district merged), and Costa Mesa District Merger Law, 1959 (two county water districts and two irrigation districts and part of a city merged).

Recommendations

(1) Procedures enabling the consolidation or merger at the local level of districts formed under the *same* general district act should be extended to the seven general district acts not now possessing this power.

(2) Procedures for the merger or consolidation at the local level of two or more noncontiguous districts formed under *different* general

³ See this committee's report, *Subcommittee Reports and Reports on Referred Bills*, Assembly Interim Committee Reports, 1961-1963, Vol. 26, No. 6, for report on A B 776 (1961), an example of this problem.

district acts should be provided to general act districts. These procedures could be similar to existing consolidation provisions of the District Organization Law. (See Legislative Counsel Opinion No. 4026, Appendix C of this report.)

DISTRICT INFORMATION

Findings

Today there is no single state department or agency which receives notice of formation and dissolution of districts or notice of all other boundary changes of water districts, including annexation, withdrawal and consolidation or merger. As a result, no state department or agency has a complete and accurate list and description of the area of general act water districts.

Three general district acts (County Water District Act, Municipal Water District Act of 1911 and Water Replenishment District Act) require limited filings of boundary changes with the Secretary of State. Other general district acts require filing of certain boundary changes with the Secretary of State,⁴ while others require certain filings with county officials.

In addition, information on some district boundary changes is available from those filings to the State Board of Equalization and local assessors required from certain districts by Sections 54900-54903 of the Government Code. Section 54900 requires, in part, that whenever there is a change in boundaries of (a) a district within a city, the tax levy of which is carried on the regular city assessment roll, or (b) a district the tax or special assessment levy of which is carried on the regular county assessment roll, or when any such district is created, or when a district previously levying and collecting taxes or special assessments based upon its own assessment utilizes the regular city or county assessment roll, "the tax or assessment levying authority of the . . . district shall file or cause to be filed a statement of such creation or change, or of the exterior boundaries newly utilizing the city or county assessment roll." The filing includes a statement of the change and a map.⁵

Because of these totally inadequate legal requirements for reporting, the State Controller (who is authorized by Section 12463.1 of the Government Code to require annual financial reports from nearly all water districts) must annually dispatch staff members to make personal visits to the 58 county seats of the State to peruse resolutions or minutes of the boards of supervisors to compile a complete list of these districts.

With the estimated number of districts formed under the 10 general district acts in this study in excess of 600, the present lack of information represents a serious impediment to orderly consideration of water district problems.

⁴ In some cases these filings are of little or no use due to the incomplete filing requirements. For example, notices of dissolution of California water districts must be sent to the Secretary of State, even though that office is not required to be notified of the formation of California water districts.

⁵ The number of districts which may come within the jurisdiction of these provisions is discussed in Chapter V under the section, "Use of County Officials for Taxation," page 93. The number of general act districts (by type) which actually levy taxes is indicated in Table XV, page 94.

Recommendations

(1) That this committee sponsor legislation at the 1963 General Session requiring that the Secretary of State be notified of the following actions with regard to the general district water acts (where not now required):

- (a) Formation of district
- (b) Dissolution of district
- (c) Annexation (inclusion) of area to district
- (d) Withdrawal (exclusion) of area from the district
- (e) Merger or consolidation of the district with one or more other districts.

(2) That this committee sponsor legislation to require the Secretary of State to make available to the public a complete list of water districts formed under the general district acts in this study.

It must be noted, however, that this committee legislation will only solve part of an overall problem. Consideration should be given by the Legislature to extending such reporting requirements to all other districts included in the Controller's reports.

(Committee bill is found in Appendix D of this report.)

OBSOLETE ACTS**Findings**

Through the years a number of general district acts have been passed which for a variety of reasons have seldom if ever been used in local areas. As a result of legislation enacted in 1953, many general district acts which did not have any district formed under them (to the best knowledge of the Legislature) were repealed in an effort to eliminate as many useless statutes as possible. Nearly 10 years have passed and one general district act which had no districts formed under it in 1953—the California Water Storage and Conservation District Act (1941)—still apparently remains without a single district formed under it.⁶

Recommendations

That the Legislature repeal this act providing, however, for the continued existence of any district formed under this act. Due to inadequate reporting provisions, it is impossible to be absolutely certain no districts have formed under this act. (Committee bill is found in Appendix D.)

⁶ An earlier bill to repeal this act (Senate Bill 343) was introduced at the 1951 session of the Legislature but was not enacted.

INTRODUCTION

The material in this report does not provide a complete analysis of all water district acts. The tables and accompanying text cover only those portions of district acts which the committee felt were most likely to be the immediate concern of the Legislature.

In approaching this study, the committee found several prior studies and background publications available for its use, but all proved to be incomplete for its purposes. It was then determined that an entirely new analysis of district acts be made, organized to meet the specific requirements of this study.

PRIOR STUDIES

Of the prior studies of districts, the most complete source document is the 1954 report for the Assembly Interim Committee on Municipal and County Government, *Analysis of California District Laws*,¹ which was prepared by the Legislative Counsel. It provides tabular information on all general act and special act water districts in addition to most of the other general act and special act districts in the State, including street and highway districts, harbor districts, etc. Biennial supplements to this report, showing only new districts formed and not including amendments to existing districts acts, have been issued regularly since its original publication, however, no complete revision in it has ever been made and it is somewhat cumbersome to use with its four supplements.

The water district sections of the above report were published separately in 1955 by the Assembly Interim Committee on Conservation, Planning, and Public Works under the title, *Water District Laws of California, an Analysis, Section 2*.² No revisions for this report have been issued. A companion report by the same committee, *Irrigation District Movement in California, A Summary, Section 1*, prepared by the University of California, Bureau of Public Administration, provides a detailed history and excellent background on one of the earliest of California's general water district laws.³

The 1957 Regular Session of the Legislature saw the creation of the Senate Interim Committee on Study of Districts,⁴ which began its study during the 1957-59 interim and issued a preliminary report in June 1959. Although a number of suggestions for district legislation resulted from this study, it concerned itself primarily with financial aspects of districts. Its work has only limited application to our current study. To this date no further study of districts has been made by the Senate.

¹ California Legislative Counsel, *Analysis of California District Laws*, 1954, 292 pps.

² Assembly Interim Committee Reports, 1953-1955, Vol. 13, No. 5A, Jan. 1955, 191 pps.

³ Assembly Interim Committee Reports, 1953-1955, Vol. 13, No. 5, 62 pps.

⁴ Senate Resolution 166, 1957, *Senate Journal*, p. 4132.

Over the years the Department of Water Resources and its predecessors have issued *Irrigation and Water Storage Districts in California, Bulletin No. 21*, which describes new districts formed under the two acts and gives limited general information in tabular form on all districts formed under these acts. This bulletin was issued annually from 1929 to 1944. Since 1944 it has been issued irregularly.⁵

In July 1958 the Department of Water Resources issued the fifth edition of its publication, *General Comparison of California Water District Acts*,⁶ which was first published in 1950 and revised in 1951, 1952 and 1953. This report included both general act and special act water districts. Each general district act or special district act was treated separately by the report and comparison of features from act to act was somewhat difficult. At this date, this 1958 report has not been revised.

Two years later, in December 1960, the Department of Water Resources released a list of *California Districts Formed Under General and Special Water District Acts*.⁷ This is a rather complete list which, in addition to the name of the district, also lists the county in which each is located, but does not include district addresses.

One of the reasons for the paucity of historical information on water districts is the fact that no central records facility existed for water districts prior to 1949. In that year the Legislature added Section 12463.1 to the Government Code,⁸ which created an advisory committee composed of seven local governmental officers to assist the State Controller in developing complete and adequate records of districts other than school districts. The Controller and the advisory committee were authorized to require financial reports from public districts whenever they felt it in the public interest to do so. As a result, the Controller has issued an *Annual Report of Financial Transactions Concerning Special Districts of California* each fiscal year since 1950-51. This is an extremely complete and valuable document and contains a great deal of helpful information. Each year additional district acts have been included in the report and the most recent edition included 167 general and special district acts involving 3,178 individual districts.

The Controller issues a similar report, *Annual Report of Financial Transactions Concerning Irrigation Districts of California*, on a calendar year basis, pursuant to the same Government Code requirements.

The Department of Water Resources has recently published *Bulletin 114, Directory of Water Service Agencies in California*,⁹ which is a revision of a 1955 report. This directory includes the name, location, irrigated area and number of domestic service connections of commer-

⁵ *Bulletin 21*, covering the years 1916 to 1928 and published in 1929, is an exceptionally complete document including early history and detailed information on each district. This was followed annually by issues designed by letter from *Bulletin 21-A*, covering the year 1929 and published in 1930, through *Bulletin 21-O*, covering the year 1943 and issued in 1944. *Bulletin 21-P* covers the years 1944-1950. The *Bulletin 21* issued in 1958 covered the years 1951 to 1955, the March 1960 issue covered the years 1956 to 1958, the December 1960 issue covered 1959. *Bulletin 21-60* was issued in 1962 and covers 1960. The period prior to 1916 is covered in the following publication: State Department of Engineering, *Bulletin 2, Irrigation Districts in California 1857-1915*, dated 1916.

⁶ Department of Water Resources, Sacramento, 1958, 77 pps. (mimeo.)

⁷ Department of Water Resources, Sacramento, December 1960, 32 pps. (mimeo.)

⁸ Statutes of 1949, Chapter 1521.

⁹ Department of Water Resources, Sacramento, June 1962.

cial water companies, mutual water companies and public water districts in California

The publications discussed above comprise the basic current reference materials on water districts now available. A number of studies of individual district problems have been published and they are included in the bibliography which appears as an appendix to this report.

Of historical interest, prior to codification of the Water Code in 1943, biennial reports were issued by the Department of Public Works, Division of Water Resources, and its predecessors on irrigation districts, California water districts, water storage districts and other agricultural general act districts. These reports, which varied somewhat in content from publication to publication, were titled *California Irrigation District Laws*, and included the complete statutes of these three general acts as well as other statutory material and general data on these districts. They were issued from 1919 to 1948.¹⁰ This series was published separately from the *Bulletin No. 21* series.

As a result of legislative action, the Division of Water Resources issued a comprehensive summary report in 1930 entitled *Bulletin No. 37, Financial and General Data Pertaining to Irrigation, Reclamation and Other Public Districts in California*. This document was prepared under the direction of the California Irrigation and Reclamation Financing and Refinancing Commission, which was created in 1929.

The biennial reports listed above, *Bulletin No. 37* and the *Bulletin No. 21* series, are the only available public documents covering this long early history of these districts. There has been little attention paid to the history and development of water districts in California.

DEFINITIONS

For the purposes of this study it has been necessary to clarify some confusion which has centered around the term "special district." As used by laymen, a "special district" is any public district, other than a school district, with specialized and limited purposes. For example, cemetery districts, park districts, transit districts, sanitation districts, library districts, fire protection districts, parking districts, mosquito abatement districts and water districts are types of districts which are commonly referred to as "special districts." One of these "special districts" may be formed either under a general enabling act with actual formation procedures handled on the county level or it may be formed by special act of the Legislature. In 1961 there were 3,178 of these "special districts."¹¹

There is a legislative distinction, however, between districts formed under general enabling acts and those created by special legislative act. Therefore, as used in this report a *general district act* is an enabling statute which does not create any specific local district but sets forth

¹⁰ These were issued as follows: Department of Engineering, *Bulletin 6*, 1919; Department of Public Works, Division of Engineering and Irrigation, *Bulletin 1*, 1921, *Bulletin 7*, 1923, *Bulletin 10*, 1925 and *Bulletin 18*, 1927. The Department of Public Works, Division of Water Resources, issued the report biennially from *Bulletin 18-A*, 1929 through *Bulletin 18-F*, 1943. A final issue *Bulletin 18-L*, was released in 1948. Publication of the Water Code made this series unnecessary.

¹¹ Alan Cranston, State Controller, *Annual Report of Financial Transactions Concerning Special Districts of California, 1960-61*, p. ix.

the organization and procedures by which districts can be formed locally. Any legislative amendment of a *general district act* affects all districts formed under it.

As used in this report a *special district act* is a statute enacted by the Legislature establishing a specific district. For example, in 1961 Assembly Bill 2455,¹² a *special district act*, created the Kern County Water Agency. Any amendment to this *special district act* affects only the Kern County Water Agency.

In this report "assessments" has been used in general to indicate both taxes and assessments.

SCOPE OF STUDY

At the outset the committee felt that if a selected list of districts was studied in detail it would be possible to provide a more useful document for the use of the committee. Since the study was to serve as a source document for the Legislature, with particular application during general sessions, when a large number of new special districts and amendments to existing special and general district acts are proposed, an attempt was made to center the study on those districts with which the Legislature has been most concerned in recent years. First, the study was limited by including only general district acts found in the Water Code and those uncodified general and special district acts generally classified in legal publications as water acts. This was done because the resolution creating this committee assigned it "the subject matter of the Water Code, uncodified laws relating thereto, and other matters relating to water, water resources, flood control and irrigation."¹³

Second, the study was further limited by omitting a number of general district acts under which only one district had organized. In actual practice the districts are, in effect, special districts. The Metropolitan Water District Act (under which only the Metropolitan Water District of Southern California is formed), the County Water Authority Act (under which only the San Diego County Water Authority is formed), and the Municipal Water District Act of 1935 (also with only one district formed under it) were omitted from the study for this reason.

An obvious exception to this limitation is the inclusion of the Water Replenishment District Act (the Central and West Basin Water Replenishment District is the only district formed under this act). In its concurrent study of the State's ground water problems, the committee found that certain provisions in this recent (1955) act may become increasingly important as the need for ground water replenishment grows in many areas of the State.

Third, a number of district acts were omitted from this study due to their limited use as water distribution entities. Among the general act districts omitted for this reason are drainage districts, levee districts, protection districts, reclamation districts, storm drain maintenance districts and storm water districts.

In summary, the districts which the committee has studied include the most widely used distribution entities providing wholesale or retail

¹² Statutes of 1961, Chapter 1003.

¹³ House Resolution 361, 1961, *Assembly Journal*, p. 4997.

water service in addition to certain other districts. Ten general district acts were included in the committee's study:

- California Water Districts (Water Code, Div. 13)
- California Water Storage Districts (Water Code, Div. 14).
- County Water Districts (Water Code, Div. 12).
- County Waterworks Districts (Water Code, Div. 16)
- Flood Control and Flood Water Conservation Districts (Deering Act 9178)
- Irrigation Districts (Water Code, Div. 11)
- Municipal Water Districts of 1911 (Deering Act 5243)
- Water Conservation Districts of 1927 (Deering Act 9127a).
- Water Conservation Districts of 1931 (Deering Act 9127c).
- Water Replenishment Districts (Water Code, Div. 18)

A complete list of districts formed under these general acts, as well as special act districts, is attached to this report as Appendix A.

A total of 55 special act districts were included in the study. In recent years these districts have been formed in ever-increasing numbers. For purposes of this study all but 3 of those 55 districts comparable to the general district acts above have been grouped together in the following three categories:

- (1) County Flood Control and Water Conservation Districts.
- (2) Flood Control Districts
- (3) Water Agencies

COMMITTEE QUESTIONNAIRE

The resolution directing this study, in addition to an analysis of district laws, requests "the reasons for their variations." In order to best assess the difficult-to-establish "reasons" for differences both among and within districts, and to obtain information not included in the statutes, the committee sent a questionnaire to all districts included in the study. A total of 608 districts received the questionnaire. The districts' response was most gratifying as 441 districts replied for a 73 percent return. A copy of the questionnaire is included in this report as Appendix B.

TABLE I. RESPONSE TO COMMITTEE QUESTIONNAIRE

	<i>Number sent</i>	<i>Number returned</i>	<i>Percent returned</i>
California water	98	59	60
California water storage	7	6	85
County water	177	182	75
County waterworks	96	64	67
Flood control and flood water conservation	4	3	75
Irrigation	110	83	75
Municipal water (1911)	48	33	69
Water conservation (1927)	5	3	60
Water conservation (1931)	11	9	81
Water replenishment	1	1	100
Special act districts	51	48	94
All Districts	608	441	73

FORMAT OF REPORT

This report was organized to provide a quick reference to selected provisions of both the general district acts and special district acts and to permit comparison between these districts. Five major tables, each giving detailed provisions of each act, accompany chapters two through six of the report. These major tables are as follows: *Voting Basis and Formation Provisions* (Table V, Chapter II), *Governing Body Provisions* (Table VIII, Chapter III), *Powers* (Table X, Chapter IV), *Financing Provisions* (Table XII, Chapter V), and *Boundaries Provisions* (Table XXI, Chapter VI). Provisions of the 10 general district acts and 55 special district acts are included in each table.

A number of smaller tables supplement the major tables and provide (1) summaries of the major tables, (2) summaries of data from the committee questionnaire, and (3) summaries of other provisions in the acts. The text of the chapters accompanying the major tables discusses in greater detail matters related to the tables.

Several appendixes to the report include the complete list of districts, a bibliography of district materials, legislation recommended by the committee, and a discussion of the Special Assessment, Investigation, Limitation and Majority Protest Act of 1931,¹⁴ and the District Investigation Law of 1933.¹⁵

The major tables in this report were based on uniform terminology—unlike previous reports of this type which utilized the actual language of each act—which greatly facilitates quick comparison of various districts, a principal objective of this report.

ACKNOWLEDGMENTS

The committee wishes to express its appreciation to the many persons who assisted it in this study, particularly the districts who responded to the committee questionnaire, as well as the office of Alan Cranston, State Controller, the District Securities Commission, the Department of Water Resources, and the Irrigation Districts Association.

The committee also wishes to express its appreciation to Legislative Counsel A. C. Morrison and his staff and Legislative Analyst A. Alan Post and his staff for their invaluable assistance in the preparation of this report.

¹⁴ The complex provisions of this act determine whether or not a water district in any specific circumstance is subject to this act.

¹⁵ At the present time no water districts included in this study are subject to the provisions of this law, however, the law may be expanded to cover water districts at any future date.

CHAPTER I

WATER DISTRICT ORGANIZATION IN CALIFORNIA

Historically the distribution of water in California has been primarily for irrigation purposes. Even with the great urban development in recent years, 90 percent of the water used in the State today is for irrigation and only 10 percent is for municipal, industrial and miscellaneous purposes. The Department of Water Resources has estimated that with the ultimate development of the State, 80 percent of the water used annually will be for irrigation purposes.¹

In a very general way, the evolution of public water distribution entities in California paralleled the growth of the State.

The creation of districts by the Legislature began during the 19th century when the State was predominantly agricultural and was accomplished primarily by a few general district acts. However, as the urban areas of the State grew rapidly during the early 20th century and as industrial development became an increasingly important segment of the economy, new general district acts were needed. The unprecedented growth of California in recent years, which came while the State maintained the largest agricultural economy in the nation, made the water problems of districts more complex. This was accompanied by an increased tendency to create special act districts, at the same time as the increasing demand for water accelerated the creation of districts under general district acts.

The entry of the State into water project construction resulted from passage in 1959 of the Burns-Porter Act and the subsequent ratification by the voters in 1960 of the \$1,750,000,000 bond issue to finance the State Water Facilities. The effects of rapid urbanization of the fastest-growing areas of the State, particularly in Southern California, are reflected in the proposed allocation of the 4,000,000-acre-foot² yield of the project. Nearly half of the project water is expected to be used for municipal and industrial purposes and 45 percent of the total yield will be delivered south of the Tehachapi Mountains where water use will be predominantly domestic and industrial. The need for more entities to distribute project water has arisen.

It was estimated in 1962 that there were more than 4,000 public and private water entities serving local areas in California. These may be broken down into four major categories of water distribution entities: (1) private water agencies (public utilities companies, which are private enterprises operating under public regulation, and mutual water companies, which are nonprofit, co-operative enterprises under private ownership formed for the purpose of serving their own members or stockholders), (2) general act districts, (3) special act districts; and (4) municipal water departments.

¹ S. T. Harding, *Water in California*, 1960, p. 30.

² One acre-foot is equivalent to covering one acre with water one foot deep. One acre-foot equals 325,825 gallons of water.

In 1958 some 51 percent of the State's water agencies were mutual companies, 17 percent were public utility companies, 25 percent were public districts, and 7 percent were municipal entities.⁸

The State Public Utilities Commission has regulatory authority over the public utilities companies. However, it does not exercise this authority over mutual water companies, municipally owned utilities, or public districts.

Although they are not the most numerous of water distributing entities, public districts nonetheless directly serve approximately 74 percent of the State's irrigated acreage. They directly serve only 15 percent of the State's domestic water, but indirectly serve as wholesale distributors for a much larger percentage than this.⁴

EVOLUTION OF PUBLIC DISTRICTS

It is helpful to an understanding of the current status of water district acts to briefly trace the development of these districts, particularly those treated in detail in this report. This is not an exhaustive history but is based upon the limited materials available.

General District Acts, 1866-1962

The first general district act enacted by the Legislature came in 1866 and provided for reclamation districts.⁵ The principal function of these districts was to reclaim swamps, marshes or tidelands—an important problem in that early period of the State's development. More than 125 of these districts still exist today and are located primarily in the Sacramento and San Joaquin Valleys.

In 1872, the Legislature authorized the formation of irrigation districts.⁶ This early law, under which no districts were formed, permitted landowners to petition the county board of supervisors for the formation of a district. In 1874, the Legislature enacted an Irrigation District Act applicable only to Los Angeles County which permitted the board of supervisors, following a feasibility study of an irrigation system, to call an election on the construction of the project and formation of a district. As with the 1872 act, no districts were formed under this law.⁷

One of the first special act water districts came into being in 1876 with passage by the Legislature of an act creating the West Side Irrigation District,⁸ in a seven-county area extending from Suisun Bay to Tulare Lake. The district never became operative. Two years later the Modesto Irrigation District was created by special act.⁹ This district never became operative. Instead the Modesto Irrigation District of today was the second district organized under the Wright Act in 1887.

⁴ Stanford Research Institute, *Economic Considerations in the Formulation and Re-payment of California Water Plan Projects*, March 1955, p. 113.

⁵ *Ibid.* p. 114.

⁶ Albert T. Henley, "The Evolution of Forms of Water Users Organizations in California," *California Law Review*, Vol. 45, No. 5, December 1957, p. 867.

⁷ Statutes of 1871-72, Chapter 634 (repealed by Statutes of 1943, Chapter 372).

⁸ University of California Bureau of Public Administration, *The Irrigation District Movement in California, A Summary*, January 1955, p. 11.

⁹ Statutes of 1876-78, Chapter 481, which was re-enacted by Statutes of 1877-78, Chapter 345 (repealed by Statutes of 1943, Chapter 372).

¹⁰ Statutes of 1877-78, Chapter 526 (repealed by Statutes of 1943, Chapter 372).

In 1880 the Legislature enacted two general district acts creating protection districts and drainage districts for purposes similar to those of the earlier reclamation districts. Additional drainage district acts were passed in 1885, 1897, 1903, 1919 and 1923.¹⁰ Today there are no 1880 or 1897 act drainage districts and only one remaining 1923 district. All three acts have been repealed.¹¹ There are six active districts formed under the 1885 act, 16 formed under the 1903 act, and three formed under the 1919 act.

Additional protection district acts were passed in 1895 and 1907.¹² Seven protection districts remain formed under the 1880 act, one formed under the 1895 act and two formed under the 1907 act.

A related type of district—the levee district—was authorized in 1905 with passage of the Levee District Act, with a second act of this type passed in 1959.¹³ Seven of these 1905 districts—the purpose of which is to construct and maintain levees—exist today. No districts have been formed to date under the 1959 act, however.

The Storm Water District Act of 1909 also authorized districts to protect lands from damage by soil erosion or storm waters. Districts formed under this act were empowered to construct dams, ditches, dikes, etc. There are nine of these districts in existence today. General acts providing for storm drain maintenance districts were passed in 1937 and 1939. There now are 26 districts remaining under the 1937 act and only one remaining under the 1939 act (which has been repealed).¹⁴

Following the establishment in 1878 of the office of State Engineer, the engineer issued a report in which a proposed general act for irrigation districts was outlined. It was not until 1887, however, when under the sponsorship of Assemblyman C. C. Wright, an attorney from Stanislaus County, a comprehensive enabling act for irrigation districts was finally passed by the Legislature.¹⁵

The Wright Act formed the basis for most of the irrigation district legislation passed to the present time. Ten years later, in 1897, the Wright Act was repealed and re-enacted by the so-called Bridgeford Act, authored by Assemblyman E. A. Bridgeford of Colusa, Glenn and Lake Counties.¹⁶ The 1897 act was substantially the same as the 1887 act, with the exception of basic changes in procedures for organization and incurring indebtedness. As an early Department of Public Works bulletin explained, "The original Wright Act was plainly defective, among other particulars, in not providing for sufficient state supervision to prevent the organization of wholly speculative districts and districts for other reasons not justified or feasible, also, in failing to give the State any control of irrigation district finances."¹⁷ Today

¹⁰ Statutes of 1880, Chapter 117, Statutes of 1885, Chapter 153, Statutes of 1897, Chapter 228, Statutes of 1903, Chapter 238, Statutes of 1919, Chapter 354, Statutes of 1923, Chapter 102.

¹¹ Statutes of 1953, Chapter 1021, Statutes of 1953, Chapter 1020.

¹² Statutes of 1880, Chapter 63, Statutes of 1895, Chapter 201, Statutes of 1907, Chapter 25.

¹³ Statutes of 1905, Chapter 310, Statutes of 1959, Chapter 370.

¹⁴ Statutes of 1909, Chapter 222, Statutes of 1937, Chapter 265, Statutes of 1939, Chapter 1100 (repealed by Statutes of 1953, Chapter 1001).

¹⁵ Statutes of 1887, Chapter 34.

¹⁶ Statutes of 1897, Chapter 189.

¹⁷ California Department of Engineering, *California Irrigation District Laws, Bulletin No. 6, 1919, p. 7.*

there are 113 irrigation districts organized under this act, which was officially named the "California Irrigation District Act" in 1917. The largest concentration of these districts is in the Central Valley; however, they are found in 32 of the 58 counties of the State, including metropolitan areas.

Through the years irrigation districts have gradually broadened their scope. In 1919 the generation of electricity was added to the powers of irrigation districts. This was a significant action and greatly influenced the development of certain districts. The Division of Water Resources noted as early as 1929, "Without incidental income from power, some of the most important irrigation developments in California during the past decade either would not have been possible or would have been delayed for many years."¹⁸ Other powers include drainage and flood protection.

These districts also serve domestic water users. Today approximately 16 percent of the water delivered by irrigation districts is for domestic and industrial purposes. Total water deliveries by irrigation districts in 1960 amounted to 7,519,000 acre-feet¹⁹ and total land area included in 1960 was 4,557,656 acres.²⁰

At the 1913 and 1915 sessions of the Legislature amendments were made to the Irrigation District Act giving the State Irrigation Commission (now the Districts Securities Commission) wide supervisory powers over the issuance of securities by districts. Although amended additionally since that time, this supervision continues today.

In response to the urban growth of the State in the early years of this century and accompanying the progressive movement in state politics, the Legislature passed another major general district act—the Municipal Water District Act of 1911.²¹ The primary purpose of these districts was to provide a domestic water supply. A second Municipal Water District Act was enacted in 1935²² but has been little used and only one district remains formed under this act. There are now 48 districts formed under the 1911 act.

In 1913 three more general district acts were passed by the Legislature—the County Water District Act,²³ the California Water District Act,²⁴ and the County Waterworks District Act.²⁵

County water districts today are the most numerous of all general act districts with 177 districts formed under this act. In its original form the County Water District Act was closely patterned on the original Municipal Water District Act of 1911, except that it applied to unincorporated territory. The districts organized under the County Water District Act have been used mainly for domestic water supply and only incidentally for irrigation.²⁶

¹⁸ California Department of Public Works, Division of Water Resources, *Irrigation Districts in California*, Bulletin No. 21, 1923, p. 35.

¹⁹ California Department of Water Resources, *Irrigation and Water Storage Districts in California, 1960*, Bulletin No. 21-60, p. 1.

²⁰ Alan Cranston, State Controller, *Annual Report of Financial Transactions Concerning Irrigation Districts of California, 1960*, p. 1.

²¹ Statutes of 1911, Chapter 611.

²² Statutes of 1935, Chapter 78.

²³ Statutes of 1913, Chapter 592.

²⁴ Statutes of 1913, Chapter 337.

²⁵ Statutes of 1913, Chapter 370.

²⁶ California Department of Public Works, Division of Water Resources, *California Irrigation District Laws*, Bulletin No. 18-B, 1932, p. 7 (hereafter referred to as Bulletin No. 18-B) and *Bulletin No. 21, Op. Cit.*, p. 17.

A number of factors influenced the passage of the California Water District Act. Its original sponsors planned to organize districts in *entered government land* in the Chuckawalla Valley and the Palo Verde mesa in Riverside County.²⁷ Also, provisions in the Irrigation District Act which prohibited overlapping districts resulted in the provision in the California Water District Act which permits the organization of California water districts within the boundaries of an irrigation district, subject to certain restrictions. In effect, however, these restrictions limit these districts generally to areas not actually served by an irrigation district.²⁸

One of the major differences between this act and the Irrigation District Act is the voting basis. California water districts provide for voting on the basis of land ownership, with one vote for each \$1.00 of assessed land value. In irrigation districts, on the other hand, each resident, registered voter has one vote. (See Table V on pages 42-46.)

Rather surprisingly, no districts were created in this Riverside County area and the first California water district (Nieland Water District) was formed in 1921 in northern Imperial County, within the Imperial Irrigation District but in an area not served with a distribution system from the irrigation district.²⁹ In effect, this California water district served as a local zone for the irrigation district.

Development of districts under the California Water District Act began slowly. Since its passage, its provisions have been greatly broadened and it has received its greatest use in the last few years. There are now 100 California water districts, making it the third most-used general district act.

The original County Waterworks District Act was passed to provide a means by which the City of Los Angeles could organize the then-unincorporated area of the San Fernando Valley to receive water from the Los Angeles Aqueduct. The aqueduct was almost complete and it was desired to make the Owens Valley water available to the area, which it proposed to later annex to the city. Originally these districts were known as county irrigation districts.³⁰

According to an early report, "At that time irrigation district bonds were not in a favorable position in the investment markets. In an amendment to the act in 1915, therefore, the name of the districts formed under the act was changed to county waterworks districts."³¹

Ninety of these districts, which are limited primarily to unincorporated areas, now exist, many having been formed in recent years. The districts, however, are concentrated in great numbers in a few counties. For example, there are 32 such districts in Fresno County and 14 in Los Angeles County. The influence of county government is great in the operation of these districts.

County water districts and California water districts include powers of drainage and reclamation in addition to those of distributing water.

²⁷ California Department of Public Works, Division of Water Resources, *California Irrigation District Laws, Bulletin No. 18-A*, 1929, p. 6 (hereafter referred to as *Bulletin No. 18-A*).

²⁸ *Ibid.*, p. 222.

²⁹ *Bulletin No. 21, Op. Cit.*, p. 18.

³⁰ *Ibid.*, p. 20.

³¹ *Loc. Cit.*

for domestic and irrigation purposes. The more limited county water-works districts are principally domestic water supply entities, although they may supply irrigation water.

In 1915, the Legislature passed the California Irrigation Act ³² (to be distinguished from the earlier California Irrigation District Act), which was desired by the Iron Canyon Association as a step toward the construction of the Iron Canyon Project on the Sacramento River near Red Bluff ³³. No districts in this area were ever formed under this act, which permitted the formation of conservation districts and a new type of irrigation district—only one of which was formed during the life of the act.

The California Irrigation Act was then amended in 1917 and re-enacted in 1919 as the California Irrigation Act of 1919 in an attempt to accomplish another objective—the formation of a large district on the Kings River for the purpose of constructing storage at the Pine Flat site. This action was the beginning of a long series of attempts to organize a district on the Kings River ³⁴.

As a result of litigation over several proposed districts in the San Joaquin Valley, the California Irrigation Act of 1919 was declared unconstitutional in 1920 ³⁵.

The Legislature in 1921 then repealed the unconstitutional act and at the same time enacted the California Water Storage District Act ³⁶ to meet objections to the unconstitutional act and to serve slightly different purposes. The purposes of this new act, the districts of which have the power to store and distribute water for irrigation, were to provide a general act under which (1) overlap with irrigation districts was permitted, (2) districts with large areas and large landholdings but small resident populations could be formed with voting based upon land ownership; (3) benefits which are not directly proportional to the value of the land could be assessed equitably ³⁷. Voting and assessments are the principal areas of difference between this act and the Irrigation District Act.

The first four districts formed under the act each fit one or more of these unusual situations. The Tulare Lake Basin Water Storage District had practically no residents. In the San Joaquin River Water Storage District the principal interests were those of the Madera Irrigation District and Miller and Lux. The latter also organized the Buena Vista Water Storage District and owned practically all the land in that district. In the Kern River Water Storage District the principal interests were centered on the Kern County Land Company and a number of separate canal companies, all more or less controlled by the Kern County Land Company. ³⁸

Today there are nine of these districts, all located in the southern San Joaquin Valley, two having been formed in 1962. An unusual as-

³² Statutes of 1915, Chapter 621.

³³ *Bulletin No. 21, Op. Cit.*, p. 22.

³⁴ *Ibid.*, pp. 22-23.

³⁵ *Moydagan v. Board of Supervisors of Madera County* (1920), 183 Cal. 434.

³⁶ Statutes of 1921, Chapter 914.

³⁷ *Bulletin No. 21, Op. Cit.*, p. 22, *Bulletin No. 18-A, Op. Cit.*, p. 135, and California Department of Public Works, Division of Water Resources, *California Irrigation District Laws, Bulletin No. 18-F, 1939*, p. 5.

³⁸ *Bulletin No. 21, Op. Cit.*, p. 22, *Bulletin No. 18-B, Op. Cit.*, p. 162.

pect of these districts is the large degree of control exercised over them by the Department of Water Resources.

During the 1920's there were a number of other actions in local areas which resulted in the passage of closely related general and special district acts.

In 1923, the Legislature created the only irrigation district formed by special district act, the Palo Verde Irrigation District.³⁹ This district act consolidated an existing levee district and a drainage district. Features of the act follow very closely the procedures of the California Irrigation District Act.

Special acts were passed by both the 1921 and 1923 Legislatures creating a water district in Santa Clara County.⁴⁰ However, local elections to make the district operative failed to pass.⁴¹ Senator Herbert Jones of Santa Clara County then sponsored the Water Conservation Act of 1929⁴² for the conserving, storing, spreading and sinking of waters for underground replenishment. A district was then successfully formed in Santa Clara County under this general act and it began a pioneer ground water replenishment program.⁴³

This 1929 act was repealed two years later and re-enacted as the Water Conservation Act of 1931.⁴⁴ Today there are 10 of these 1931 districts operating, including a district in Ventura County engaged in extensive ground water replenishment. The powers of these districts are broad, however, and include the general storage and distribution of water as well as recharge.

Following the nullification of the California Irrigation Act of 1919, the Kings River interests succeeded in getting the Legislature to enact the California Water Conservation District Act of 1923⁴⁵ as their next attempt to form a district in that area. The unusual local circumstances of the Kings River area were reflected in this act, which authorized creation of conservation districts composed of "three or more units, all or any of which shall be irrigation, water storage, or reclamation, or drainage districts, or any other political subdivisions of the State organized to promote irrigation or reclamation or drainage or flood control."⁴⁶ The act also created the State Irrigation Board to effect the consolidation of these various districts into conservation districts. Shortly after the enactment of this act a formation petition was filed by the Kings River Conservation District and remained pending for many, many years. The California Water Conservation District Act was repealed in 1953⁴⁶ without having a district formed under it. A special act district, the Kings River Conservation District, was finally enacted by the Legislature in 1951,⁴⁷ following construction of Pine Flat Dam by the U.S. Army Corps of Engineers, ending more than 30 years of effort.

³⁹ Statutes of 1923, Chapter 452.

⁴⁰ Statutes of 1921, Chapter 522, and Statutes of 1923, Chapter 479.

⁴¹ *Eulissan*, No. 21, *Op. Cit.*, pp. 29-30.

⁴² Statutes of 1929, Chapter 166.

⁴³ Interesting accounts of the history of the formation of this district are found in Henley, *Op. Cit.*, and Stephen Smith, *The Public District in Integrating Ground and Surface Water Management: A Case Study in Santa Clara County*, April 1952, 135 pp.

⁴⁴ Statutes of 1931, Chapter 1020.

⁴⁵ Statutes of 1923, Chapter 426.

⁴⁶ Statutes of 1953, Chapter 998.

⁴⁷ Statutes of 1951, Chapter 931.

In 1927, the Legislature enacted the Water Conservation Act of 1927, a general district act creating districts with powers of financing and constructing water conservation works. The 1927 act was drawn primarily in the interests of landowners along the Santa Clara River in Ventura County who desired to conserve water by spreading.⁴⁸ Only six districts formed under this act remain today. The Ventura district which sponsored this act later reorganized under the 1931 act as the United Water Conservation District.

It was during the period from 1915 to 1930 that the irrigation district became a successful and accepted institution. The double impact of World War I and increased western migration brought about substantial new growth in these districts during this period. In the delivery of agricultural water, irrigation districts dominated the field. In 1929, only seven county water districts were serving agricultural areas and districts formed under the other four general district acts (California Water, County Waterworks, California Water Storage, and Water Conservation of 1927) had accomplished little with regard to the serving of agricultural water.⁴⁹ Unfortunately, there are no records available of the activities of these districts in the area of domestic and industrial water supplies.

This growth of districts in local communities also coincided with the emergence of an integrated program for water development of the Sacramento and San Joaquin Valleys, which culminated with submission of the State Water Plan (Division of Water Resources, *Bulletin No. 25*) to the Legislature of 1931 and the enactment in 1933 of the Central Valley Project Act. The failure of the State to finance the project during this depression period resulted in congressional authorization in 1935 for federal construction of the project. The construction of the project stimulated the creation of districts to provide entities to contract for federal project water, and at least 12 irrigation districts are known to have been formed for this purpose.⁵⁰

In 1931 still another general district act, creating flood control and flood water conservation districts,⁵¹ was enacted. Five districts formed under this statute exist today and are all located in Sonoma, Modoc, and Mendocino Counties. This general act was intended specifically for flood control and conservation of floodwaters. Districts formed under it do not have the power to distribute water. A great many similar countywide flood control districts were desired in the years following this act and the other general district conservation acts, but almost all of these countywide districts followed the pattern of Los Angeles County and were formed as special act districts.

The next general district acts passed by the Legislature were the Municipal Water District Law of 1935, the California Water Storage and Conservation District Act (1941) and the County Water Authority Act (1943).

No further general district acts of statewide application were passed until 1951 when the Legislature enacted the Community Services Dis-

⁴⁸ *Bulletin No. 21, Op. Cit.*, p. 27.

⁴⁹ University of California Bureau of Public Administration, *Op. Cit.*, p. 25.

⁵⁰ *Ibid.*, p. 29.

⁵¹ Statutes of 1931, Chapter 641.

trict Act (Sections 60000-61891, Government Code)⁵² These multipurpose districts are authorized to supply water for domestic, irrigation, sanitation, industrial, fire protection and recreation purposes, as well as to collect, treat, or dispose of sewage, waste and storm water, and to collect or dispose of garbage or refuse. These districts may also provide fire protection, public recreation, street lighting, mosquito abatement, and police protection.

In 1955 the Legislature enacted a general district act applicable only to seven Southern California counties which provided for water replenishment districts.⁵³ The main feature of these basinwide districts is the provision for a "replenishment assessment" or "pump tax" to finance the purchase of water for ground water replenishment. The act was sponsored by the Southern California Water Coordinating Conference and was based upon the successful replenishment operations of the Orange County Water District. The original sponsors of the bill saw its immediate application in Los Angeles County; and in 1959 the Central and West Basin Water Replenishment District was organized under this act to replenish the overdrawn central and west basins of Los Angeles County. This is the only replenishment district formed to date. It was expected that replenishment district boundaries would be based upon ground water basins and these districts would overlap a number of other water districts organized on other bases.

Mention should also be made of another general district act—the Public Utility District Act (Sections 15501-18004, Public Utilities Code)⁵⁴—which, although not appearing in the Water Code, includes certain powers of water districts, including the storage and distribution of water. Since its enactment it has been used in many areas of the State and 65 districts formed under this act, many of them providing water services, now exist.

Not all general district acts have been successfully used, however. There are at least three general district acts under which no local districts ever were formed. The earliest of these was the County Power Pumping District Act of 1915,⁵⁵ which authorized districts to construct and equip wells to serve district lands. This act was finally repealed in 1953, having remained on the statute books for almost 40 years.

A second general district act—the Conservancy Act of California, enacted in 1919⁵⁶—provided for the formation of districts for the spreading of floodwaters for storage and other purposes, including irrigation.⁵⁷ There is no record of any districts being formed under this act for irrigation purposes and it was also repealed in 1953.

The third act which has never been used is the lengthy (191 sections) California Water Storage and Conservation District Act of 1941. Districts formed under this act have broad powers, including the general functions of several other general act districts (irrigation districts, reclamation districts and water storage districts) and are specifically permitted to store water underground and to use surplus

⁵² Statutes of 1951, Chapter 1711

⁵³ Statutes of 1955, Chapter 1614

⁵⁴ Statutes of 1921, Chapter 560

⁵⁵ Statutes of 1915, Chapter 745 (repealed by Statutes of 1953, Chapter 1022)

⁵⁶ Statutes of 1919, Chapter 332 (repealed by Statutes of 1953, Chapter 1023)

⁵⁷ California Department of Public Works, Division of Water Resources, *Irrigation District Laws, Bulletin No. 18-C, 1933, p. 7*

waters. This act has never been repealed and has been omitted from this study completely

Special District Acts, 1915-1962

The first major special act district created by the Legislature was the Los Angeles County Flood Control District, enacted in 1915. Most of the county is included in this district, which was formed principally to conserve and control flood and storm waters. The district was formed by special act since none of the general acts in existence at that time were adequate⁵⁸

Through the years since the earliest days of statehood the Legislature created a number of miscellaneous types of districts (reclamation, storm drain, levee, etc.) by special district act. This has continued until the present day but these district acts are not treated individually in this report. Those enacted since 1915, however, are included in Table II on page 35 under the category, "Other."

With this Los Angeles district a pattern of formation of flood control districts began. Since this first flood control district nine more special district acts, based upon but not identical to the Los Angeles district, have been enacted. In 1927, 12 years after formation of the Los Angeles district, the American River Flood Control District in Sacramento County and the Orange County Flood Control District, were created. It was another 12 years later, in 1939, that the San Bernardino County Flood Control District was formed by special act. During the period from 1940 to 1950, similar districts were formed in Ventura County (1944) and Humboldt County (1945). In the mid-1950's, additional flood control districts were enacted, including Morrison Creek (1953) in Sacramento County, Fresno Metropolitan (1955), and Del Norte County (1955). The most recent district of this type was the San Mateo County Flood Control District, which was enacted in 1959.

Most of these flood control districts are limited to the control and conservation of flood and storm waters and are not empowered to distribute or sell water. These districts were created by special act and no general act district along similar lines was ever enacted.

In 1945 the San Diego County Flood Control District Act was enacted by the Legislature. When the bill was first introduced the district was substantially similar to the flood control districts noted above. In the bill's final form which became law, however, the district was reduced in scope to that of a planning body charged only with making studies. This district in its present form, therefore, is not comparable to the above-described flood control districts. It has, however, been included in the study and the tables under the category of special district act flood control districts.

The development of a similar type of district by special act began with the enactment in 1945 of county flood control and water conservation districts for Riverside and San Luis Obispo Counties. Twenty-one of these districts exist today and were formed principally to conserve flood and storm waters and to construct flood control works. However, generally they have broader powers than the flood control districts, including water distribution in some cases.

⁵⁸ Committee questionnaire

The third county flood control and water conservation district was authorized for Monterey County in 1947 and three more were authorized in 1949 (Sonoma County, Alameda County and Mendocino County). In 1951, creation of these special districts by the Legislature reached a peak when six new districts were approved by the Legislature during that general session (Solano County, Santa Clara County, Napa County, Lake County, Contra Costa County, and Yolo County). Two of these districts were created at each of the next two general legislative sessions (Marin County and San Benito County in 1953 and Santa Cruz County and Santa Barbara County in 1955).

At the special session of 1956 a county flood control and water conservation district was enacted for San Joaquin County, and in 1957 for Tehama County. At the 1959 session of the Legislature four county flood control and water conservation districts, all located in Northern California, were created by special act (Siskiyou County, Sierra County, Plumas County and Lassen-Modoc County). No additional districts of this type have been enacted since 1959. In many cases these districts closely resemble each other and, in fact, often were copied from earlier acts in the series.

In recent years another large group of countywide special act districts have been formed under the general title—Water Agencies. As with the above special act districts, several of these water agencies are patterned after other districts of this type and are virtually identical.

The first county water agency was enacted in 1945 for Santa Barbara County. The second district of this group was the Sacramento County Water Agency Act, which was patterned after the Santa Barbara act and was enacted in 1952. In 1957, creation of a series of these districts in Northern California counties began with the enactment of County Water Agencies for Contra Costa, Placer and Shasta Counties.

In 1959, eight of these agencies were created—five of these were countywide—covering the Counties of Yuba, Sutter, Nevada, El Dorado and Amador. A sixth—Mariposa—covered the entire county except Yosemite Park. These Northern California water agency acts were quite similar in most respects, although several varied in minor ways to meet local conditions. The two remaining districts enacted in 1959—the Mojave Water Agency and the Antelope Valley-East Kern Water Agency—were both included in the same bill. Neither were countywide and both, as drafted, were nearly identical to the Municipal Water District Act of 1911, a general district act. The principal purpose of their enactment was to contract with the State for water from the State Water Facilities.

The 1961 Legislature approved one remaining countywide district in Northern California—the Alpine County Water Agency which was based upon the El Dorado County Water Agency Act of 1959—and enacted three others for areas in Southern California (also to provide contracting agencies for water from the State Water Facilities). Two of these agencies—Desert and San Geronimo Pass—were nearly identical to the Municipal Water District Act of 1911. The third, the Kern County Water Agency, was unlike any existing water district. These differences in the Kern Agency resulted principally from unusual circumstances existing in Kern County.

At the First Extraordinary Session of 1962, the Legislature created two more special act water agencies (Upper Santa Clara Valley in Los Angeles County and Crestline-Lake Arrowhead in San Bernardino County), also for the express purpose of contracting with the State for water from the State Water Facilities. Passage of these acts brings the total number of these agencies to 19. The Crestline-Lake Arrowhead agency was copied from the Antelope Valley-East Kern agency of 1959 which, in turn, was copied from the Municipal Water District Act of 1911. The Upper Santa Clara agency was based upon several previous special act agencies. All of these water agencies have broad powers to conserve and distribute water.

In the last 20 years it has been the objective of most of the counties of the State to establish countywide districts to co-ordinate water development activities in the county (in almost every case with the board of supervisors serving as governing body). In some instances this co-ordination may take the form of providing service as a countywide wholesaler of water from State or federal projects, or it may take the form of constructing flood control projects.

As has been outlined in this discussion of special act districts, each of the three types—water agencies, flood control districts, and county flood control and water conservation districts—has been utilized in a number of counties, the water agencies becoming the most popular type in the last few years. Interestingly enough, in the formation of these three categories of special act districts which are countywide, there is only one county (Santa Barbara) in which there is more than one of these *countywide* special act districts (a water agency and a county flood control and water conservation district).

In 1950 the Brisbane County Water District in San Mateo County was created by special act⁵⁹. This district is governed by all the provisions of the County Water District Act except for special bonding provisions which are included in the special act. This special act was used as a method of creating a general act district slightly different from other districts formed under the general district act for the specific purpose of meeting local needs.

In 1959 a special act was utilized to consolidate two irrigation districts and two county water districts into a new district—the Costa Mesa County Water District—in all respects operated virtually in the same manner as districts formed under the County Water District Act, a general district act.

The same session of the Legislature passed the Limited Water District Law of 1959,⁶⁰ which authorized the formation of municipal water districts in a small area of northern Santa Clara County (The act was to be effective only for two years). The Legislature declared in the act that unique problems of municipal growth and peculiar water storage and supply problems necessitated the use of this "special act" rather than formation under a general district act. Yet the Limited Water District Law is not actually a special district act since it doesn't create a specific district by name but, as a general act, sets up procedures whereby districts may be formed. This act was another unusual attempt by the Legislature to meet specific local needs.

⁵⁹ Statutes of 1st Ex. 1950, Chapter 13

⁶⁰ Statutes of 1959, Chapter 2136

In an action similar to the Costa Mesa merger, in 1961 a special act was used to merge the Hollister Irrigation District into the San Benito County Flood Control and Water Conservation District, a special district act.⁶¹

Over the years three other important special district acts which do not fit into any of the above three categories have been enacted by the Legislature. These are the Orange County Water District Act (1933),⁶² the Santa Clara-Alameda-San Benito Water Authority Act (1955),⁶³ and the Yuba-Bear River Basin Authority Act (1959).⁶⁴ Only the Orange County Water District (as a result of its pioneering efforts at ground water replenishment) has been included in this study (found in the tables under the category, "Other").

The two other districts, the Santa Clara-Alameda-San Benito Water Authority and the Yuba-Bear River Basin Authority, are both districts with broad general powers including the provision of water for any beneficial use. The Yuba-Bear River Basin Authority has the additional power to control flood and storm waters.

Water Development by Metropolitan Areas

The greatest development of domestic and industrial water supplies for the State's burgeoning metropolitan areas has been accomplished by the State's largest cities.⁶⁵ The State's metropolitan areas have a long history of pioneering water development projects involving a number of different approaches.

The first major municipal water importation project began in 1905 with the approval by the voters of the City of Los Angeles of a bond issue to begin a 240-mile-long aqueduct project to bring water to the city from the Owens Valley in Mono County. The project was completed in 1913. An expansion of the aqueduct was completed in 1940 and the aqueduct still provides most of the water used by the city each year; the remainder comes from wells and the Metropolitan Water District.⁶⁶

The second major project by a city was by San Francisco, which completed its O'Shaughnessy Dam on the Tuolumne River in Yosemite National Park in 1923. The first pipeline to San Francisco was completed in 1925 and it has since been expanded twice. The city also sells water to many communities in the eastern half of the peninsula, part of northern Santa Clara County, and southwestern Alameda County.

On the eastern shore of San Francisco Bay, nine cities joined in the sponsorship and formation of a regional water district. The major problem facing this group was to find a general act which would permit a district to exist in more than one county and include both incorporated and unincorporated areas. As a result of these efforts a new general district act—the Municipal Utility District Act—rather than a special district act, was passed by the Legislature in 1921.⁶⁷ This act also

⁶¹ Statutes of 1961, Chapter 203

⁶² Statutes of 1933, Chapter 324

⁶³ Statutes of 1955, Chapter 1239

⁶⁴ Statutes of 1959, Chapter 2131

⁶⁵ These are colorfully described in Michael Brewer and Stephen Smith, *California's Man-Made Rivers*, University of California, Division of Agricultural Sciences, Berkeley, June 1961, 26 pps.

⁶⁶ Metropolitan Water District of Southern California, *23d Annual Report*, 1961, p. 50.

⁶⁷ Detailed history of the Los Angeles development and also the development of the Metropolitan Water District of Southern California are included in Vincent Ostrom, *Water and Politics*, The Haynes Foundation, 1953, 297 pps.

⁶⁸ Statutes of 1921, Chapter 218

authorized these districts to supply light, water, power, heat, transportation, telephone service, garbage and sewerage facilities.

The East Bay Municipal Utility District was formed under this act in 1923, including areas in Alameda and Contra Costa Counties. The district's major project was Pardee Dam on the Mokelumne River and a 94-mile aqueduct to the East Bay area. Additional dams and aqueducts are now being added to the system.⁶⁸ Unlike the Metropolitan Water District of Southern California and the San Diego County Water Authority, which are wholesale agencies, the East Bay Municipal Utility District is also a retail water entity.

In the years since its passage, the Municipal Utility District Act has been used for the formation of several other districts, differing widely in purpose. For example, one such district—the Sacramento Municipal Utility District—provides electric power only.

In 1927 an unusual general district act—the Metropolitan Water District Act⁶⁹—was enacted by the Legislature primarily to meet the additional water needs of the City of Los Angeles and Southern California, which were experiencing tremendous growth in population. A year later, in 1928, the only district formed under this act—the Metropolitan Water District of Southern California—came into existence. This district has proved to be, in effect, a special act district. A Metropolitan Water District is composed of "member units," which include cities and public water districts. The six-county Metropolitan Water District of Southern California now has a population of 8,000,000 (almost half the State) and an assessed valuation of \$14,798,000,000. Its member units include the 13 original cities, 11 municipal water districts, and a county water authority. However, within the area of the district there are a total of 96 incorporated cities.⁷⁰ In recent years areas annexing to the district have been required to do so by first organizing as municipal water districts. This policy has stimulated the formation of these districts in Southern California.

The water supplies for this district come from the Colorado River. Shortly after its formation the district began planning for a 242-mile-long aqueduct to bring this water from Parker Dam on the Colorado River to the Los Angeles area. The aqueduct began operation in 1941 and recently it was enlarged to its full capacity of 1,212,000 acre-feet a year, or one billion gallons daily. The aqueduct project represents an investment by the district of nearly one-half billion dollars.

A fourth metropolitan area—San Diego—also utilized a general district act to form a district to approach its water supply problems on a countywide basis. The San Diego County Water Authority, formed in 1944, is the only district formed under the County Water Authority Act,⁷¹ which was enacted by the Legislature the previous year. The main function of the San Diego County Water Authority was to construct an aqueduct connecting San Diego with the lines of the Metro-

⁶⁸ Interesting accounts of the early development of a water supply for the East Bay as well as the San Francisco area are found in the following reports of the Commonwealth Club of California: *A Bay Cities Water District*, Vol. XI, No. 3, 77 pps.; *The Bay Cities Water Problem*, 1915, Vol. X, No. 6, 36 pps.; *The Bay Cities Water Supply* 1914, Vol. IX, No. 1, 96 pps.

⁶⁹ Statutes of 1927, Chapter 429. The early history of the district is told in detail in the Metropolitan Water District of Southern California's *History and First Annual Report*, published in 1939.

⁷⁰ Metropolitan Water District of Southern California, *Water for People*, July 1962, pp. 18-19.

⁷¹ Statutes of 1943, Chapter 545.

politan Water District. The original aqueduct, constructed in two stages, was supplemented by a second aqueduct, completed in 1960.⁷² County water authorities may be formed by two or more public agencies (including cities and selected water districts) with the governing body consisting of at least one representative from each public agency.

These impressive projects in the State's four largest metropolitan areas—Los Angeles, San Francisco, San Diego and the East Bay—are in addition to many other municipal water systems.

RECENT TRENDS IN DISTRICT FORMATION

Special District Acts

As can be seen from Table II below, most of the special act districts have been created in the last 10 years—the high point coming at the 1959 Legislative session when 15 special district acts were approved. As has been described above, the first special act districts were flood control districts, most of which were formed between 1915 and 1947, and are generally countywide in area.

Beginning in 1945 and continuing through the 1959 session, the second type, flood control and water conservation districts were formed in large numbers. Most of these districts are also countywide and have broader powers than the flood control districts.

The third type of special act district which evolved was the water agency, also countywide for the most part. With the exception of one agency formed in 1945 and another in 1952, all the rest of the 19 water agencies have come in the past six years. These districts are concentrated in Northern California. Table VII on page 52 shows the locations and area of each of these three categories of special act districts.

TABLE II. NUMBER OF SPECIAL ACT WATER DISTRICTS ENACTED BY THE LEGISLATURE, 1913-1962

Year*	Water agencies	Flood control districts	Flood control and water conservation districts	Other	Total
1915	0	1	0	2	3
1917	0	0	0	1	1
1919	0	0	0	1	1
1921	0	0	0	1	1
1923	0	0	0	1	1
1927	0	2	0	0	2
1933	0	0	0	1	1
1939	0	1	0	0	1
1944 [†]	0	1	0	0	1
1945	1	2	2	0	5
1947	0	0	1	0	1
1949	0	0	3	0	3
1951	0	0	6	1	7
1952 [†]	1	0	0	1	2
1953	0	1	2	1	4
1955	0	2	2	4	8
1959 [†]	0	0	1	0	1
1957	3	0	1	0	4
1959	8	1	4	2	15
1961	4	0	0	0	4
1962 [†]	2	0	0	0	2
TOTAL	19	11	22	16	68

* No districts were formed in years not listed.

[†] Extraordinary Session.

⁷² Brewer and Smith, *Op. Cit.*, p. 9.

General District Acts

Although the number of special act districts has about doubled in the past five years, a number of general district acts have shown a similar rate of growth. Table III on page 37 shows the total number of districts formed under each general act for the years 1950-51 to 1960-61.

TABLE III. TOTAL NUMBER OF GENERAL ACT DISTRICTS 1950-51-1960-61

	1950-51	1951-52	1952-53	1953-54	1954-55	1955-56	1956-57	1957-58	1958-59	1959-60	1960-61
California water	n.a.	n.a.	n.a.	n.a.	n.a.	67	77	87	88	92	100
California water storage	4	4	4	4	4	4	4	4	6	7	7
County water	n.a.	n.a.	n.a.	91	116	125	141	152	160	168	177
County waterworks	49	54	64	66	69	75	79	82	86	90	90
Flood control and flood water conservation	4	4	4	4	4	4	4	4	4	4	4
Irrigation *	107	107	116	117	113	114	113	115	115	115	113
Municipal water (1911)	n.a.	n.a.	n.a.	22	24	28	28	29	35	45	48
Water conservation (1921)	5	5	5	5	5	6	6	6	6	5	5
Water conservation (1931)	10	10	10	10	10	10	10	10	11	10	10
Water replenishment	--	--	--	--	--	0	0	0	1	1	1

* Calendar year basis

n.a.—not available

SOURCE: Alan Cranston, State Controller

It can be seen that the number of county water districts has nearly doubled in the seven-year period from 1953-54 to 1960-61, with 88 districts having been formed in that period for a total of 177 today. During the same seven years the number of municipal water districts more than doubled, increasing from 22 to 48. In the five-year period from 1955-56 to 1960-61, the number of California water districts rose from 67 to 100, an increase of 50 percent.

Although not increasing at such a rapid rate, county waterworks districts nonetheless have shown a substantial increase in the last 10 years, from 1950-51 to 1960-61. During this period the number of these districts increased from 49 to 90. These general district acts have also been amended often during the past decade or so.

On the other hand, the long-established and predominantly agricultural irrigation districts have remained static in number for several decades. In fact, in the 10-year period from 1950-51 to 1960-61 the net increase in these districts was only six—the total having risen from 107 to 113. The number of water conservation districts formed under the 1927 and 1931 acts and flood control and flood water conservation districts has also remained static in recent years.

Since few general district acts require notice of formation of districts to be filed with any state agency, there is no information available concerning California water districts prior to 1955-56 and county waterworks districts prior to 1950-51—the years when the State Controller began including these districts in his annual report on special districts.

It is expected that the number of *countywide* special district acts will not increase appreciably in the future since 36 of the 58 counties, including Alpine, the State's smallest, now have at least one countywide district and many others have what are essentially countywide districts. It is expected, however, that the number of special act districts will increase for other purposes such as providing new contracting entities to contract with the State. The start of this trend was obvious during the 1959, 1961 and 1962 legislative sessions as a result of the Department of Water Resources' policy of contracting with water districts covering as large an area as possible. In many cases it is not possible to easily consolidate several local districts for contracting purposes so a special act district is superimposed over the area, eliminating any problems of overlap, conflicting jurisdiction, etc.

On the other hand, the number of general act districts is expected to continue to increase as the State continues to grow, and the need for additional amendments to general district acts will continue.

TABLE IV. CHRONOLOGICAL LIST OF GENERAL DISTRICT ACTS

<i>Year</i>	<i>Title</i>
1866	Reclamation Districts Act
1872	Irrigation Act of 1871-72
1880	Drainage District Act (repealed)
	Protection District Act of 1880
1885	Drainage Law of 1885
1887	"Wright Act" (irrigation districts)
1895	Protection District Act of 1895
1897	California Irrigation District Act (repeal and re-enactment of "Wright Act")
	Drainage District Act (repealed)
1903	Drainage District Act of 1903
1905	Levee District Act
1907	Protection District Act of 1907
1909	Storm Water District Act of 1909
1911	Municipal Water District Act of 1911
1913	County Water District Act
	County Waterworks District Act
	California Water District Act
1915	California Irrigation Act (repealed)
	County Power Pumping District Act (repealed)
1919	California Irrigation Act of 1919 (1915 act re-enacted—unconstitutional)
	Conservancy Act of California (repealed)
	Drainage District Act
1921	California Water Storage District Act
	Public Utility District Act
	Municipal Utility District Act
1923	California Water Conservation District Act (repealed)
	Drainage District Act of 1923 (repealed)
1927	Metropolitan Water District Act
	Water Conservation Act of 1927
1929	Water Conservation Act of 1929 (repealed)
1931	Water Conservation Act of 1931
	Flood Control and Flood Water Conservation District Act
1935	Municipal Water District Law of 1935
1941	California Water Storage and Conservation District Act
1943	County Water Authority Act
1951	Community Services District Act
1955	Water Replenishment District Act
1959	Levee District Law of 1959

CHAPTER II

FORMATION AND AREA

The formation procedures for general act districts and special act districts differ greatly since the former are organized at the local level while the latter are, for the most part, created by the Legislature with very little or no local action necessary to activate them.

GENERAL ACT DISTRICTS

Formation

The formation procedures for general act districts can be divided into three basic steps. First, those in the local area wishing to organize the district are required to file a petition with the county board of supervisors of the principal county in which the proposed district is located (The sole exception is water storage districts, which file with the Department of Water Resources.) The number of signatures required varies from district to district as is shown in Table V on pages 42-46.

Second, for all general act districts except municipal water districts, a public hearing must be held, following the determination that all petition requirements have been met, and proceedings may be terminated if the petition is not sufficient. The board of supervisors of the principal county (or the Department of Water Resources in the case of water storage districts and water replenishment districts) conducts the hearing. The board generally has the authority to change proposed boundaries, excluding areas found not to be benefited by the district and including areas which can show benefit.

In the case of water replenishment districts, water storage districts and irrigation districts, the Department of Water Resources must make an investigation of the proposed project of the district under consideration. If the department's evaluation is adverse, changes in boundaries, etc., can be made to meet the department's objections. The formation procedure must be terminated if the objections are not met. With respect to irrigation districts, the department's objections can be overruled by a petition of three-fourths of the landowners of the proposed district.

During the formation process, before an election is held, a determination is usually made on a number of organizational options which may be available. These permit variations between districts formed under one general district act. For example, the number of irrigation district directors may be either three or five, and a choice must be made in the petition. California water storage districts may have 5, 7, 9 or 11 directors—a determination being made at the final hearing. The Water Conservation Acts of 1927 and 1931 have options of three, five or seven directors—the choice being specified in the petition.

TABLE V. VOTING BASIS AND FORMATION PROVISIONS

A GENERAL ACT DISTRICTS

	District voting basis	Formation ¹		
		Petition	Hearing	Election ²
California water	Landowner (one vote for each \$1 of assessed land value)	Owners of majority of land area (if noncontiguous area, owners of majority of assessed value of land in each area)	Yes	Yes
California water storage	Landowner (one vote for each \$100 of assessed land value)	Majority of landowners (including majority of assessed land value) or 500 landowners (including 10 percent of assessed land value) to Department of Water Resources	Yes (by Department of Water Resources)	Yes (by Department of Water Resources)
County water	Voter	Voters equal to 10 percent of voters in last gubernatorial election (if in cities, 10 percent in each)	Yes	Yes (if cities, majority in each)
County waterworks	Voter	25 percent of resident landowners or 25 percent of resident and non-resident landowners (including 15 percent of resident landowners)	Yes	Yes, if any protest (may omit election if petition signed by all owners of real property in district)
Flood control and flood water conservation	No provision for voting	10 landowners (including 25 percent of assessed land value)	Yes	No, action by board of supervisors
Irrigation	Voter	Majority of landowners (including majority of assessed land value), or 500 petitioners (electors or landholders) including owners of 20 percent of assessed land value	Yes (also investigation by Department of Water Resources)	Yes

¹ Unless otherwise indicated, board of supervisors of principal county receives petition and conducts hearing and election² Majority unless otherwise indicated

TABLE V. VOTING BASIS AND FORMATION PROVISIONS—Continued

A GENERAL ACT DISTRICTS—Continued

	District voting basis	Formation ¹		
		Petition	Hearing	Election ²
Municipal water (1911)	Voter	Voters equal to 10 percent of voters in last gubernatorial election (if cities, 10 percent in each) (other provisions, declaration of intention and inclusion of portion of a city partly incorporated in an existing district)	No	Yes
Water conservation (1927)	Landowner (one vote for each acre)	50 landowners or owners of majority of land area	Yes	Yes
Water conservation (1931)	Voter	500 voters or 20 percent of voters	Yes	Yes
Water replenishment	Voter	10 percent of voters (if more than one county, 10 percent in each county) to County Clerk	Yes (by Department of Water Resources)	Yes (by board of supervisors)

B SPECIAL ACT DISTRICTS

1. County Flood Control and Water Conservation Districts

Alameda	Voter	No provision	----	----
Contra Costa	Voter	No provision	----	----
Lake	Voter	No provision	----	----
Lassen-Modoc	Voter, bonds landowner (one vote for each \$1000 of assessed value of all property)	10 percent of voters of Lassen County (board may activate without petition ³)	No	At discretion of board of supervisors ²
Marin	Voter	No provision	----	----
Mendocino	Voter	No provision	----	----
Monterey	Voter	No provision	----	----
Napa	Voter	No provision	----	----
Plumas	Voter, bonds landowner (one vote for each \$1000 of assessed value of all property)	No provision	----	----
Riverside	Voter	No provision	----	----

² Unless otherwise indicated, board of supervisors of principal county receives petition and conducts hearing and election.³ Majority unless otherwise indicated.⁴ Lassen County Board of Supervisors.

TABLE V. VOTING BASIS AND FORMATION PROVISIONS—Continued

B SPECIAL ACT DISTRICTS—Continued

1 County Flood Control and Water Conservation Districts—Continued

	District voting basis	Formation		
		Petition	Hearing	Election ²
San Benito	Landowner (one vote in each zone in which own land)	----	----	Yes
San Joaquin	Voter	No provision	---	----
San Luis Obispo	Voter	No provision	----	----
Santa Barbara	Voter	No provision	----	----
Santa Clara	Voter	No provision	----	----
Santa Cruz	Voter	No provision	----	----
Sierra	Voter, bonds landowner (one vote for each \$1000 of assessed value of all property)	No provision	----	----
Siskiyou	Voter, bonds landowner (one vote for each \$1000 of assessed value of all property)	10 percent of voters (board may call election without petition)	No	At discretion of board of supervisors
Solano	Voter	No provision	----	----
Sonoma	Voter	No provision	----	----
Tehama	Voter, bonds landowner (one vote for each \$1000 of assessed value of all property)	No provision	----	----
Yolo	Voter	No provision	----	----

2 Flood Control Districts

American River	Voter	No provision	----	----
Del Norte County	Voter	No provision	----	----
Fresno Metropolitan	Voter	----	----	Yes
Humboldt County	Voter	No provision	----	----
Los Angeles County	Voter	No provision	----	----
Morrison Creek	Voter	No provision	----	----
Orange County	Voter	No provision	----	----
San Bernardino County	Voter	No provision	----	----

² Majority unless otherwise indicated

TABLE V. VOTING BASIS AND FORMATION PROVISIONS—Continued

B SPECIAL ACT DISTRICTS—Continued

2 Flood Control Districts—Continued

	District voting basis	Formation		
		Petition	Hearing	Election ²
San Diego County	No provision for voting	No provision	----	----
San Mateo County	Voter	No provision	----	----
Ventura County	Voter	No provision	----	----

3 Water Agencies

Alpine County	Voter	No provision	----	----
Amador County	Voter	No provision	----	----
Antelope Valley— East Kern	Voter	No provision	----	----
Contra Costa County	Voter	No provision	----	----
Crestline-Lake Arrowhead	Voter	----	----	Yes
Desert	Voter	No provision	----	----
El Dorado County	Voter	No provision	---	----
Kern County	Voter	----	----	Yes
Mariposa County	Voter	No provision	----	----
Mojave	Voter	25 voters (to Board of Supervisors of San Bernardino County)	Yes (by Depart- ment of Water Resources)	Yes (by Board of Supervisors of San Bernardino County)
Nevada County	Voter	No provision	- - -	- - -
Placer County	Voter	No provision	----	----
Sacramento County	Voter	No provision	----	----
San Geronimo Pass	Voter	No provision	----	----
Santa Barbara County	Voter	No provision	----	----
Shasta County	Voter	No provision	----	----
Sutter County	Voter	No provision	----	----
Upper Santa Clara Valley	Voter	No provision	----	----
Yuba County	Voter	No provision	----	----

² Majority unless otherwise indicated

TABLE V. VOTING BASIS AND FORMATION PROVISIONS—Continued

4 Other

	District voting basis	Formation		
		Petition	Hearing	Election ^a
Kings River Conservation District	Voter	No provision	----	----
Orange County Water District	Landowner or owner of improvements or other assessable rights (one vote per \$100 of assessed value in each division)	No provision	----	----
Palo Verde Irrigation District	Landowner (one vote per \$100 assessed value of land and improvements)	No provision	----	----

^a Majority unless otherwise indicated

With reference to water replenishment districts, the maximum ad valorem assessment to be permitted (up to 20 cents per \$100 assessed value) is included in the petition at the time of formation and becomes one of the factors presented to the voters at the election. Under the 1931 Water Conservation Act the petition similarly may include a request that taxes for bonded indebtedness be levied on all property rather than land only, which is the normal basis for assessment in these districts.

In the formation of districts under the Water Conservation Acts of 1927 and 1931, the proceedings are automatically terminated upon petition (objecting to the formation) by owners of more than one-half of the assessed value of the proposed district.

In 1961 the Legislature added slightly different provisions to the County Water District Act and the California Water District Act which specifically permit the board of supervisors to terminate formation proceedings before the election if, in their opinion, the district is "not in the public interest" (county water districts)¹ or if there is "good cause" (California water districts)² for it not to be formed. This explicit authority gives the local boards of supervisors a firmer control over formation of these districts and was enacted to reduce the number of uneconomic or otherwise impractical districts being formed.

In the formation of flood control and flood water conservation districts the board of supervisors itself creates the district after the hearing, as there is no provision in the act for an election. In the formation of county waterworks districts, the election can be dispensed with if the formation petition is signed by all owners of real property in the district.

¹ Section 34264.1, Water Code (Statutes of 1961, Chapter 1343).² Section 34302.5, Water Code (Statutes of 1961, Chapter 1323).

In all the remaining general act districts in this study an election is the third step in the formation procedure. The election is called by the body which received the petition.

A simple districtwide majority is required to approve formation of all districts except county water districts, where majorities must also be recorded in each city included in the proposed district as well as in the unincorporated area.

Recognizing the fact that general act districts have evolved separately over a long period of time, it is understandable that there would be a lack of uniformity in a number of these procedural items related to formation. For example, formation elections for county water districts must be held between 60 and 70 days after the hearing. A number of other district acts set no time period but the Water Conservation Act of 1931 provides a maximum period of 120 days. The requirements for publication of notice of election provide another example of a lack of uniformity between general district acts.

The County Waterworks District Act is unique in that it permits the formation of improvement districts and the approval of a bond issue to be consolidated with the formation election.

Following the formation of a county water district or a water replenishment district or a municipal water district, the county clerk of the principal county is required to file notice of the formation of the district with the county recorder and the Secretary of State. The latter official then issues a certificate of incorporation of the district, which in turn is filed with the county clerk. This certification date becomes the official formation date of the district. In the formation of water storage districts, the Department of Water Resources files a notice of formation with the county clerk only. In the formation of irrigation districts, California water districts and water conservation districts under both the 1927 and 1931 acts, the county clerk (or the board of supervisors in the case of irrigation districts) is required to file notice of formation only with the county recorder.

No other general district acts require any filing of notice of formation. Thus, no state agency or official has an accurate record of districts formed under the general district acts in this study and, consequently, no complete list of these is available.

Area

Table VI on pages 49-50 briefly outlines territorial requirements of general act districts in this study and the restrictions imposed upon their formation. It can be seen that a number of districts prohibit overlap or superimposition of either the same type of district, other types of districts, or both. With irrigation districts, for example, overlap is permitted only with the approval of the existing district.

The example of a small water district in San Diego County which serves 1,300 acres of land has often been cited with reference to superimposition of districts. This district is within a municipal water district which is within a county water district which is a member of the county water authority, which is a member agency of the Metropolitan Water District. Similar cases of the superimposition of several districts over one area exist in other areas of the State. At least two general district

acts and many special district acts were in part passed to permit overlap with other districts

It can also be seen from this table that in most cases, proposed districts need not be composed of contiguous areas. As explained above, all proposed district boundaries are subject to adjustment before the election so that only areas benefiting from the district are included. Additional restrictions in the case of irrigation districts, water storage districts and California water districts require that all areas included in the district must be susceptible to irrigation from common sources proposed by the district as its supply. Formation of water replenishment districts is limited to seven Southern California counties (Santa Barbara, Ventura, Los Angeles, San Diego, Riverside, San Bernardino and Orange).

All 10 general district acts included in this study can include both incorporated and unincorporated area.

A related problem—the growth of municipalities and creation of new municipalities including the areas of existing districts—was the subject of a lengthy court action, which concluded in April 1962. On December 6, 1957, the Downey County Water District, as a result of annexation by the city, was contained completely within the corporate boundaries of the City of Downey, in Los Angeles County. The city then passed a resolution declaring the district merged with the city. (The County Water District Act is silent on the matter of overlap with municipalities.) A court test was made of the merger and the superior court ruled against the city. On appeal, the district court of appeals then reversed the trial court decision. A hearing was denied by the State Supreme Court. At the time of publication the actual transfer of the district's property and assets to the city had not taken place.

In its decision the district court of appeals relied upon a 1910 rule of merger and declared

“ the general rule in connection with other special districts is that when the territory of a public corporation of limited powers is annexed to and entirely contained within the boundaries of a municipal corporation which has power to exercise the same functions as well as others essential to municipal government, the public corporation of limited powers, in the absence of special legislative enactment revealing it should continue its existence, of necessity automatically merges with the municipal corporation and ceases to exist. This doctrine of merger by operation of law is predicated on the theory of duplication of functions—otherwise two distinct local governmental bodies claiming to exercise the same authority, powers and franchises simultaneously over the same territory would ‘produce intolerable confusion, if not constant conflict.’ ”³

It is not known how many districts are subject to dissolution as a result of this decision and great concern among districts has resulted

³ *People ex rel City of Downey v Downey County Water District* (1962), 202 A C A 570, 875

TABLE VI. AREA OF GENERAL ACT DISTRICTS

<i>General district act</i>	<i>Area</i>
California water districts	<p>Lands susceptible of irrigation from a common source and by the same system of works, must be contiguous unless not more than two miles apart or separated by state hospital land</p> <p>Lands in a California water district in existence not less than five years and not delivering water may be included in an irrigation district, under water service contracts with United States, state agency or district. Lands may become part of any irrigation, drainage or reclamation project</p>
California water storage districts	<p>Lands irrigated or susceptible of irrigation from a common source and by the same system of works, need not be contiguous</p> <p>May include land in other agencies including other water storage districts having different plans, purposes, and objectives</p>
County water districts	<p>County or two or more contiguous counties or a portion of such county or counties, may include unincorporated territory</p> <p>Lands in a county water district in existence not less than five years and not furnishing water may be included in irrigation districts</p> <p>A county water district which includes part or all of the land in an irrigation district may take over properties of the irrigation district</p> <p>A district may be annexed to or included within a municipal utility district without impairing legal existence</p>
County waterworks districts	<p>Any unincorporated portion of a county, or the whole or any portion of one or more incorporated cities and contiguous unincorporated territory, and not included in a county irrigation or county waterworks district, may include noncontiguous territory of not less than 10 privately-owned acres which may be supplied through same distribution system. Any overlap is prohibited</p>
Flood control and flood water conservation districts	<p>Any area within one county requiring control of floods and conservation of floodwaters. Shall not include lands within any other flood control district "heretofore created or organized"</p>
Irrigation districts	<p>Land irrigable from common source and by same system, need not be contiguous, includes residential and business</p> <p>New districts may not include land in another irrigation district without consent of board of existing district</p>
Municipal water districts (1911)	<p>Any county or portion of a county or lands in more than one county, may consist of either incorporated or unincorporated territory alone or both; if city included, its entire corporate area must be included, with certain exceptions, land need not be contiguous</p> <p>Identity or legal existence of any public corporation or agency is not impaired by inclusion in district</p>

TABLE VI. AREA OF GENERAL ACT DISTRICTS—Continued

<i>General district act</i>	<i>Area</i>
Water conservation districts (1927)	Lands in watershed of any stream of water or unnavigable river, or adjacent thereto or deriving a water supply therefrom, may be entirely within unincorporated territory or partly within incorporated territory, may be within one or more counties, need not be contiguous
Water conservation districts (1931)	The whole or a part or parts of one or more watersheds of any stream or streams of water or unnavigable river or rivers, or territory adjacent thereto or deriving a water supply therefrom; may be entirely within unincorporated territory or partly within incorporated territory, may be within one or more counties, need not be contiguous
Water replenishment districts	Incorporated or unincorporated territory or both within one or more of the Counties of Santa Barbara, Ventura, Los Angeles, San Diego, Riverside, San Bernardino and Orange, except area now in Orange County Water District. Overlap with existing agency which replenishes ground water supplies prohibited

SPECIAL ACT DISTRICTS

Formation

The passage by the Legislature of a special act district generally replaces at least the first two steps of formation and most often the third step as well. As is shown on Table V, only 5 of the 55 special act districts included in this study (one county flood control and water conservation district, one flood control district, and three water agencies) required an election within the district itself to render the district operative, and only one district—the Mojave Water Agency—required the filing of a petition and the conducting of a hearing by the board of supervisors in a manner similar to that of general act districts.

Unusual circumstances in the area of the Mojave agency also resulted in a requirement in the act that following the filing of the petition, the Department of Water Resources make a study of the need for the district.

In the majority of the special act districts covered by this study (see Table VIII) the governing body is the board of supervisors. In these cases it has been customary for the board to pass a resolution declaring the district operative and duly organized. In at least two special act districts (Sutter County Water Agency and Nevada County Water Agency) this action has not been taken and the districts, for all practical purposes, are inactive. Two other districts (Siskiyou County Flood Control and Water Conservation District and Sierra County Flood Control and Water Conservation District) have been officially recognized by board resolution but are inoperative. There is no requirement that districts created by special act be activated within any specific time period (except for those requiring an election to be held within a specific period following the passage of the act).

To date none of the special act districts included in this study have been rejected by the voters in local referenda (However, a formation election for the Crestline-Lake Arrowhead Water Agency has been set for January 8, 1963)

In only a few cases are notices of formation of special act districts required to be filed with the county recorder or Secretary of State. It would seem that there is more reason for general act districts to make such filings than special act districts since special act districts are identifiable from their statutes.

Area

In each of the 55 special district acts in this study the area included in the districts is specifically set forth and is described in Table VII on page 51. The Legislature itself defines the original boundaries of special act districts.

TABLE VII. AREA INCLUDED IN SPECIAL ACT DISTRICTS *

Special act districts	Number of districts	County wide	Part of one county	More than one county
County Flood Control and Water Conservation Districts	22	Alameda, Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Sierra, Sonoma, Tehama (15)	Plumas, Riverside, San Benito, Shasta, Yolo (5)	Lassen, Modoc, Solano, Yolo (Solano, Yolo Counties) (2)
Flood Control Districts	11	Del Norte County †, Humboldt County †, Orange County, San Bernardino County, San Diego County †, San Mateo County, Ventura County † (7)	American River (Sacramento County), Fresno Metropolitan, Los Angeles County, Morrison Creek (Sacramento County) (4)	None
Water Agencies	19	Alpine County, Amador County, El Dorado County, Kern County, Nevada County, Placer County, Sacramento County, Santa Barbara County, Shasta County, Sutter County (10)	Contra Costa County, Crestline-Lake Arrowhead (San Bernardino County), Desert (Riverside County), Merced County, Moraga (San Bernardino County), San Geronimo Pass (Riverside County), Upper Santa Clara Valley (Los Angeles County) (7)	Antelope Valley-East Kern (Los Angeles, Kern Counties), Yuba County ‡ (2)
Other	3	None	Orange County Water District, Palo Verde Irrigation District (Riverside County) (2)	Kings River Conservation District (Kings, Tulare, Fresno Counties) (1)

* Based upon district act as last amended by Legislature. Some districts may annex and exclude area without action of Legislature. (See Chapter VI)

† Excluding only offshore islands.

‡ Annexation of areas in other counties permitted by act.

None of the general district acts can prohibit the Legislature from superimposing a special act district over an existing general act district. This fact seems to be one of the major reasons for creation of a number of these districts by means of special acts. That is, a special district act may be, in practical terms, the only way to create a countywide district without raising conflicts with numerous existing general act districts, each with different overlap provisions.

One special act district, in its response to the committee questionnaire, stated that a general act district had announced it would withhold approval of formation of the water district under a general district act and, therefore, a special district act was the simplest means of overcoming this opposition.

Another major reason for formation by special district act is (rather than replacing existing districts) to specifically provide larger entities for the purpose, for example, of contracting with the federal or state government. Most of these special district acts have express provisions providing that they *do not* impair the existence of general act districts within the special act districts.

CHAPTER III

GOVERNING BODIES

The provisions for governing bodies of the water districts included in this study are somewhat more uniform than other aspects of these districts.

SELECTION

General Act Districts

With the exception of flood control and flood water conservation districts and county waterworks districts, members of the governing bodies of the 10 general district acts in this study are elected. Directors of county waterworks districts may be either the board of supervisors or a separate body appointed by the supervisors. The board of supervisors always serves as the governing body of flood control and flood water conservation districts.

All eight general district acts with elected directors provide for election by division. Four require election by division and three others require it if divisions are established. Only the Irrigation District Act provides for election by division on an optional basis.

Special Act Districts

With regard to special district acts, all of the county flood control and water conservation districts except two have the board of supervisors serving as ex officio directors of the district. The Tehama County and Yolo County Flood Control and Water Conservation Districts each provide for appointment of directors by the board of supervisors. Three of these district acts—Contra Costa, Lake and San Joaquin—provide that the board of supervisors may delegate all of its authority to an appointed commission to serve in place of the board itself (only Contra Costa has exercised this option to date).

All of the flood control districts formed by special act, except American River and Fresno Metropolitan, also utilize the county board of supervisors as governing body. Fresno Metropolitan provides a board composed of appointed city and county officials, a city council member, a board of supervisors member, and district residents appointed by these two bodies (see Table VIII). The American River District provides for election of directors at-large.

Ten of the 19 special act water agencies have the county board of supervisors serving ex officio as directors of the agency. Five of the agencies utilize election by division, two utilize a combination of some elected at large and some elected by division, and one includes a combination of election at large, election by division and appointment. One agency act (Amador County) permits either elected directors or the board of supervisors serving ex officio.

Of the other special act districts, the Palo Verde Irrigation District elects directors at large, the Kings River Conservation District uses a combination of election at large and election by district, and the

TABLE VIII. GOVERNING BODY PROVISIONS

A GENERAL ACT DISTRICTS				
	Size	Qualifications	Selection	Maximum remuneration
California water	5*	District landowner	Elected (by division if established)	\$10/day and expenses (can be changed by by laws)
California water storage	5, 7, 9 or 11†	Not specified	Elected by division	\$25/day and 10¢/mile between residence and office, expenses
County water	5	Voter of district (of division if elected by division)	Elected (by division if established)	\$50/meeting (monthly limit of 2), other business, \$20/day and expenses
County waterworks	5	Board of supervisors	Ex officio	None
		Landowner and voter‡	Appointed by board of supervisors	\$10/month
Flood control and flood water conservation	5	Landowner and resident of district	Appointed (by board of supervisors)	Expenses only
Irrigation	3 or 5†	Landowner and voter of district and division, resident if elected by division	Elected by division or at large	\$20/day, or \$400 monthly salary if district produces power, 10¢/mile between residence and office, expenses
Municipal water (1911)	5	Division resident	Elected by division	\$50/meeting (monthly limit of 2)
Water conservation (1927)	3, 5, or 7†	County resident and district voter	Elected (by division if established)	Meetings, \$10/day, other business, \$10 per item, expenses
Water conservation (1931)	3, 5, or 7†	County resident and district voter	Elected by division	Meetings, \$25/day, other business, \$25 per item, expenses
Water replenishment	5	Division resident	Elected by division	\$50/meeting (monthly limit of 2)
B SPECIAL ACT DISTRICTS				
1. County Flood Control and Water Conservation Districts				
Alameda	5	Board of supervisors	Ex officio	\$24/month and expenses

County	Number of supervisors	Board of supervisors (may delegate all authority to commission of 7)	Ex officio	\$24/month and expenses
Contra Costa	5	Board of supervisors (may delegate all authority to commission of 7)	Ex officio	
Lake	5	Board of supervisors (may delegate all authority to commission of 9)	Ex officio	Expenses only
Lassen-McClellan	10	All county supervisors in district	Ex officio	Expenses only
Marin	5	Board of supervisors	Ex officio	No provision
Mendocino	5	Board of supervisors	Ex officio	Expenses only
Monterey	5	Board of supervisors	Ex officio	No provision
Napa	5	Board of supervisors	Ex officio	\$100/month and expenses
Plumas	5	Board of supervisors	Ex officio	Expenses only
Riverside	5	Board of supervisors	Ex officio	No provision
San Benito	5	Board of supervisors	Ex officio	No provision
San Joaquin	5	Board of supervisors (may delegate all authority to commission of 7)	Ex officio	\$24/month and expenses
San Luis Obispo	5	Board of supervisors	Ex officio	No provision
Santa Barbara	5	Board of supervisors	Ex officio	Expenses only
Santa Clara	5	Board of supervisors	Ex officio	No provision
Santa Cruz	5	Board of supervisors	Ex officio	Expenses only
Sierra	5	Board of supervisors	Ex officio	Expenses only
Siskiyou	5	Board of supervisors	Ex officio	Expenses only
Solano	5	Board of supervisors	Ex officio	Expenses only
Sonoma	5	Board of supervisors	Ex officio	\$1000 per year and expenses
Tehama	5	Landowner, resident and voter of district	Appointed by board of supervisors	Expenses only
Yolo	5	Not specified	Appointed by board of supervisors	Expenses only

* May be increased to 7, 9 or 11 members by board resolution at any time after four years from the formation of a district

† Depends on number of divisions

‡ Board of supervisors may appoint independent board upon petition of 10 percent (or 25) of district water users

TABLE VIII. GOVERNING BODY PROVISIONS—Continued

B SPECIAL ACT DISTRICTS—Continued
2 Flood Control Districts

	Size	Qualifications	Selection	Maximum remuneration
American River	5	Residents (for one year) and voter of district	Elected at large	\$30/meeting (monthly limit of 1), expenses
Del Norte County	5	Board of supervisors	Ex officio	No provision
Fresno Metropolitan	9	(2) Directors of public works city and county (4) All district residents, one a member of city council	Ex officio Appointed by city council	Meeting, \$10/day \$, other business, \$10 per diem; expenses
Humboldt County	6	(3) Two district residents, other one, member of board of supervisors Board of supervisors	Appointed by board of supervisors Ex officio	No provision
Los Angeles County	6	Board of supervisors	Ex officio	No provision
Morrison Creek	5	Board of supervisors (Sacramento County)	Ex officio	Expenses only
Orange County	5	Board of supervisors	Ex officio	No provision
San Bernardino County	5	Board of supervisors	Ex officio	No provision
San Diego County	5	Board of supervisors	Ex officio	No provision
San Mateo County	6	Board of supervisors	Ex officio	Expenses only
Ventura County	5	Board of supervisors	Ex officio	\$50/month

3. Water Agencies

Alpine County	5	Board of supervisors	Ex officio	\$30/meeting (monthly limit of 3), other business, \$50/day and expenses
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	5	Division voter, or Board of Supervisors	Elected by division Ex officio	\$20/meeting (monthly limit of 3) and expenses
Amador County		Board of Supervisors	Ex officio	None
Antelope Valley-East Kern	7	Division resident	Elected by division	\$20/meeting (monthly limit of 3)
Contra Costa County	5	Board of supervisors	Ex officio	No provision
Crestline-Lake Arrowhead	5	Division resident	Elected by division	\$20/meeting (monthly limit of 3)
Desert	5	Division resident	Elected by division	\$20/meeting (monthly limit of 3)
El Dorado County	5	Board of supervisors	Ex officio	Expenses only
Kern County	7	Division voter	Elected by division	\$25/meeting and expenses
Mariposa County	5	Board of supervisors	Ex officio	\$20/meeting and expenses (can be changed by $\frac{2}{3}$ vote of board)
Mojave	11	Voter of agency (of division if elected by division)	8—Elected (7 by division, 1 at large), 3—appointed by various agencies	\$20/meeting (monthly limit of 3)
Nevada County	5	Board of supervisors	Ex officio	\$20/meeting (monthly limit of 3); other business, \$20/day and expenses
Placer County	5	Board of supervisors	Ex officio	Expenses only
Sacramento County	5	Board of supervisors	Ex officio	Expenses only
San Geronimo Pass	7	Elector of division (elector or land- owner of agency if elected at large)	Elected, 5 by division and 2 at large	\$20/meeting (monthly limit of 3)
Santa Barbara County	5	Board of supervisors	Ex officio	Expenses only
Shasta County	5	Board of supervisors	Ex officio	Expenses only
Sutter County	5	Board of supervisors	Ex officio	\$20/meeting and expenses (can be changed by $\frac{2}{3}$ vote of board and majority of advisory council)

§ Except city or county officials

TABLE VIII. GOVERNING BODY PROVISIONS—Continued

	Size	Qualifications	Selection	Maximum remuneration
Upper Santa Clara Valley	7	Los Angeles County resident and elector or landowner of agency (of division if elected by division)	Elected, 6 by division, 1 at large	\$20/meeting (monthly limit of 3)
Yuba County	5	Board of supervisors	Ex officio	\$20/meeting and expenses (can be changed by $\frac{2}{3}$ vote of board and majority of advisory council)
4. Other				
Kings River Conservation District	7	Landowner, elector and resident of district (of division if elected by division)	Elected, 6 by division, 1 at large	\$20/meeting (monthly maximum of 5), expenses, and other compensation as fixed by board
Orange County Water District	10	District resident and division landowner	Appointed, 3 1 each by City Councils of Anaheim, Fullerton and Santa Ana, elected, 7—by division	\$20/meeting and mileage, other business, \$30/day and expenses
Palo Verde Irrigation District	7	District landowner (majority must also be district residents)	Elected at large	\$20 per diem

Orange County Water District uses a combination of election by district and appointment by city councils. The Orange County Water District situation came about when the original district, including all seven directors elected by division, was enlarged to take in three cities. To provide representation to these new areas each city was permitted to appoint a director and the board was enlarged to accommodate the additional directors.

The American River Flood Control District Act (1927) and the two water agencies created by a single act of the 1959 Legislature—the Mojave Water Agency and the Antelope Valley-East Kern Water Agency—provide that the first district governing board be appointed by the Governor with subsequent members elected.

SIZE

General Act Districts

Four of the general district acts in this study provide that the size of the governing body may vary from district to district. Irrigation districts may have three or five directors; water conservation districts of both 1927 and 1931 each have an option of three, five or seven directors; and water storage districts have an option of 5, 7, 9 or 11 directors. The six remaining general district acts each have governing bodies consisting of five members. A unique provision permitting the enlargement of the Board of California Water Districts to 7, 9 or 11 members at any time four years after formation was enacted in 1961.¹

Special Act Districts

Of the special act flood control and water conservation districts, all except the Lassen-Modoc District have governing bodies of five members. The Lassen-Modoc District has a board of 10 members as it encompasses two counties. With the exception of the Fresno Metropolitan Flood Control District, which has a nine-member board, all special act flood control districts have five-member boards.

With regard to the special act water agencies, 14 have five-member governing bodies, four have seven-member bodies, and one has an 11-member body. Of the other special act districts, the Kings River Conservation District and the Palo Verde Irrigation District each have seven-member governing bodies and the Orange County Water District has a board of 10 members.

Although the vast majority of districts have five-member governing bodies, there seems to be no real agreement as to the most ideal size. Those with larger boards, the Orange County Water District and the Mojave Water Agency, for example, required these larger boards to meet organization requirements of the local districts.

A number of districts, however, informed the committee that procedural problems often arose with the operation of three-member boards when one member was absent. As a result of this problem, the committee questionnaire included a question as to the actual number of directors utilized by those districts given a choice. The answers to this question are as follows:

¹ Section 34708, Water Code (Statutes 1961, Chapter 1323).

**TABLE IX. SIZE OF GOVERNING BODY OF DISTRICTS
WITH OPTIONAL PROVISIONS**

<i>Type of district</i>	<i>Number of dists.</i>	<i>Number of responses</i>	<i>Size of board</i>				
			3	5	7	9	11
Irrigation	110	78	24	52	n a	n a	n a
Water conservation (1927)	5	2	0	0	2	n a.	n a.
Water conservation (1931)	11	8	0	2	6	n a	n a
Water storage	7	8	n a	3	1	1	1
Totals	133	90	24	57	11	1	1

n a—not applicable

Thus it can be seen that irrigation districts are the only general act districts utilizing three-member boards, with approximately one-third of the responding districts using this size board. From the table it can also be seen that a majority of those districts formed under general district acts with optional board sizes chose the five-member board.

TERM OF OFFICE

Section 25000 of the Government Code provides four-year terms for members of all county boards of supervisors. Therefore, all districts using the board of supervisors as ex officio boards of directors are subject to four-year terms. With very few exceptions, all of the other districts in this study provide four-year terms for directors.

The exceptions include the Palo Verde Irrigation District, which provides three-year terms, and the Fresno Metropolitan Flood Control District, which provides both two- and four-year terms, depending upon the method of selection of members. Also of interest is the Metropolitan Water District Act, which is a general district act not providing fixed terms of office for directors, as directors serve at the pleasure of the appointing entity.

QUALIFICATIONS

General Act Districts

As is indicated in Table VIII, all general act districts except water storage districts establish some qualifications for membership on the governing board of the district. All general district acts providing for election by division, except water storage districts, require that the director be a voter or resident of the division from which he is elected. Two general district acts—irrigation districts and California water districts—require that directors be landowners. A similar requirement is made by the Flood Control and Flood Water Conservation District Act, which has no provisions for voting.

Special Act Districts

The Tehama County Flood Control and Water Conservation District requires directors to be both landowners and residents and the Yolo County Flood Control and Water Conservation District has no specific qualifications for directors. The remaining special act districts in this category are governed by the board of supervisors.

Of the special act flood control districts, the American River district and the Fresno Metropolitan district require that a director be a resi-

dent of the district. All other districts in this category are governed by the board of supervisors.

Of the special act water agencies, only the Upper Santa Clara Valley Water Agency and the San Geronimo Pass Water Agency require that directors be landowners (here it is required if the residence requirement is not met). All other districts require residence in the district or division if elected by division.

All three of the other special act districts—Kings River Conservation District, Orange County Water District and Palo Verde Irrigation District—require land ownership as a condition of membership on the district's governing body. All three also have residence requirements.

REMUNERATION

General Act Districts

The compensation for directors of general act districts varies from district to district (see Table VIII). Generally, however, compensation is based either upon a per-day or per-meeting basis, often with a monthly limit. Some districts also provide for expenses, including travel, etc.

Special Act Districts

The special act districts with elected boards generally follow a similar pattern with various combinations of rates per-day and per-meeting and with various expense allowances.

There is a great deal of variation among those special act districts governed by the county board of supervisors, whose pay as supervisors is set by statute. There are three general patterns of compensation of the boards in this situation. Some districts governed by the board set a nominal additional salary (\$24 per month, for example) and provide for expenses. The Sonoma County Flood Control and Water Conservation District provides the greatest compensation of all the special act districts—\$1,900 per year plus expenses.

On the other hand, some of the special act districts governed by the board of supervisors make no provision for additional compensation above the regular salary of supervisors.

Other special act districts provide only expenses for the board.

Of course, the basic pay of supervisors varies greatly from county to county. For example, Los Angeles County supervisors receive \$21,000 a year while Sierra County supervisors receive only \$2,400 a year. Both of these boards have at least one water district for which they serve as governing body.

Some of the special act districts have provisions for the appointment of citizens' advisory bodies to assist the governing bodies. The number of members of these advisory groups varies a great deal, as do their responsibilities and compensation.

CHAPTER IV

FUNCTIONS AND POWERS

STORAGE AND DISTRIBUTION OF WATER

General Act Districts

All but one (Flood Control and Flood Water Conservation District Act) of the general district acts in this study give the districts the power to store and distribute water and act as wholesale and/or retail water distribution entities.

Special Act Districts

All of the special act county flood control and water conservation districts have the authority to store and distribute water (Mendocino, which is limited to flood and storm waters is the only district limited in this regard), but one of the special act flood control districts (San Diego County) does not have this power and six of these districts (American River, Fresno Metropolitan, Morrison Creek, Los Angeles County, San Mateo County, and Ventura County) have only limited power to store and distribute water. The Fresno Metropolitan and Los Angeles County Flood Control Districts are permitted only to store water and this storage is limited to storm and other waste waters. An amendment to the Los Angeles district act permits the district to store imported and reclaimed waters for ground water replenishment, however, when such waters are provided to the district without charge. Special zones have been established for this purpose and the district has engaged in replenishment, in co-operation with local districts, for several years. The Morrison Creek Flood Control District is permitted both storage and distribution but this, too, is limited to flood and storm waters. The American River, San Mateo County and Ventura County Flood Control Districts are limited to storage only without any other restrictions.

Districts not permitted to distribute water, or those which are limited to distribution or storage of storm, flood and waste water, as a result are not capable of serving as wholesale or retail water entities and, for example, would not be able in their present form to serve as a "master agency" for water from the State Water Facilities.

All 19 of the special act water agencies and the three other special act districts included in this study have the power to store and distribute water. Six of the water agencies (Alpine County, Amador County, Kern County, Mariposa County, Nevada County and Placer County) are limited in that they can distribute water outside the agency only if such water is in excess of the agency's needs.

TABLE X. POWERS

A. GENERAL ACT DISTRICTS				
	Eminent domain*	Storage and distribution of water	Ground water replenishment	Hydroelectric power
California water	Yes (CCP)	Yes	Not specified	May contract with agencies for construction and operation of hydroelectric works
California water storage	Yes (CCP and Const.), except property of another public agency	Yes	Not specified	Yes, but limited to incidental development
County water	Yes (CCP)	Yes	Not specified	Yes, but limited to incidental development (wholesale only)
County waterworks	Power not specifically granted	Yes	Not specified	No
Flood control and flood water conservation	Yes	No	Not specified	No
Irrigation	Yes (CCP)	Yes	Yes	Yes
Municipal water (1911)	Yes, but outside district requires board of supervisors' consent under certain circumstances	Yes	Yes	No
Water conservation (1927)	Yes	Yes, but certain limitations on ground water acquisition	Yes	No
Water conservation (1931)	Yes, except cemeteries	Yes	Yes	No
Water replenishment	Yes, except water rights already put to beneficial use or property owned by an agency having replenishment power. But outside county requires board of supervisors' consent	Yes, but limited to replenishment	Yes, and also has related assessment power ("pump tax")	No

* Unless otherwise stated, the provision is general in scope.
 CCP expressly incorporates Code of Civil Procedure, Part 3, Title 7 (Sections 1237 to 1266 2).
 Const. Expressly incorporates California Constitution, Article I, Section 14

TABLE X. POWERS—Continued

B SPECIAL ACT DISTRICTS

1 County Flood Control and Water Conservation Districts

	Eminent domain*	Storage and distribution of water	Ground water replenishment	Hydroelectric power
Alameda	Yes, but outside county requires board of supervisors' consent	Yes	Yes	No
Contra Costa	Yes, except property of city and county or municipal utility district	Yes	Yes	No
Lake	Yes, but outside county requires board of supervisors' consent	Yes	Not specified	No
Lasen-Mendon	Yes, except water rights and water facilities, but limited to district (CCP)	Yes	Yes	Yes (wholesale only)
Marin	Yes, except city and county or public district	Yes	Yes	No
Mendocino	Yes (CCP)	Yes, but limited to flood and storm waters	Yes	No
Monterey	Yes but outside county for reclamation requires board of supervisors' consent	Yes	Yes	No
Napa	Yes	Yes	Yes	No
Plumas	Yes, except water rights and water facilities, but outside agency requires board of supervisors' consent (CCP)	Yes	Yes	Yes (wholesale only)

Riverside	Yes, but subject to certain specific limitations	Yes	Yes	No
San Benito	Yes, except Pacheco Pass Water District property	Yes	Yes	No
San Joaquin	Yes, except property of city and county or municipal utility district, but limited to district	Yes	Yes	No
San Luis Obispo	Yes	Yes	Yes	No
Santa Barbara	Yes, except property of city and county or municipal water district	Yes	Yes	No
Santa Clara	Yes, except in other water conservation districts within county	Yes	Yes, and also has related assessment power ("pump tax")	No
Santa Cruz	Yes (CCP)	Yes	Yes	No
Shasta	Yes, but outside county requires board of supervisors' consent (CCP)	Yes	Yes	Yes (wholesale only)
Shasta	Yes, except water rights and water facilities, but limited to county (CCP)	Yes	Yes	Yes (wholesale only)
Solano	Yes, except public water development projects, but limited to district (CCP and Const.)	Yes	Yes	No
Sonoma	Yes (CCP)	Yes	Yes	Yes
Tehama	Yes, except water rights and water facilities, but limited to county (CCP)	Yes	Yes	Yes
Yolo	Yes, but outside county requires board of supervisors' consent	Yes	Yes	No

* Unless otherwise stated, the provision is general in scope.
CCP Expressly incorporates Code of Civil Procedure, Part 3, Title 7 (Sections 1207 to 1209.2).
Const. Expressly incorporates California Constitution, Article I, Section 14

TABLE X. POWERS—Continued

B. SPECIAL ACT DISTRICTS—Continued

2 Flood Control Districts

	Eminent domain*	Storage and distribution of water	Ground water replenishment	Hydroelectric power
American River	Yes	Only storage	Not specified	Yes
Del Norte County	Yes	Yes	Yes	No
Fresno Metropolitan	Yes	Only storage of flood, storm and other waste waters	Yes but limited to flood, storm and other waste waters	No
Humboldt County	Yes	Yes	Yes	Yes (wholesale only)
Los Angeles County	Yes (CCP)	Only storage of flood, storm and other waste waters (and unreported and reclaimed water when furnished without cost to district)	Yes, but limited to flood, storm and other waste waters (and unreported and reclaimed water when furnished without cost to district)	No
Morrison Creek	Yes (CCP)	Yes, but limited to flood and storm waters	Yes, but limited to flood and storm waters	No
Orange County	Yes (not beyond 15 miles outside district) (CCP)	Yes	Yes	No
San Bernardino County	Yes	Yes	Yes	No
San Diego County	No	No	No	No
San Mateo County	Yes, but outside county requires board of supervisors, and city council consent	Only storage	Yes	No
Ventura County	Yes	Only storage	Yes	No

3. Water Agencies

Alpine County	Yes, except public water use property, but outside county requires board of supervisors' consent (CCP and Const.)	Yes	Yes	Yes (wholesale only), also can sell rights to use falling water
Amador County	Yes, but outside county requires board of supervisors' consent (CCP and Const.)	Yes	Yes	Yes (wholesale only), also can sell rights to use falling water
Antelope Valley-East Kern	Yes, but limited to agency	Yes	Yes	No
Contra Costa County	Yes, except public water use property, but limited to agency (CCP and Const.)	Yes	Yes	No
Crestline-Lake Arrowhead	Yes, but outside agency requires board of supervisors' consent	Yes	Yes	Yes (wholesale only), also can sell rights to use falling water
Desert	Yes, but limited to agency	Yes	Yes	Yes (wholesale only), also can sell rights to use falling water
El Dorado County	Yes, except public water use property, but limited to agency (CCP and Const.)	Yes	Yes	Yes (wholesale only), also can sell rights to use falling water
Kern County	Yes, but outside county requires board of supervisors' consent (CCP and Const.)	Yes	Yes	Yes (wholesale only), also can sell rights to use falling water
Mariposa County	Yes, except public water use property, (CCP and Const.)	Yes	Yes	Yes, also can sell rights to use falling water
Mojave	Yes, except public water use property, but limited to agency (CCP and Const.)	Yes	Yes	Yes (wholesale only)
Nevada County	Yes, except public water use property, outside agency requires board of supervisors' consent (CCP and Const.)	Yes	Yes	Yes (wholesale only), also can sell rights to use falling water

* Unless otherwise stated, the provision is general. In some CCP Expressly incorporates Code of Civil Procedure, Part 3, Title 7 (Sections 1287 to 1296.2). Const. Expressly incorporates California Constitution, Article I, Section 14

TABLE X. POWERS—Continued

8. SPECIAL ACT DISTRICTS—Continued

3. Water Agencies—Continued

	Eminent domain*	Storage and distribution of water	Ground water replenishment	Hydroelectric power
Placer County	Yes, except public water use property, outside agency requires board of supervisors' consent (CCP and Const)	Yes	Yes	Yes (wholesale only), also can sell rights to use falling water
Sacramento County	Yes, except public water use property (CCP and Const)	Yes	Yes	No
San Geronimo Pass	Yes, but limited to agency property (CCP and Const)	Yes	Yes	Yes (wholesale only), also can sell rights to use falling water
Santa Barbara County	Yes, except public water use property, (CCP and Const)	Yes	Yes	Yes, but limited to incidental development and use of agency
Shasta County	Yes, except public water or power use property, but outside county requires board of supervisors' consent (CCP and Const)	Yes	Yes	Yes, but limited to incidental development (wholesale only), also can sell rights to use falling water
Sutter County	Yes, but limited to agency (CCP and Const)	Yes	Yes	No
Upper Santa Clara Valley	Yes, but outside agency requires board of supervisors' consent	Yes	Not specified	Yes (wholesale only), also can sell rights to use falling water
Yuba County	Yes, but outside county requires board of supervisors' consent, (CCP and Const)	Yes	Yes	Yes, but limited to incidental development, also can sell rights to use falling water

4 Others

Kings River Conservation District	Yes, except public water use property (CCP)	Yes	Yes	Yes	Yes
Orange County Water District	Yes, except property used for water, power, within Santa Ana River watershed (or study of planfile)	Yes	Yes	Yes, and also has related assessment power ("pump tax")	No
Palo Verde Irrigation District	Yes	Yes	Yes	Yes	Yes

* Unless otherwise stated, the provision is general in scope
 CCP Expressly incorporates Code of Civil Procedure, Part 3, Title 7 (Sections 1237 to 1266.2)
 Const. Expressly incorporates California Constitution, Article I, Section 13

GROUND WATER REPLENISHMENT

A second power which is closely related to the storage and distribution of water is ground water replenishment. Until recently, in most districts there has been no need for specific replenishment programs of the type authorized by the Water Replenishment District Act or undertaken by certain districts in the San Francisco Bay area and Southern California. As a result, in a number of cases the power of ground water replenishment may be implied from the term "storage" as used in the acts. These acts generally authorize storage of water "for any useful purpose" or similar language. In the case of districts with the expressed power of replenishment, specific reference to underground storage or the sinking and spreading of water is usually included.

There are five general district acts (California Water, California Water Storage, County Water, County Waterworks, and Flood Control and Flood Water Conservation District Acts) that do not expressly authorize replenishment. Twenty-one of the 22 special act county flood control and water conservation districts (Lake is the only exception), 9 of the 11 flood control districts (American River and San Diego County are the exceptions), 18 of the 19 water agencies (Upper Santa Clara Valley is the exception), and the 3 other special act districts have the power of ground water replenishment.

One general act district (Water Replenishment District Act) and two special district acts (Santa Clara County Flood Control and Water Conservation District and Orange County Water District) have specific authorization to conduct replenishment programs utilizing the special "replenishment assessment" (discussed in detail in Chapter V, Financing of Districts). In addition, one district formed under a general act (Alameda County Water District) has similar replenishment powers which were added by special act of the Legislature in 1961. It should be noted that the Water Conservation Act of 1931 came into being as a result of the need for replenishment programs and this act contains explicit language authorizing replenishment but does not provide for a "replenishment assessment." The United Water Conservation District in Ventura County and the Santa Clara Valley Water Conservation District in Santa Clara County, both formed under this act, have engaged in replenishment programs for many years. A number of districts have recently expressed the view that the "replenishment assessment" is necessary to provide a complete replenishment program. The Legislature may well be faced with requests to grant this additional power to both general district acts and special district acts in the near future.

EMINENT DOMAIN

The power of eminent domain has received a great deal of attention from the Legislature in recent years. A general lack of uniformity exists among district acts with regard to this power.

All general act districts and all but one special act district (San Diego County Flood Control District) in this study have the basic power of eminent domain. A wide variety of restrictions have been placed upon individual acts, however.

As shown in Table X, some district acts expressly incorporate Article I, Section 14 of the *California Constitution*; some expressly incorporate Part 3, Title 7 (Sections 1237-1266 2) of the *Code of Civil Procedure*; and some do not include specific reference to either.

General Act Districts

Four of the nine general district acts with this power place restrictions upon the exercise of eminent domain. Municipal water districts are limited to the extent that condemnation outside the district requires the consent of the board of supervisors of the county involved. Other district limitations include water conservation districts (1931) which are not permitted to condemn cemeteries, water replenishment districts, which are prohibited against condemning water rights already put to beneficial use or property owned by an agency having replenishment power; and California water storage districts, which may not condemn the property of another public agency.

Four of the 10 general district acts incorporate the provisions of the Code of Civil Procedure.

Special Act Districts

Most of the special act districts are limited in this power. The most frequent restrictions on exercise of eminent domain by special act districts are summarized below:

TABLE XI. SUMMARY OF RESTRICTIONS ON EMINENT DOMAIN POWER OF SPECIAL ACT DISTRICTS

	Number of districts	Limited to district	Outside district—requires board of supervisors consent	Outside of county—requires board of supervisors consent§
County flood control and water conservation	22	Solano, Lassen-Modoc, San Joaquin, Tehama* (4)	Plumas† (1)	Alameda, Lake, Monterey‡, Sierra, Yolo (5)
Flood control	11	None	None	San Mateo County (1)
Water agencies	19	Antelope Valley-East Kern, Contra Costa County, Desert, El Dorado County, Mojave, San Geronimo Pass, Sutter County (7)	Crestline-Lake Arrowhead, Placer County†, Upper Santa Clara Valley, Nevada County (4)	Alpine County, Amador County, Kern County, Shasta County, Yuba County (5)
Other	3	None	None	None

* Countywide district with actual wording of act limiting to county

† Countywide districts, therefore, limitation effective only in counties other than those in which district is located

‡ Limitation applies only to condemnation for recreation purposes

§ Supervisors of affected county in which condemned property is located

There are several restrictions in special district acts not shown in Table XI. For example, an unusual provision in the San Benito County Flood Control and Water Conservation District Act prohibits the condemnation of property of the Pacheco Pass Water District; the Orange County Flood Control District is prohibited from exercising

eminent domain more than 15 miles from the district; and several other special act flood control and water conservation districts and flood control districts are prohibited from condemning one or more of the following: property of a city and county; municipal utility district, public district, or water development project, water rights; or property within certain other districts

Ten of the water agencies (Alpine County, Contra Costa County, El Dorado County, Mariposa County, Mojave, Nevada County, Placer County, Santa Barbara County, Shasta County, and Sacramento County) are prohibited from condemning property devoted to public water use. A similar restriction applies to the Kings River Conservation District and, in somewhat different terms, to the Orange County Water District. Twenty-five of the 55 special act districts incorporate the Code of Civil Procedure provisions.

It can be seen that there are many variations in the manner in which the eminent domain power granted to districts is described and in the restrictions on this power. There seems to be no specific pattern of selection of restrictions except that a great many of the more recently enacted acts provide for approval by the board of supervisors of the county affected of any condemnation outside the district or county in which the district is located.

The power of eminent domain seems to be one district power in which greater uniformity would be advantageous

HYDROELECTRIC POWER

General Act Districts

The authority to develop hydroelectric power has been granted to only 4 of the 10 general district acts in this study (California water, California water storage, county water and irrigation). The water storage district and county water district provisions are limited to incidental development, while the County Water District Act also requires that power developed be sold at wholesale only.

Special Act Districts

Four of the special act county flood control and water conservation districts (Lassen-Modoc, Plumas, Sierra and Siskiyou) authorize the development of hydroelectric power and are limited to wholesale marketing of this power. A fifth, Sonoma, authorizes hydroelectric development without this limitation.

Only two of the special act flood control districts (American River and Humboldt County) are authorized to develop hydroelectric power (wholesale only in the case of the Humboldt district). Fifteen of the 19 special act water agencies (Antelope Valley-East Kern, Contra Costa County, Sacramento County and Sutter County are the four exceptions) are authorized to develop hydroelectric power. All but 3 of these 15 agencies (Mariposa County, Santa Barbara County and Yuba County) are also limited to wholesale marketing of such power. The Santa Barbara County, Shasta County and Yuba County Water Agencies are further limited to incidental development of hydroelectric power. Thirteen of these special act water agencies also have the authority to sell rights to use falling water from their projects. (Mojave and Santa Barbara County Water Agencies are the only exceptions.)

It can be seen that special district water agencies, the most recently formed districts, have a greater percentage of districts with the authority to develop hydroelectric power. It should be pointed out, however, that many of these water agencies are physically located where it is impossible to use this authority

CONTRACTS WITH THE FEDERAL GOVERNMENT

The power of districts to contract with the federal government for water from federal projects governed by the Reclamation Act of June 17, 1902¹ and subsequent federal reclamation acts² is a power that has been under intense discussion and litigation for many years. In addition to contracting for water supplies, districts may contract with the United States for the construction of distribution systems for federal projects. Federal loans to districts are discussed in Chapter V (Financing).

General Act Districts

In 1917 the Legislature passed the Irrigation District Federal Cooperation Law (now codified as Sections 23175-23302, Water Code) which authorizes districts to "co-operate and contract with the United States" under Reclamation Law. These provisions call for an election within the district to approve such a contract and authorize districts to levy assessments to meet these contractual obligations if the contract calls for repayment of construction money, repayment of the cost of acquiring any property or issuance of bonds. Under this law, irrigation districts are also authorized to borrow money from the federal government. A 1935 amendment to this co-operation law provided that county water districts be considered irrigation districts and be empowered to act as an irrigation district in co-operation and contracting with the federal government.

In 1941 the County Water District Law itself was amended to specifically authorize "co-operation under irrigation district Federal Cooperation Law." In 1953 a similar section was added to the California Water District Law empowering California water districts to contract and co-operate with the United States under the provisions of the Irrigation District Federal Cooperation Law.

Provisions were also added to the Water Storage District Law in 1941 authorizing co-operation and contracting with the United States. These provisions were similar to those of the Irrigation District Federal Cooperation Law except that no election is required to approve a contract between the United States and a water storage district. Provisions similar to those of the Water Storage District Law (but not including an election) were added in 1949 to the Water Conservation Act of 1931. More limited power to contract with the federal government is granted to districts formed under the Water Conservation Act of 1927.

The Municipal Water District Act (1911) includes a provision authorizing these districts to contract with a number of public agencies

¹ See c. 1092, 32 Stat. 338.

² These laws are codified in various sections of 43 USC from Section 872 through Section 408. See also Leland Graham, *Some Aspects of Federal-State Relationships in California Water Resource Development*, Sacramento, 1961, 286 pps. (process), for an excellent discussion of many aspects of Reclamation Law, including the California contracts.

(including the United States) "to carry out any of the powers of such district." Approval of a contract under these provisions requires a two-thirds majority vote if the contract calls for the incurring of an indebtedness or liability exceeding in any year the income and revenue for such year. This applies either to the district itself or an improvement district.

When enacted in 1955, the Water Replenishment District Act included a provision authorizing such districts to "act jointly with or co-operate with the United States . . . to the end that the purposes and activities of this district may be fully and economically performed."

The Flood Control and Flood Water Conservation District Law of 1931 includes a provision authorizing districts formed under this act to "negotiate and contract with the government of the United States . . . for the construction or maintenance of the works of the district." This provision is more limited than the other general district acts. Thus, of the general district acts, only the County Waterworks District Act makes no provision for co-operation and contracting with the federal government.

Following the completion of early phases of the Central Valley Project, a large number of districts contracted with the federal government for a water supply and construction of distribution facilities. The standard contracts with the Secretary of the Interior delegated substantial control over the districts to the Secretary of the Interior. Extensive litigation over the validation of these contracts ensued and the famous *Ivanhoe Irrigation District* case lasted eight years before finally being decided by the U.S. Supreme Court in 1958. In this 8-0 decision the court reversed the California Supreme Court and upheld the *Ivanhoe* contract and three similar contracts. The *Ivanhoe* contract was a combination contract (9-e and 9-d) calling for both a water supply and federal construction of a distribution system. The validity of the 160-acre limitation and other important aspects of reclamation law were also decided in this case.³

Special Act Districts

Although the special district acts included in this study were enacted over a period of several decades, within the three types of these districts there is a great deal of uniformity of provisions for contracting with the federal government.

Six of the special act county flood control and water conservation districts (Mendocino, Sierra, Siskiyou, Solano, Sonoma and Tehama) contain language expressly authorizing these districts to co-operate and

³ *Ivanhoe Irrigation District v. McCracken* (1958) 357 U.S. 273. This decision consolidated three other appeals from similar California Supreme Court decisions in addition to the *Ivanhoe* case. Two of the other three, *Madera Irrigation District v. All Persons* (1957), 47 Cal. 2d 581 and *Alhambra v. Madera Irrigation District* (1957), 47 Cal. 2d 595, concerned general act districts and Central Valley Project Contracts. The other, *Santa Barbara County Water Agency v. All Persons* (1957), 47 Cal. 2d 699, involved a special act district and a contract for the Cachuma Project. For text of U.S. Supreme Court opinion see Engle, *Central Valley Project Documents, Part II*, House Doc. #346, 85th Cong., 1st Sess., 1957, pps. 741-758; also see California Legislature Joint Committee on Water Problems, *Eleventh Partial Report*, 1957, pps. 14-102 for the four earlier State Supreme Court decisions. A final action before the California Supreme Court culminated in 1960 when the court upheld all four contracts.

contract with the federal government under Reclamation Law and also apply the provisions of the Irrigation District Federal Cooperation Law to these districts. One other district, the San Joaquin County Flood Control and Water Conservation District, expressly authorizes co-operation and contracting under Reclamation Law but does not incorporate Irrigation District Federal Cooperation Law. The remaining 13 districts in this category authorize contracts with the federal government (and in most cases with other governmental bodies, as well) for the acquisition of property rights or the construction, maintenance and operation of any or all works and improvements authorized by the district act. The language varies from act to act but these provisions generally pertain to flood control and related projects. Ten of the 11 special act flood control districts (San Diego County Flood Control District has no authority to contract) include this same general provision with authority granted to contract for projects authorized by the acts.

On the other hand, all 19 of the special act water agencies contain provisions expressly authorizing the districts to contract with the federal government under Reclamation Law. Twelve of these agencies (Alpine County, Amador County, El Dorado County, Kern County, Mariposa County, Nevada County, Placer County, Sacramento County, Santa Barbara County, Shasta County, Sutter County and Yuba County) have substantially identical provisions and all 12 districts are also authorized to contract under the provisions of the Irrigation District Federal Cooperation Law. The five agencies copied from the Municipal Water District Act (Antelope Valley-East Kern, Crestline-Lake Arrowhead, Desert, Mojave and San Geronio Pass) and the Upper Santa Clara Valley and Contra Costa County Water Agencies all include specific provisions for elections on contracts and do not incorporate Irrigation District Federal Cooperation Law provisions.

These contracting provisions of water district acts provide an interesting example of what seems to be unintentional uniformity. The provisions of the Irrigation District Federal Cooperation Law are actually used by county water districts, California water districts, and 18 special district acts, in addition to irrigation districts. By simply authorizing a new special act district to utilize the provisions of Irrigation District Federal Cooperation Law, the Legislature has created a desirable uniformity.

OTHER POWERS

Sewage Disposal

Four general district acts (Irrigation District Act, County Water District Act, Municipal Water District Act of 1911 and Water Conservation Act of 1931) also have the power to acquire, construct and operate facilities for the collection, treatment and disposal of sewage. None of the special act districts have this additional power.

Fire Protection

The County Water District Act is the only act in this study which authorizes the acquisition, construction and operation of fire protection facilities.

Recreational Facilities

Two general district acts (County Water District Act and Water Conservation Act of 1927) and four special district acts (Alameda County and Marin County Flood Control and Water Conservation Districts and the Antelope Valley-East Kern and Crestline-Lake Arrowhead Water Agencies) specifically authorize the operation of recreation facilities incidental to district facilities.

Drainage and Reclamation

Four general district acts (California Water, California Water Storage, County Water, and Irrigation) and seven special district acts (Alameda, Mendocino, San Benito, and Sonoma County Flood Control and Water Conservation Districts; San Bernardino County Flood Control District, Kings River Conservation District, and Palo Verde Irrigation District) include the drainage and reclamation of land as authorized powers. This power has not been granted to any of the more recent water agencies.

Miscellaneous

The Contra Costa County Water Agency and the Mojave Water Agency each are specifically granted the power to prevent salinity intrusion, a responsibility of particular importance to the Contra Costa agency.

CHAPTER V

FINANCING

The financing of water districts has been given the greatest consideration through the years by both the Legislature and others concerned with districts. Table XII on page 78 and the discussion in this chapter are an attempt to examine only the most important areas of financing of water districts.

AD VALOREM ASSESSMENTS

Basis

As can be seen from Table XII, all general act districts except California water storage districts and flood control and flood water conservation districts, and all special act districts except the San Diego County Flood Control District, have provision for ad valorem assessments to finance district operations. Two of the major general act districts—irrigation districts and California water districts—base all ad valorem taxes on land only, the traditional emphasis of these agricultural districts. As was indicated above, these districts also base voting rights on land ownership. All other general act districts permit assessment of land and improvements or of all property (which includes land, improvements and personal property). The basis for all eight general act districts is the same for both the district and zones (where the district is authorized to create zones).

With regard to special act districts there is a similar variation as to taxable property, and in many cases the basis for districtwide assessments is not the same as for zone assessments. Table XIII summarizes these assessment provisions, which are detailed in Table XII. In a few special act districts the basis for assessment for bond repayment is different than it is for other purposes.

When a general district act leaves the method of assessment up to the local district, the determination is usually made at the time of formation of the local district and the choices available are carefully spelled out. For example, districts formed under the Water Conservation Act of 1931 may assess land and improvements for bond purposes rather than land only. This option must be made in the petition at the time of formation of the district and is effective during the life of the district.

As is shown in Table XIII, general district acts divide almost evenly between use of land only, land and improvements, or all property as a basis for both district and zone assessment (only six of these acts permit the creation of zones, however).

When considering special act districts there are a number of discernible patterns which are different for each category of special district act. With regard to county flood control and water conservation districts, little use is made of land only as an assessment basis. All but two of the districts base district assessments on all property.

TABLE XII. FINANCING PROVISIONS

A GENERAL ACT DISTRICTS

	Power to create zones ¹	Annual ad valorem assessments ²			Indebtedness			
		Basis ³	Maximum limit		Type	Vote required ⁴	Maturity period (Maximum years)	Maximum
			District	Zone				
California water	Yes	Land	None	None	General obligation bonds	$\frac{3}{4}$	40	None
					Revenue bonds	Majority	40	None
					Warrants	$\frac{1}{2}$ of board	5	None
California water Storage	No	No ad valorem tax Assessments on land based on project benefits	--	--	General obligation Bonds	Majority	40 (50 for additional bonds)	None
					Warrants	None	None	None
County water	Yes	All property	None	None (\$ 75 under alternate procedure)	General obligation bonds	$\frac{3}{4}$	None	None
					Revenue bonds	Majority ⁵	40 ⁶	None
						$\frac{3}{4}$	50	
					Refunding bonds	Majority	None	None
					Formation warrants	None	None	None
					Notes	None	4	2 percent of assessed value
County waterworks	Yes	Land or all property	None	None	General obligation bonds (dist.)	Majority	40	None
					General obligation bonds (zone)	60 percent	40	None
					Revenue bonds	Majority ⁷	40 ⁸	None

				Refunding bonds	Majority	30	None
Flood control and flood water conservation	No	No ad valorem tax	--	Loans (from county)	Board majority	5	85 percent of annual revenue (\$10,000 for districts with less than \$100,000 assessed value)
Irrigation	Yes	Land	--	No provisions	--	--	--
				General obligation bonds	Majority or $\frac{2}{3}$	50	None
				Revenue bonds	Majority ^a	40 ^b	None
					$\frac{2}{3}$	50	
				Refunding bonds	Majority	None	None
				Warrants	Board action or majority election	3 (more by voter approval)	\$ 25/\$100 of assessed value
Municipal water (1911)	Yes	All property	None	General obligation bonds	$\frac{2}{3}$	40	None
				Revenue bonds	Majority ^a	40 ^b	None
				Notes	None	3	Lesser of \$1,000,000 or 2 percent of assessed value
				Notes (for specified purposes)	None	10	Lesser of \$500,000 or 1 percent of assessed value
				Formation warrants	None	None	None

¹ Benefit zones, improvement districts, etc., except those formed under improvement acts

^a Per \$100 assessed value, exclusive of bond assessments

^b Revenue Bond Act of 1911, Government Code Sections 54390-54700

^c "Land and improvements" indicates statutory references to either "land and improvements" or "real property"

^d When listed, "by zone," must obtain required majority in each zone if more than one zone participating

TABLE XII. FINANCING PROVISIONS—Continued
A GENERAL ACT DISTRICTS—Continued

	Power to create zones ¹	Annual ad valorem assessments ²			Indebtedness			
		Basis ³	Maximum limit		Type	Vote required ⁴	Maturity period (Maximum, years)	Maximum
			District	Zone				
Water Conservation (1927)	No	Land and improvements	\$ 25 (additional \$ 30 by majority election)	--	Formation warrants	None	None	\$ 25/acre of land
Water conservation 1981	Yes	Land and improvements, or land	\$ 25 (additional \$ 10 under specified circumstances)	None	General obligation	$\frac{3}{4}$	40 (25 for zones)	None
					Revenue certificates	None	None	Revenue from reclaimed water
					Warrants	None	None	None
					Formation warrants	None	None	\$ 25/acre of land
Water replenishment	No	Land and improvements	\$ 20 (more by voter approval)	--	General obligation bonds	$\frac{2}{3}$	40	None
					Formation warrants	None	None	None
B SPECIAL ACT DISTRICTS								
1 County Flood Control and Water Conservation Districts								
Alameda	Yes	All property (zone or land and improvements)	\$ 015	None	General obligation bonds (by zones)	$\frac{2}{3}$ (by zone)	40	None
Contra Costa	Yes	All property (zone or land and improvements)	\$ 02	\$ 20	General obligation bonds (by zones)	$\frac{2}{3}$ (by zone)	40	None
					Refunding bonds	Board majority	--	None

TABLE XIII. FINANCING PROVISIONS—Continued

B SPECIAL ACT DISTRICTS—Continued

1 County Flood Control and Water Conservation Districts—Continued

	Power to create zones ^a	Annual ad valorem assessments ^a				Indebtedness			
		Basis ^b	Maximum limit		Type	Vote required ^c	Maturity period (Maximum years)	Maximum	
			District	Zone					
San Joaquin	Yes	All property (zone or land and improvements)	\$.02 (\$.04 if water conservation or distribution)	\$.20 (flood control) \$.20 (water conservation)	General obligation bonds (by zones) Refunding bonds	$\frac{2}{3}$ (by zone) Board majority	40 --	None None	
San Luis Obispo	Yes	All property	None	None	General obligation bonds (by zones) Revenue bonds	$\frac{2}{3}$ (by zone) Majority ^d	40 40 ^e	None None	
Santa Barbara	Yes	All property	\$.02	\$.20	General obligation bonds (by zones) Refunding bonds	$\frac{2}{3}$ Board majority	40 --	5 percent of assessed value None	
Santa Clara	Yes	All property or land and improvements	None	None	General obligation bonds (by zones)	$\frac{2}{3}$	40	None	
Santa Cruz	Yes	All property (zone or land and improvements)	\$.02	\$.25 (can be more by majority election)	General obligation bonds (by zones) Refunding bonds	$\frac{2}{3}$ (by zone) Board majority	40 40	None None	
Sierra	Yes	All property	\$.10	\$.05	Refunding bonds Revenue bonds General obligation bonds Warrants	$\frac{2}{3}$ Majority ^d $\frac{2}{3}$ None	None 40 ^e 50 None	None None 15 percent of assessed value None	

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	Yes	All property	\$ 10	\$ 05	General obligation bonds	$\frac{3}{4}$	50	15 percent of assessed value
Sakiyon					Warrants	None	None	None
Solano	Yes	All property (one or land and improvements)	\$ 15	\$ 10	General obligation bonds	$\frac{3}{4}$	40	Amount repayable by annual tax of \$ 15
					Refunding bonds	$\frac{1}{2}$ of board	40	
					Refunding bonds	Majority	None	Amount repayable by annual tax of \$ 15
						$\frac{1}{2}$ of board	None	
Sonoma	Yes	All property	\$ 08 (\$ 06 additional for flood control and drainage projects)	\$ 25 (can be more by majority election)	General obligation bonds	$\frac{3}{4}$	40	None
					Refunding bonds	Board majority	--	None
					Revenue bonds	$\frac{3}{4}$ of board	40 ⁸	None
					Warrants	None	None	None
Tehama	Yes	All property	\$ 03 (\$ 05 with consent of board of supervisors)	\$ 05 (\$ 15 with unanimous consent of advisory committee, \$ 50 with majority election)	General obligation bonds (by zones)	$\frac{3}{4}$	50	15 percent of assessed value
					Warrants	None	None	None
Yolo	Yes	All property	\$ 05	None	General obligation bonds (by zones)	$\frac{3}{4}$	50	None
					Revenue bonds	Majority ¹	50	None
					Refunding bonds	$\frac{3}{4}$	50	None
					Notes	None	4	2 percent of assessed value
					Warrants	None	None	None

¹ Bonds, zones, improvement districts, etc., except those formed under improvement acts

² Bonds, zones, improvement districts, etc., except those formed under improvement acts

³ Revenue Bond Act of 1941, Government Code Sections 54300-54700

⁴ "Land and improvements", includes statutory references to either "land and improvements" or "real property."

⁵ When listed, "by zone" must obtain required majority in each zone if more than one zone participating

TABLE XII. FINANCING PROVISIONS—Continued

B. SPECIAL ACT DISTRICTS—Continued
2 Flood Control Districts

	Power to create zones†	Annual ad valorem assessments*				Indebtedness			
		Basis†	Maximum limit		Type	Vote required‡	Maturity period (Maximum years)	Maximum	
			District	Zone					
American River	Yes	Land	\$ 10	None	General obligation bonds	Majority	40	None	
					Refunding bonds	Board majority	--	None	
					Warrants	None	None	None	
Del Norte County	Yes	All property (zone or land and improvements)	None	None	General obligation bonds (by zones)	$\frac{3}{4}$	40	None	
Fresno Metropolitan	Yes	Land and improvements	\$ 20	None	General obligation bonds	Majority	40	None	
					Refunding bonds	Board majority	--	None	
					Notes	Board majority	None	\$ 10 tax	
Humboldt County	Yes	All property or land and improvements (zone all property)	None	None	General obligation bonds	$\frac{2}{3}$	40	None	
Los Angeles County	Yes	Land and improvements	\$ 15	\$ 05	General obligation bonds	Majority	40	None	
Morrison Creek	No	Land and improvements	\$ 05 (\$ 10 after bonds are issued)	--	General obligation bonds	$\frac{3}{4}$	40	None	
					Refunding bonds	Board majority	--	None	
					Warrants	None	None	None	

Orange County	No	All property	\$ 30 (\$ 10 for purchase and distribution of water)	--	General obligation bonds	$\frac{1}{2}$	--	None
San Bernardino County	Yes	All property	Aggregate limit of \$ 30		General obligation bonds	$\frac{1}{2}$	40	None
					Loan (by zones)	Majority	20	Per loan 2 percent of assessed value of zone
San Diego County	No	--	Donations only	--	--	--	--	--
San Mateo County	Yes	Zones only all property or land and improvements	No tax	\$ 40	General obligation bonds (by zones)	$\frac{1}{2}$ (by zone)	40	None
Yuba County	No (zones created by act itself)	All property	Aggregate limit—Zones 1 \$ 20 Zones 2-4 \$ 40		General obligation bonds (by zones)	$\frac{1}{2}$ (by zone)	40	None
					General obligation bonds (by district only for incorporation of water)	$\frac{1}{2}$	40	None

3 Water Agencies

Albino County	Yes	All property (zone land)	\$ 65	None	Revenue bonds	Majority ¹	50	None
Anaconda County	No	All property	\$ 10 (may be increased by countywide election)	--	General obligation bonds (by member unit)	$\frac{1}{2}$ (by member unit)	40	None
					Revenue bonds	Majority ¹	40 ²	None

¹ Benefit zones, improvement districts, etc., except those formed under improvement acts

² Per \$100 assessed value exclusive of bond assessments

³ Revenue Bond Act of 1941, Government Code Sections 54300-54310

⁴ When listed, "by zone," must obtain required majority in each zone if more than one zone participating

TABLE XII. FINANCING PROVISIONS—Continued

B SPECIAL ACT DISTRICTS—Continued
3 Water Agencies—Continued

	Power to create zones ¹	Annual ad valorem assessments ²			Indebtedness			
		Basis ³	Maximum limit		Type	Vote required ⁵	Maturity period (Maximum years)	Maximum
			District	Zone				
Antelope Valley- East Kern	Yes	All property		Aggregate limit of \$ 10 (administrative purposes only)	General obligation bonds	$\frac{2}{3}$	40	None
					Revenue bonds	Majority ⁴	40 ¹	None
					Refunding bonds	--	--	None
					Notes	None	3	Lesser of \$500,000 or 2 percent of assessed value
					Formation warrants	None	None	None
Contra Costa County	Yes	All property (zone land)	\$ 03	None	General obligation bonds	$\frac{2}{3}$	None	None
					Refunding bonds	Majority	None	None
					Revenue bonds	Majority ⁴	40 ¹	None
						$\frac{2}{3}$	50	
					Warrants	None	None	Anticipated annual revenue
Crestline-Lake Arrowhead	Yes	All property	Aggregate limit of \$1, including bond assessments (may be more by majority election)		General obligation bonds	$\frac{2}{3}$	40	None
					Revenue bonds	Majority ⁴	40 ¹	None
					Refunding bonds	--	--	None
					Notes	None	3	Lesser of \$500,000 or 2 percent of assessed value

					Formation warrants	None	None	None
Desert	Yes	All property	None	None	General obligation bonds	2/3	40	None
					Revenue bonds	Majority ²	40 ³	None
					Refunding bonds	2/3	40	None
					Notes	None	3	Lesser of \$1 million or 2 percent of assessed value
El Dorado County	No	All property	\$ 10	--	Formation warrants	None	None	None
					General obligation bonds (by member unit)	2/3 by member unit	40	Sum of capital obligations and water payments to be paid by member units
					Revenue bonds	Majority	50	None
					General obligation bonds (by member unit)	2/3 (by member unit)	40	None
Kern County	Yes (for federal or state contracts only)	All property	\$ 05	None	Revenue bonds	Majority	50	None
					General obligation bonds (by member unit)	2/3 (by member unit)	40	None
					Revenue bonds	Majority ²	40 ³	None
					General obligation bonds (by zone)	2/3 (by zone)	40	None
Mariposa County	Yes	All property	\$ 10	\$ 50	Revenue bonds	Majority ²	40 ³	None
					General obligation bonds (by zone)	2/3 (by zone)	40	None
					Revenue bonds	Majority ²	40 ³	None
					General obligation bonds	2/3	None	None
Mohave	Yes	Land	\$ 10	None	Revenue bonds	Majority ²	40 ³	None
					General obligation bonds	2/3	50	None
					Refunding bonds	Majority	--	None
					Refunding bonds	Majority	--	None

¹ Benefit zones, improvement districts, etc., except those formed under Improvement acts.

² For the purpose of this study, the term "zone" is defined as a "benefit zone."

³ Revenue Bond Act of 1941, Government Code Sections 54300-54700.

⁴ "Land and improvements" indicates statutory references to either "land and improvements" or "real property."

⁵ When listed, "by zone," must obtain required majority in each zone if more than one zone participating.

TABLE XII. FINANCING PROVISIONS—Continued

B SPECIAL ACT DISTRICTS—Continued
3 Water Agencies—Continued

	Power to create zones?	Annual ad valorem assessments ²			Indebtedness			
		Basis ¹	Maximum limit		Type	Vote required ¹	Maturity period (Maximum years)	Maximum
			District	Zone				
Mojave—Continued					Notes	$\frac{2}{3}$ of board	5	Annual issue limited to \$ 025 per acre
Nevada County	Yes	All property (zone land)	\$ 05	None	Revenue bonds	Majority ¹	40 ¹	None
Placer County	Yes	All property	\$ 10	\$ 50	General obligation bonds (by zones)	$\frac{2}{3}$ (by zone)	40	None
					Revenue bonds	Majority ¹	50	None
Sacramento County	Yes	All property	\$ 15	\$ 25 (can be more by election)	Special assessment	$\frac{2}{3}$	40	Amount repayable by tax of \$ 15/\$100 of assessed value exclusive of member units' debt
					General obligation bonds (by agency)	$\frac{2}{3}$ election or $\frac{1}{2}$ of board	None	
					Refunding bonds	Majority election or $\frac{1}{2}$ of board	--	
					General obligation bonds (by zones)	Majority	None	None
					Revenue bonds	Majority ¹	40 ¹	None
					General obligation bonds	$\frac{2}{3}$	40	None
					Refunding bonds	--	--	None
San Geronimo Pass	Yes	All property	Aggregate limit of by election)	\$.40 (can be more by election)	Revenue bonds	Majority ¹	40 ¹	None

				Notes	None	3	Lesser of \$1 million or 2 percent of assessed value
Santa Barbara County	No	All property	\$ 15	Formation warrants	None	None	None
				Special assessment	$\frac{3}{4}$	40	Amount repayable by tax of \$ 15/\$100 of assessed value
				General obligation bonds	$\frac{2}{3}$ election or $\frac{1}{4}$ of board	None	Amount repayable by tax of \$ 15/\$100 of assessed value exclusive of member union debt
				Refunding bonds	Majority election or $\frac{1}{4}$ of board	--	
Shasta County	Yes	All property	\$ 65	General obligation bonds (by zone)	$\frac{2}{3}$ (by zone)	40	10 percent of assessed value
				Revenue bonds	Majority ²	40 ³	None
				Refunding bonds	Majority	--	None
				Warrants	Board majority	None	Anticipated annual revenue
Sutter County Upper Santa Clara Valley	No	All property	\$ 10	Revenue bonds	Majority ³	40 ³	None
				General obligation bonds	$\frac{1}{4}$	40	None
				Refunding bonds	--	--	None
				Notes	None	3	Lesser of \$1 million or 2 percent of assessed value
Yuba County	No	All property	\$ 10	Formation warrants	None	None	None
				Revenue bonds	Majority ⁴	50	None

¹ Board sewer improvement districts, etc. except those formed under improvement acts

² \$100 assessed value exclusive of land assessments

³ Revenue Bond Act of 1941, Government Code Sections 64300-65700

⁴ Land and improvements; indirect statutory references to either "land and improvements" or "real property"

⁵ When listed, "by zone," must obtain required majority in each zone if more than one zone participating

TABLE XII. FINANCING PROVISIONS—Continued

B SPECIAL ACT DISTRICTS—Continued

4 Other

	Power to create zone ¹	Annual ad valorem assessments ²			Indebtedness				
		Base ³	Maximum limit		Type	Vote required ⁴	Maturity period (Maximum years)	Maximum	
			District	Zone					
Kings River Conservation District	Yes	Land	\$ 25	No provision for zone tax	General obligation bonds	$\frac{2}{3}$	40	None	
					Refunding bonds	Majority	None	None	
					Revenue bonds	$\frac{2}{3}$	None	None	
Orange County Water District	No	Land and improvements	1961-65, \$ 20, 1965-71, \$ 15, from 1971, \$ 08 ⁵	--	Warrants	None	None	None	
Palo Verde Irrigation District	Yes	Land or land and improvements	None	None	Notes	None	1	\$100,000	
					General obligation bonds (district)	Majority	40	None	
					General obligation bonds (zone)	$\frac{2}{3}$ (or consent in writing by owners of $\frac{2}{3}$ of assessed value of lands)	40	None	
					Revenue bonds	Majority	40	None	
					Refunding bonds	Majority	40	None	
					Warrants	None	None	None	

¹ Benefit zones, improvement districts, etc., except those formed under improvement acts² Per \$100 assessed value, exclusive of bond assessments³ When land, "by zone," must obtain required majority in each zone if more than one zone participating⁴ When land, "by zone," must obtain required majority in each zone if more than one zone participating⁵ Levy over \$ 08 requires four-fifths consent of board, can be used only for purchase of replacement water, and must exclude separate mineral rights

Almost as many also use all property as the zone basis. Five of these districts permit zones the option to assess land and improvements instead of all property. Two of these districts, which assess all property districtwide, require zones to assess land and improvements. Still another possibility utilized by one district is assessment for either the district or the zone by either of the two methods.

The special act flood control districts split almost evenly between assessment of land and improvements or of all property. However, with the special act water agencies almost all districts (18 out of 19) provide for district assessment based upon all property. Ten of the 14 water agencies which have the power to create zones also assess these zones on the basis of all property and four make zone assessments on the basis of land only.

Thus it can be seen that there are a great many different combinations of assessment bases. At the same time each category of special act districts tends to utilize one general approach. It is obvious that in the creation of a new special act district the possible choices of assessment bases are many and varied.

TABLE XIII. SUMMARY OF BASIS OF AD VALOREM ASSESSMENTS OF WATER DISTRICTS

	Number of districts	Land		Land and improvements		All property	
		District	Zone	District	Zone	District	Zone
General act districts.....	10	4	4	3	1	3	3
Special act districts							
County flood control and water conservation districts.....	22	0	1	2	10	20	18
Flood control districts.....	11	1	1	4	4	5	5
Water agencies.....	19	1	4	0	0	18	10
Other.....	3	2	2	2	1	0	0
All Districts.....	*65	7	11	12	19	46	36

* Columns do not add up since some districts do not have assessments and others have more than one basis.

Limits

In all cases the tax limits discussed in this chapter and included in Table XII are exclusive of taxes levied for payment of bonded indebtedness. An election to authorize the selling of bonds is considered an authorization to levy sufficient taxes to pay back the principal and interest on the bonds (if these are general obligation bonds). However, certain limits are imposed by several district acts upon the total amount of bonds that can be sold or the total indebtedness that can be incurred. These restrictions are discussed in the section of this chapter on bonding.

Only three of the eight general district acts in this study that authorize ad valorem assessments place limitations on the tax rate which may

be levied. These are the Water Conservation Acts of 1927 and 1931 and the Water Replenishment District Act. Each of these district acts, however, as can be seen from Table XII, provides for levies in excess of the limit under certain circumstances. For example, the tax rate of water replenishment districts and water conservation districts formed under the 1927 act may exceed the limit by majority vote of the district's voters and the voters of water conservation districts formed under the 1931 act may authorize special assessments by majority vote.

Water replenishment districts have a statutory limit of \$0.20 per \$100 of assessed value but the actual limit is established at the time of formation of the district. The limit to be used, up to \$0.20, is included in the petition of formation. After the district is formed the limit established at formation may be increased even beyond the \$0.20 by majority vote of the district's voters, however, the original limit cannot exceed the \$0.20 limit.

The Irrigation District Act, while not limiting the tax rate which may be levied, does limit the amount which may be raised by an annual assessment for maintenance and operation to 4 percent of the assessed value of land, the amount which may be raised for certain other district purposes to 4 percent of the assessed value of land, and the amount which may be raised for the purchase of district bonds to 1 percent of the assessed value of land.

None of the 10 general district acts in this study have any statutory restrictions or limits on zone tax rates.

With regard to special act districts, however, a large percentage of these district acts include limitations on both the district tax rate and the zone tax rate, and in most cases these limits are different for the district and zones.

Table XIV summarizes the tax limits of general and special act districts and briefly indicates the range of these limitations. As is indicated, general act districts are much less restricted than special act districts as far as the maximum tax rate is concerned.

TABLE XIV. SUMMARY OF AD VALOREM TAX LIMITS OF WATER DISTRICTS

	Number of districts	District				Zone			
		Number with limits	\$ 00- \$ 10*	\$ 11- \$ 30*	Over \$ 30*	Number with limits	\$ 00- \$ 10*	\$ 11- \$ 30*	Over \$ 30*
General act districts.....	10	3	0	3	0	0	--	--	--
Special act districts									
County flood control and water conservation districts.....	22	18	14	3	1	15	5	6	4
Flood control districts..	11	6	2	3	1	4	1	0	3
Water agencies.....	19	17	13	2	2	6	1	1	4
Other.....	3	2	0	2	0	0	--	--	--
All Districts.....	65	46	29	13	4	25	7	7	11

* Per \$100 assessed value

In the case of all three categories of special act districts, more restrictions are placed upon the district tax limit than are placed upon the zone tax limit. Also for special act districts a majority of the district tax limits are less than \$0.10 per \$100 of assessed value. On the other hand, a majority of the zone limits are in excess of \$0.10, and 11 out of the 25 zone limits are in excess of \$0.30 per \$100 of assessed value.

Of those special act districts with district tax limits, the lowest limit is the 1½-cent per \$100 assessed value limit placed upon the Alameda County Flood Control and Water Conservation District. This district, it should be noted, does not have a zone limit. A number of other special act districts have limits almost this low. The highest district limit among special act districts is the \$0.50 limit placed upon the Lake County Flood Control and Water Conservation District.

The lowest zone limit among special act districts is the \$0.02 limit placed upon the Mendocino County Flood Control and Water Conservation District. The highest limit on a special act district for zone taxes is the \$1.50 limit placed upon the Lake County Flood Control and Water Conservation District.

A number of special act districts do not specify a district or zone limit but establish an overall limit which cannot be exceeded by the combined district and zone tax rates.

Actual Tax Rates

The tax limits discussed above are the maximum permitted by the general and special district acts. The actual tax rates utilized by the operating districts are often far below the statutory maximum. On the other hand, special act districts often find it necessary to ask the Legislature to raise their tax rate maximum as conditions in the local district change. A number of factors, including the necessity of obtaining local support for formation of a special act district, enter into the determination of the limit included in the original special district act legislation.

Table XV on page 94 summarizes the actual tax rates being levied by general and special act districts. It can be seen from this table that not all districts authorized to do so actually levied taxes in 1960-61 (1960 for irrigation districts).

Use of County Officials for Taxation

Five of the eight general district acts in this study which authorize the levy of ad valorem assessments provide for the collection of all district taxes by county officials based upon the county assessment rolls. These five are the County Waterworks, Municipal Water (1911), Water Conservation (1927 and 1931) and Water Replenishment Acts.

The remaining three general district acts offer both use of county officials and use of a district's own assessor and collector. These provisions of the three acts vary, however.

**TABLE XV. RANGE, AVERAGE, AND MEDIAN OF ACTUAL DISTRICTWIDE
TAX RATES OF WATER DISTRICTS, 1960-61**

	Number of districts	Number levying taxes	Highest tax rate levied*	Lowest tax rate levied*	Average tax rate levied*	Median tax rate levied*
General Act Districts						
California water.....	100	21	\$52 000	\$0 150	\$5 307	\$1 500
California water storage.....	No ad valorem taxes, Assessments on per acre basis				--	--
County water.....	177	83	\$2 290	\$0 010	\$0 619	\$0 434
County waterworks.....	90	31	\$21 590	\$0 010	\$1 936	\$0 785
Flood control and flood water conservation.....	No ad valorem taxes, Assessments based on benefits				--	--
Irrigation†.....	113	82	\$32 203	\$0 200	\$3 611	\$2 985
Municipal water (1911).....	48	24	\$2 900	\$0 097	\$0 539	\$0 145
Water conservation (1927).....	6	3	\$0 250	\$0 032	\$0 177	\$0 250
Water conservation (1931).....	10	9	\$0 268	\$0 040	\$0 172	\$0 188
Water replenishment.....	1	1	--	--	\$0 005	--
Special Act Districts						
County flood control and water conservation.....	22	14	\$0 130	\$0 010	\$0 039	\$0 022
Flood control.....	11	7	\$0 200	\$0 001	\$0 077	\$0 050
Water agencies.....	19	6	\$0 100	\$0 010	\$0 056	\$0 037

* Shown to the closest mill per \$100 assessed value

† Calendar year 1960

SOURCE: Alan Cranston, State Controller

The Irrigation District Act provides as the normal procedure assessment by the district's own assessor and collection by the district's own tax collector. This act, however, provides that "If a board neglects or refuses in any year to levy assessments pursuant to this part, the board of supervisors of the office county shall, as provided in this article, perform the duties of the board of the district in respect to levying assessments in the same manner and with the same effect as if they were performed by the board." (Section 26500, Water Code.) Thus, under these circumstances irrigation districts use the county assessment rolls and utilize county officials for collection.

A further provision of the Irrigation District Act provides that the governing body of any irrigation district of less than 3,000 acres may, by resolution, dispense with the offices of district assessor and tax collector and in so doing utilize county assessment rolls and collection by county officials.

The California Water District Act also provides as a normal procedure the assessment by the district assessor and collection by the district tax collector.

A number of variations are possible with these districts, however. The governing body of a California water district may direct its assessor to utilize the county assessment rolls rather than making a

separate district assessment. Under these circumstances the district retains the two district officials—assessor and tax collector—however.

The California Water District Act also provides alternate provisions under which the governing body of a district, by resolution, may elect to have all its taxes levied and collected by the counties in which the district is located and to base these taxes upon the county assessment rolls.

The County Water District Act provides two specific procedures—the “main tax procedure” and the “alternative tax procedure”—for the levy and collection of district taxes.

The “main tax procedure” calls for use of the county assessment rolls and collection of taxes by county officials. The “alternative tax procedure” provides that the governing body of a county water district may, by resolution, dispense with the “main tax procedure” and utilize its own district assessor and district tax collector.

The “alternative tax procedure” further authorizes, upon resolution of the governing body, the simultaneous use of both procedures with each procedure being used for different taxes levied by a single district.

Forty-three of the 45 special district acts in this study utilize county officials for collection of district taxes and base these taxes on the county assessment rolls. The two exceptions are the Palo Verde Irrigation District, which has its own assessor and tax collector (only if the district fails to levy taxes to meet bonded indebtedness are county officials authorized to perform these functions), and the San Diego County Flood Control District, which does not have the power to levy *ad valorem* assessments.

As is discussed elsewhere in this report, the fact that a district utilizes county officials and the county assessment rolls for levy and collection of taxes makes that district subject to the provisions of several other acts, including the “alternative method for dissolution of districts” provisions of the Government Code (see Chapter V) and the requirements for reporting boundary changes found in Sections 54900-54903 of the Government Code (see findings and recommendations, district information).

BONDS

All but two of the general district acts (flood control and flood water conservation districts and water conservation districts of 1927) and all but two of the special district acts (San Diego County Flood Control District—which permits donations only, and Orange County Water District) authorize the financing of district projects by the sale of one or more types of bonds.

The most common type of long-term issue are general obligation bonds, which are secured by the taxing resources of the district and offer the greatest degree of security to the bond purchaser. Revenue bonds, which are secured only by designated revenues, are the second most-used type of bonds. Districts that have assured revenues from certain water tolls, power sales or other regular revenues, often use revenue bond financing.

Certain bonding trends can be seen among special district acts. For example, all 22 county flood control and water conservation districts are authorized to issue general obligation bonds while only four of

these districts have the authority to issue revenue bonds. The same situation is true with flood control districts where 10 of the 11 special act districts of this type are authorized to issue general obligation bonds while none are authorized to issue revenue bonds. Generally speaking, these two types of districts construct primarily projects which do not produce revenue. Flood control projects, particularly, do not generally produce revenue and must be financed by taxation, and thus, general obligation bonds.

A somewhat different situation exists with regard to special district water agencies, however. These districts generally have the authority to issue both general obligation and revenue bonds. These districts are more likely to construct projects with revenue from, for example, power generation.

A third type of bonds authorized by many districts are refunding bonds, which are used to refinance previous bond issues. In most cases there are no set vote or maturity requirements for these bonds and refunding bonds generally must be sold under the same conditions, and be approved by the same majority as the original bonds. Some districts, however, do establish specific requirements for refunding bonds and these are set out in Table XII.

Bond Elections

Nearly all bond issues must be authorized by the voters of the district or zone. In a few cases, bonds may be issued by large majorities of the governing body (four-fifths, for example) and without a vote of the people.

There is much variation among districts as to the method of issuing bonds. Several districts construct projects only by zone and therefore, issue bonds by zones. Other districts issue bonds districtwide but require the necessary majority in each zone of the district. A great many combinations are available to districts, including issuance by two or more zones.

Article XI, Section 18, of the California Constitution provides

"No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose."

Because of this provision, local municipal and school general obligation bond issues require a two-thirds majority for approval. (The courts have ruled that this section does not apply to revenue bonds which are repaid from revenues, not taxes¹) Court decisions have also established that the two-thirds requirement does not apply to water districts.²

¹ See *Ozward v Dale* (1955), 45 Cal 2d 729, 290 P 2d 859, and *Redondo Beach v Tuxpan*, 8, *Property Owners, Citizens and Electors* (1960), 54 Cal 2d 126, 352 P 2d 170. An excellent discussion of local bond elections is contained in Stanley Scott and Frank Morin, "Local Bond Elections in California: The Two-Thirds Requirement," *Public Affairs Report*, University of California, Bureau of Public Administration, June 1952.

² See *In re Madera Irrigation District* (1891), 92 Cal 296, 28 Pac 875 (irrigation districts), and *Joint Highway District No. 15 v Rinman* (1934), 220 Cal 575, 32 P 2d 144.

Nevertheless, as a result of the pattern set by the constitutional provision, most water districts require two-thirds votes for general obligation bonds, although not required by the Constitution (A number of districts do require only a simple majority.) The bond vote requirements of districts included in this study are as follows:

TABLE XVI. SUMMARY OF VOTE REQUIRED FOR WATER DISTRICT BOND ISSUES

	Number of districts	General obligation bonds		Revenue bonds	
		Majority	Two-thirds	Majority	Two-thirds
General act districts.....	10	3*	6	5	2
Special act districts					
County flood control and water conservation districts.....	22	0	22	4	0
Flood control districts.....	11	3	7	0	0
Water agencies.....	19	0	15	18	2
Other.....	3	1	2	1	1
All districts.....	65	7	52	28	5

* County waterworks districts require 60 percent for zone bonds

It must be noted that some districts permit different vote requirements under certain conditions, in which case, these districts are included more than once in the above table. In addition, not all districts permit both types of bonding, and some have no bonding provisions whatsoever.

Table XVI indicates that the predominant requirement for general obligation bonds is a two-thirds vote and the predominate requirement for revenue bonds is a simple majority vote.

Four of the 10 general district acts in this study and 25 special district acts incorporate part or all of the revenue bond procedures set forth in the Revenue Bond Law of 1941 (Sections 54300-54700, Government Code). Acts not utilizing these procedures include detailed revenue bond provisions in the individual acts.

In recent years at least one exception to the provisions of the Revenue Bond Law has been made in four special district acts by an extension of the maximum bond maturity period from 40 to 50 years. These districts utilize all the Revenue Bond Act procedures except the maturity period. One general district act, the County Water District Act (which authorizes the sale of bonds pursuant to the Revenue Bond Act) permits a 50-year maturity period if a two-thirds vote is used for these revenue bonds. This is an alternative procedure included in the County Water District Act. Some special act districts have adopted this same procedure as well.

The procedures for issuing general obligation bonds are spelled out in each general district act and each special district act as there is no act comparable to the Revenue Bond Act dealing with general obligation bonds.

Bond Limitations

None of the general district acts establishes a limit on the amount of bonds a district may issue. Several general act districts apply some limits to other forms of financing, including warrants, notes, etc., but not to bonds.

Eleven special act districts have maximum bonding limits. In these districts using the assessed value limitation, the maximum bonding varies from 5 percent of the district's assessed value to 15 percent of this value. Another form of limit restricts bonding to that amount that can be repaid from a specific tax rate. These rates vary from a maximum annual tax of \$0.10 per \$100 assessed value to \$0.15 per \$100 assessed value.

Another form of limitation on bonding is the establishment in the district acts of maximum interest rates at which bonds may be sold. The maximum rate per annum is usually 5 percent, although certain district acts permit higher interest rates.

Interest Rates

As was noted above, the more recently enacted special act water agencies generally authorize the use of revenue bonds while only a few of the earlier categories of districts authorize this use. According to the District Securities Commission, "revenue bonds of districts appear to be becoming more acceptable on the market in recent years, and in

TABLE XVII. MONTHLY WATER BOND INTEREST RATES**(Nationwide)**

Month	1960-61 net interest cost (percent)	
	General obligation bonds	Revenue bonds
January.....	3.88	3.70
February.....	3.41	3.71
March.....	3.47	3.48
April.....	3.85	3.81
May.....	3.86	3.62
June.....	4.09	3.86
July.....	3.66	4.50
August.....	3.77	4.00
September.....	3.44	3.81
October.....	3.70	3.62
November.....	3.88	4.08
December.....	3.26	4.44

SOURCE: Chief, Basic Data Branch, Division of Water Supply and Pollution Control, U.S. Public Health Service, as reprinted in "Journal of the American Waterworks Association," July 1962.

many instances, the interest rates were as low as would be expected if sold as a general obligation of the district."³

As an indication of this trend, Table XVII represents nationwide bond interest data.

It can be seen that during 4 of the 12 months the interest rate for revenue bonds was less than that of general obligation bonds. At the same time, however, the interest rates of revenue bonds fluctuated more widely than those of the more stable general obligation bonds.

Districts Securities Commission

Prompted by the widespread default of many irrigation and water districts in payment of principal and interest due on outstanding bonds during the late 1920's, the Legislature in 1929 created the California Irrigation and Reclamation Financing and Refinancing Commission. In a report to the Governor dated December 1, 1930, the commission recommended legislation to restore the credit standing of districts, to obtain necessary financing, to establish the confidence of the investing public, to strengthen the individual buying power of landowners in these districts, and to provide continuing checks and curbs on the creation of new indebtedness.

As a result of this study and report the 1931 Legislature created the Districts Securities Commission. The commission membership now consists of the State Superintendent of Banks, the Attorney General, the Director of Water Resources, and two members at large appointed by the Governor. The Districts Securities Commission assumed all of the duties of the earlier California Bond Certification Commission, which was created in 1911 for the purpose of establishing a better market for irrigation district securities but had much less authority over districts than the new Districts Securities Commission.⁴

The 1930 report of the Financing and Refinancing Commission concluded that most of the water districts in default at that time should not have been organized in the first place. The principal reasons for default in bond payments, the commission concluded, were (1) over-capitalization, (2) an impossible amortization program; (3) inclusion of marginal lands incapable of bearing their proportion of district debt, (4) lack of adequate, dependable and feasible water supply, and (5) failure of lands to develop as planned.

Following the creation of the Districts Securities Commission, 59 districts were refinanced and investor confidence in the State's water districts was restored.

The commission now passes upon the economic feasibility and financial soundness of some districts' proposals to incur long-term indebtedness by issuance of bonds, warrants, or by contracts.

The commission's investigation includes a review of project plans and estimates, the financial condition of the district and analysis of repayment capacity, a confirmation of the valuations of property that

³ "Functions and Operations of California Districts Securities Commission," T. P. Stivers, executive secretary, before Governor's Council, May 28, 1962.

⁴ California Department of Public Works, Division of Water Resources, *Financial and General Data Pertaining to Irrigation, Reclamation and Other Public Districts in California Bulletin No. 17* Sacramento, 1930, pps. 16-22; California Department of Public Works, Division of Water Resources, *California Irrigation District Laws, Bulletin 18-B*, Sacramento, 1931, p. 31.

provide security for the bonds, a review of the proposed maturity schedule, provisions for reserve funds, and other conditions of sale of the bonds

The commission's record is impressive and there has never been a default in payment of principal and interest on bonds or warrants approved by the commission since its organization in 1931.⁵

At the present time irrigation districts and California water districts are required by law to be subject to the broad financial supervision of the commission and must submit to the commission for approval all proposals for incurrence of long-term indebtedness by issuance of bonds and warrants (except revenue bonds of California water districts) or by contracts. Certain special act districts as well are required to submit securities to the commission for approval, and the revenue bonds of county water districts must also be approved by the commission. In addition, any contracts entered into under the Irrigation District Federal Cooperation Law providing for repayment of construction money, repayment of the cost of acquiring any property, or issuance of bonds, must be submitted to the commission.

In addition to the general act districts listed above, many other public agencies may utilize the services of the commission. Section 20003 of the Water Code provides as follows:

"20003 Whenever the governing board of any water storage district, water conservation district, county water district, county water works district, public utility district, reclamation district, drainage district, or any district other than an irrigation district, the primary function of which is the irrigation, reclamation, or drainage of land, or the development of water for domestic use or the distribution thereof, or the generation of power or the generation thereof, which district exists under the law of this State, declares by resolution that it deems it desirable that the bonds of the district should be certified pursuant to this chapter, the governing board of the district shall file a certified copy of the resolution with the Commission. Then, and in that event, all of the provisions of this chapter apply to the district . . ."

About 500 additional districts, including nearly all of the general district acts concerned primarily with the conservation or distribution of water, are eligible to submit securities to the commission under this provision. At the present time, however, very few have done so. In 1962, 109 irrigation districts and 47 California water districts had sold securities and automatically were subject to commission supervision. In addition, 11 county water districts, 2 drainage districts, 4 cities, 1 community services district, 1 public utility district, 1 water storage district, 1 water conservation district (1931), and 2 special act districts have submitted to commission supervision.

It is important to note that whenever a district requests commission approval of a bond issue, commission control and supervision continues during the entire period these bonds are outstanding and during this period no additional bonds can be issued without commission approval.

⁵T. P. Silvers, "Water District Activities in California," statement of September 23, 1960.

All districts so supervised must also file annual financial reports with the commission. These requirements may in part explain why so few districts having an option to use the commission's services have actually done so. In addition, the California Water Storage District Law adds to these requirements and provides that whenever the commission has passed upon one district bond issue, all subsequent issues must be submitted to the commission.

Commission approval and certification of a bond issue results in the bonds becoming legal investments for all trust funds, the funds of all insurance companies, banks (both commercial and savings), trust companies, the state school funds, and any funds which may be invested in county, municipal or school district bonds, and they may be deposited as security for the performance of any act whenever the bonds of any county, city and county, or school district may be so deposited, including deposit as security for public money. This certification normally results in a broader market for the district's securities and a lower interest rate to the district.

Bonds issued by certain general act districts, however, by wording in the general district acts themselves automatically become legal investments for similar types of funds as bonds examined and approved by the commission. In addition bonds issued under the Revenue Bond Law of 1941 are not subject to commission approval.

The County Waterworks District Act and the County Water District Act contain language which gives bonds issued under these acts the same force, value and use as bonds of any municipality and a number of special district acts also have this same provision. It should be noted, however, that despite these statutory declarations, these bonds do not have the same status as commission-approved securities.

The commission has often expressed the view that this lack of uniformity of procedures relating to the issuance of bonds results in bonds of the various types of districts varying greatly as to their degree of soundness. The executive secretary of the commission has said that "the commission is of the opinion that bonds issued by all agricultural water districts, irrespective of the type of act under which they are organized, should meet uniform minimum standards in the issuance of bonds, and it is believed that this can best be accomplished by placing all agricultural type water districts under the financial supervision of this commission in the same manner as irrigation districts and California water districts."⁶

OTHER FINANCING METHODS

In addition to ad valorem assessments and bonds, districts may finance operations and projects by (1) issuance of warrants, (2) issuance of notes, (3) loans and (4) water charges, and other assessments.

Warrants

District short-term financing is often accomplished by issuance of warrants which are normally payable over a period of 5 to 10 years. These warrants are often sold at quite reasonable interest rates and

⁶ Letter to Assemblyman Carley V. Porter dated July 5, 1962.

most water district acts establish a maximum interest rate at which warrants may be sold

As with bonds, all income from warrants issued by water districts organized under state law are exempt from federal income tax, which is a substantial assistance in marketing at low rates of interest

Many of the district acts in this study authorize the issuance of warrants. The conditions of issuance vary from district to district. Some district acts require a vote of the people to issue warrants, while others permit authorization by board action alone. Also, the maturity period and amount of warrants is limited by some district acts and not limited by others

Some of the district acts in the study authorize a particular type of warrant—the formation warrant. These are usually very short-term issues and are used to meet the formation costs of districts

Notes

A number of district acts in this study authorize the issuance of promissory notes. As with warrants, some district acts limit the maturity period, interest rate, and amount of the note which is permitted.

Loans

In recent years loans from the state and federal governments have become major forms of financing of local water development projects, after many years of federal activity in flood control projects. The federal government took first action in this area in 1955 and 1956 with the passage of Public Laws 130 and 984 by the 84th Congress. Under Public Law 130, federal non-interest-bearing loans are made to local agencies for the purpose of constructing distribution systems on authorized federal reclamation projects. Under Public Law 984, the Small Projects Act, non-interest-bearing loans or grants up to a maximum of \$5,000,000 are made to local agencies for construction of irrigation facilities

In 1957 the California Legislature first enacted a program of state assistance to local projects, which in 1959 became the Davis-Grunsky Act. This program provides low-interest⁷ loans up to a maximum of \$4,000,000 to public agencies for the construction of local projects "in which there is a statewide interest," and which the agencies are unable to finance on reasonable terms from other sources. Larger loans may be made with approval of the Legislature. The act also provides loans of up to \$25,000 for the preparation of project feasibility reports. Grants of up to \$300,000 for recreation and fish and wildlife functions of such projects are also permitted under this act. Larger grants may also be made with approval of the Legislature

Amendments to the act made in 1961 require that all contracts for loans or grants be approved by an election in the local agency. The 1961 amendments also specified that every public agency empowered by law to construct a project eligible for a Davis-Grunsky loan or grant is granted the power to borrow money or receive a grant under the program, execute a contract with the state, and levy ad valorem taxes or assessments to repay the loan. By this action, and without specific authorization in the individual district act, most of the districts in-

⁷ Interest rates are determined from a formula which is based upon the most recent sale of general obligation bonds by the State

cluded in this study are, therefore, automatically permitted to use this method of financing.

Two of the district acts included in this study provide for district financing by means of loans under specific circumstances. County waterworks districts may accept loans from the county in which they are located. Provisions of the act limit these loans to 85 percent of the district's anticipated annual revenue or \$10,000 if the district has less than \$100,000 assessed value. The loans are also limited to five years.

Upon majority vote of the electorate, loans may be accepted for zones of the San Bernardino County Flood Control District. Such loans may be made for up to 20 years and in an amount per loan not exceeding 2 percent of the assessed value of the zone.

Water Charges and Other Assessments

Most of the districts included in this study are authorized to charge for water delivered. Certain districts also are permitted to levy standby charges for water availability which do not depend on actual water delivered.

In 1953, the Orange County Water District Act was amended to provide for a novel "replenishment assessment" which is assessed on each acre-foot of ground water extracted. This assessment, commonly called a "pump tax," is levied to finance the replenishment of both accumulated and annual overdraft of the underground basins of the district.

A slightly modified replenishment assessment is the key feature of the Water Replenishment District Act, a general district act. In 1961, authority to levy a replenishment assessment was granted by special legislative act to the Alameda County Water District, which is a district formed under the County Water District Act. In 1962 the Legislature amended the Santa Clara County Flood Control and Water Conservation District, a special district act, to authorize the levy of a replenishment assessment by that district. All of these provisions for replenishment assessments are based upon the Orange County Water District Act and its experience.

In all cases described above the replenishment assessment complements an ad valorem tax program by the district.

Several other district acts provide for the levy of special assessments, including those based on benefits from district projects. Water storage districts, particularly, utilize a number of forms of financing not used by other districts, including direct assessment warrants, warrants payable at future times, and several other types of special assessment. The unusual forms of financing used by these districts are in part a result of the nature and character of these districts, which were created for specific purposes and to meet specific needs. (See Chapter I.)

BENEFIT ZONES AND IMPROVEMENT DISTRICTS

A number of different terms are used to describe zones or subdistricts within general or special act districts. These zones are basically a financing entity within a district, created for the purpose of limiting the assessment of costs to the property benefited by the project.

Table XII includes a column, "power to create zones." This refers to the power of the district's governing body to create special zones for

the financing of projects of common benefit to the areas of these zones. These zones are variously referred to as "zones," "benefit zones," "improvement districts," or "distribution districts." They are merely geographic areas which have various powers to levy ad valorem assessments, issue one or more types of bonds, and construct works. Zones utilize the same methods of financing, in most cases, as the district itself. In some districts, bonds, for example, are issued only by zones. There is, however, no limit on the size of zones. The word "zones" was used in this study to differentiate these zones from the three improvement acts discussed below.

The term "zones," as used in this study, does not include (1) "member units," (2) "zones" which are created by the district act itself as electoral boundaries (which are often referred to as "divisions"); or, (3) districts formed under the Improvement Act of 1911 (Sections 5000-6794, Streets and Highways Code), the Municipal Improvement Act of 1913 (Sections 10000-10609, Streets and Highways Code). The latter are special assessment district acts and were originally created for use by counties and municipalities. However, a number of general and special district water acts specifically authorize their use. These improvement acts differ greatly from the types of zones included in Table XII above. Under the improvement acts, there is an assessment of individual property for the entire cost of the project and such assessments can be paid at once or by the issuance of bonds—the security of the bonds being specific individual parcels of property.

Zones

Six of the 10 general district acts in this study authorize the formation of zones within the districts. Of the special district acts, 21 of the 22 county flood control and water conservation districts, 7 of the 11 flood control districts, 14 of the 19 water agencies, and 2 of the 3 other special district acts are authorized to create such zones.

Table XVIII on page 105, compiled from the committee questionnaire, indicates the extent to which districts authorized to create zones have actually done so.

It can be seen from Table XVIII that less than half of the districts actually have created zones. Municipal water districts, county water districts, and irrigation districts have made the most extensive use of zones.

In 1927 the Legislature passed an act providing "for the organization and creation of improvement districts under the 'California Irrigation District Act', to provide for the acquisition, construction, operation, maintenance and repair of improvements therein, and for the levy of assessments on the lands of such improvement districts."⁸ This act has subsequently been amended substantially and after codification now appears as Part 7 of Division 11 (Sections 23600-24103) of the Water Code as part of the Irrigation District Act.

These provisions have been carefully worked out and have been used quite successfully. In 1949, county water districts were authorized to create improvement districts pursuant to the provisions of the Irrigation District Act, and in 1953 California water districts were author-

⁸ Statutes of 1927, Chapter 1415.

ized to do the same. Therefore, the three most used general district acts are today authorized to utilize the same basic procedures for the formation of zones or improvement districts.

TABLE XVIII. NUMBER OF DISTRICTS WHICH HAVE CREATED ZONES

	Questionnaire		Number creating zones		
	Number of districts	Total returned	Yes	No	No response
General District Acts*					
California water.....	98	59	2	44	14
County water.....	176	182	24	79	29
County waterworks.....	96	71	1	8	49
Irrigation.....	100	82	16	52	14
Municipal water (1911).....	48	33	13	18	2
Water conservation (1931).....	11	9	2	5	2
Special District Acts					
County flood control and water conservation.....	22	21	14	5	2
Flood control.....	11	8	4	4	0
Water agencies.....	19	13	1	8	4
Other.....	3	2	1	1	0
All Districts.....	593	430	78	224	116

* Districts not listed are not authorized to establish zones.

In 1949 special provisions were added to the Irrigation District Act providing for the creation of distribution districts "for the purpose of contracting with the United States pursuant to the federal reclamation laws for the construction of a distribution system separate from or supplemental to the works of the district." These provisions (Sections 23500-23583, Water Code) were prompted by the completion of portions of the Central Valley Project. The Irrigation District Act also provides for "revenue improvement districts," in which assessments are prohibited and all obligations of the improvement district must be met by revenues (Water Code, Sections 23800-23811, added in 1947.)

In 1957, Part 6.5 (Sections 36460-36543, Water Code) was added to the California Water District Act, providing for the creation of distribution districts along the same lines as those of the Irrigation District Act. These provisions in the California Water District Act also permit the formation of distribution districts for distribution systems not associated with federal projects as well.

In addition to authorizing use of the Irrigation District Act provisions for formation of unimprovement districts, the County Water District Act includes an alternate procedure for the formation of improvement districts (Sections 31585-31618, Water Code), enacted in 1959.

Each of the other three general district acts which provide for the creation of improvement districts or zones do so by means of specific provisions in the individual act. The provisions in the Municipal Water District Act of 1911 were added in 1951.

The same year provisions (Sections 55650-55679, Water Code) were added to the County Waterworks District Act authorizing the creation of "zones." A unique provision in this act (Section 55200-55203, Water Code) permits these zones to be created at the time of formation of the district.

In 1933, improvement district provisions were added to the Water Conservation Act of 1931. Later, in 1958, additional provisions permitting the formation of "special improvement districts" for specific purposes were added to this act.

It can be seen that provisions for improvement districts or zones in the case of all general district acts came sometime after the original enactment of the acts, beginning with the Irrigation District Act in 1927.

The most common use of zones is for the construction of distribution systems, including canals, pipelines, etc. One irrigation district reported it created 258 separate zones for the lining of open ditches. Zones are also used for assessment of maintenance and operations costs of projects.

A number of county water districts have utilized zones to finance sewerage systems, one of the functions of these districts. Municipal water districts have used zones to repay federal loans and for ground water replenishment programs. One municipal water district created zones to purchase private water companies that were included within the district. General act districts have used zones for a wide variety of projects and purposes.

With regard to special act districts, the older flood control and water conservation districts and flood control districts have used zones a great deal. Responses to the questionnaire indicated these zones had been used for construction of dams and levees, operation and maintenance of flood control projects, channel clearance and many other related purposes.

The Kern County Water Agency Act, enacted in 1961, included provisions for zones of benefit for the specific purpose of contracting for water from the State Water Facilities. Considerable attention was given in this act to including in zones only lands specifically benefitting from the projected import of water. The definition of "benefit" in this act was quite limited compared to the provisions of most other general and special district acts. Since enactment of the Kern County Water Agency Act many persons have referred to the new type of zone authorized by it as "benefit zones." A number of special act districts have indicated to the committee that they were anxious to provide zones similar to those in the Kern County act for their district in order to similarly limit the inclusion of land in zones.

Special Assessment Districts

Four general district acts authorize the use of one or more of the special assessment district acts to finance improvements. County water districts and water conservation districts (1931) may use all three acts—the Improvement Act of 1911, the Municipal Improvement Act of

1913, and the Improvement Bond Act of 1915 Municipal water districts (1911) and county waterworks districts are authorized to use only the Improvement Act of 1911. In addition, county water districts and water conservation districts (1931) are permitted to use the Street Opening Act of 1908 (Sections 4000-4443, Streets and Highways Code)

Special act districts are authorized to use these acts as follows

TABLE XIX. SPECIAL ACT DISTRICTS AUTHORIZED TO USE SPECIAL ASSESSMENT DISTRICT ACTS

	Number of districts	Improvement Act of 1911	Municipal Improvement Act of 1913	Improvement Bond Act of 1915
County flood control and water conservation	22	Contra Costa, Marin, San Luis Obispo, Santa Cruz, Sonoma, Yolo (6)	Contra Costa, Marin, San Luis Obispo, Santa Cruz, Sonoma, Yolo (6)	Contra Costa, Marin, San Luis Obispo, Santa Cruz, Sonoma, Yolo (6)
Flood control	11	Fresno Metropolitan, Orange County, San Mateo County (3)	San Mateo County (1)	Fresno Metropolitan, Orange County, San Mateo County (3)
Water agencies	19	Amador County, Antelope Valley-East Kern, Contra Costa County, Crocker-Lake Arrowhead, Desert, Kern County, Mojave, San Geronimo Pass (8)	Amador County, Contra Costa County, Kern County, Mojave (4)	Contra Costa County, Mojave (2)
Other	3	None	None	None

A total of 17 special act districts are authorized to use the 1911 act, and 11 districts are authorized to use the 1913 and 1915 acts. Both general act and special act districts, however, have made very little use of these special assessment district acts. Table XX below indicates their actual use by general act districts, based upon responses to the committee questionnaire.

TABLE XX. ACTUAL USE OF SPECIAL ASSESSMENT DISTRICT ACTS BY GENERAL ACT DISTRICTS

	Number of districts	Number of responses	Improvement Act of 1911	Municipal Improvement Act of 1913	Improvement Bond Act of 1915
County water	176	132	11	10	7
County waterworks	96	71	4	*	*
Municipal water (1911)	48	33	3	*	*
Water conservation (1931)	11	9	0	0	1

* Not authorized

Of the 17 special act districts authorized to use one or more of the three special assessment district acts, only one district—the Sonoma County Flood Control and Water Conservation District—reported to the committee that it had actually used one of the acts. The district added that it found the procedures of the 1911 act “too complex and costly.”

These special assessment district acts, therefore, are only a minor factor in the financing programs of water districts, but, if desired, could be used by nearly half of the State's water districts.

CHAPTER VI

BOUNDARIES

This chapter discusses the manner in which districts, after formation, are increased in size by *annexation* of additional territory, are decreased in size by the *withdrawal* of territory, are consolidated with one another by *merger* or *consolidation*, or cease to exist by *dissolution*.

In 1933 the Legislature enacted the District Organization Law (now Sections 58000-58309, Government Code) to provide a uniform procedure for formation, annexation, withdrawal, consolidation and dissolution of "tax or assessment districts." The provisions of this law are applicable to general and special act districts only if the District Organization Law specifically includes the district act (no water districts, special act or general act, are now so included) or if a special or general district act specifically incorporates provisions of the District Organization Law. Although none of the 10 general district acts authorize the use of any of the provisions of the District Organization Law, a number of the special act districts in this study utilize one or more of its procedures.

As a result of the differences between formation of general act districts and special act districts, provisions for changes in boundaries of the two types of districts are quite different.

For general district acts the basic steps involved in voluntary annexation, withdrawal and dissolution are in most cases similar to those of formation and include (1) filing of a petition,¹ (2) public hearing, and (3) an election² (or in some cases, board action only).

Only a small number of the special district acts, however, have provision for these boundary changes.

ANNEXATION (Inclusion)

General Act Districts

As can be seen from Table XXI, all general act districts except flood control and flood water conservation districts provide for the annexation (termed "inclusion" in some district acts) of additional territory to districts.

The number of signatures required for an annexation petition varies. For all but the Municipal Water District Act of 1911, which requires signatures equal to only 10 percent of the voters at the last gubernatorial election, and the Water Replenishment District Act, which requires signatures of only 10 percent of the district voters (including 10 percent in each affected city), the requirements could be considered high.

¹ In the case of annexation and withdrawal unless otherwise indicated the petition requirements apply only to the area to be annexed or withdrawn.

² In the case of annexation and withdrawal unless otherwise indicated the election is held only in the area to be annexed or withdrawn.

TABLE XXI. BOUNDARIES PROVISIONS

A GENERAL ACT DISTRICTS	Annexation ¹			Withdrawal ¹			Dissolution ²		
	Petition ³	Hearing	Election ⁴	Petition ³	Hearing	Election ⁴	Petition ³	Hearing	Election ⁴
California water	Majority of land-owners (including 50 percent of land)	Yes	Yes (districtwide) if annexation is in the district's best interest, or if protest by 3 percent of district landowners or owners of 3 percent of assessed land value	Owners of all land	Yes	No, board action	Owners of 1/3 of land	No	Yes, 2/3 vote
Involuntary Action by Attorney General for misuse of powers ⁵									
California water storage	Owners of 50 percent of landowners, or owners of Water Resources	Yes (by Department of Water Resources)	Yes (districtwide) if protest by 3 percent of district landowners (conducted by Department of Water Resources)	Owners of all land (to Department of Water Resources)	Yes (by Department of Water Resources)	No, action by Department of Water Resources	Majority of land-owners (including majority of assessed land value) If inactive 2/3 of owners and owners of 50 percent of land and assessed land value	No	Yes, 3/4 vote
Involuntary Action by Attorney General for misuse of powers or by Department of Water Resources for failure to report on project within 10-25 years from formation date, abandonment of project, or failure of voters to approve project									
County water	Majority of voters or landowners, or owners of majority of land	Yes	No, board action	Board resolution or owners of majority of assessed value of land and improvements	Yes	No, board action	40 percent of election, or owners of 40 percent of assessed value of land and improvements (must be later if debt exceeds 10 percent of assessed value of all property)	Yes	Yes, 50 percent vote
Unpublished assent board resolution or owners of 25 percent of land and assessed land value									
		Yes	No, board action				Unanimous board action	Yes	No, action by board of supervisors

County water works	Owners of 50 percent of land, or		Yes (districtwide and annex area)		Part of district may withdraw when included within a municipal corporation (prior to issuance of bonds and after filing with county assessor, State Board of Equalization, and district board)		50 residents		No, board restitution	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No, board restitution
Flood control and flood water conservation	Owners of all land	Yes	Yes	No	No provision	--	--	--	Involuntary	Whenever all of district is annexed to municipal corporations providing water service or waterworks, the district is dissolved. If the district is not dissolved, it includes all of district. Effective when action dissolving district is filed with State Board of Equalization. Also action by Attorney General for nonuse of powers.
	Uninhabited area 1 Owners of all land 2 Unincorporated contiguous land only owners of all real property	Yes	Yes	No	No provision	--	--	--	Involuntary	Whenever all of district is annexed to municipal corporations providing water service or waterworks, the district is dissolved. If the district is not dissolved, it includes all of district. Effective when action dissolving district is filed with State Board of Equalization. Also action by Attorney General for nonuse of powers.
Irrigation	No provision	--	--	--	No provision	--	--	--	(Government Code Sections 58950-59005 applicable—action by county officials for nonuse of powers)	
	Majority of land-owners (including 50 percent of land)	Yes	Yes (districtwide) if petition is presented by landowners (including 3 percent of district assessed land value)	Yes (districtwide) if petition is presented by landowners (including 3 percent of district assessed land value)	Owners of 50 percent of land in governing body of city to which area annexed	Yes	No, board action	Yes	Majority of land-owners (including majority of assessed land value). If inactive $\frac{1}{4}$ of voters and owners of 60 percent of land and assessed land value	Yes, $\frac{1}{4}$ vote
Municipal water (1911)	Voters equal to 10 percent of voters in last general election (if cities, 10 percent in each)	No	Yes	Yes	Board resolution or voters equal to 10 percent of voters in last gubernatorial election (if cities, 10 percent in each)	Yes, if withdrawn by board	Yes	Yes	25 percent of voters if bonded indebtedness paid (to county clerk)	Yes (by board of supervisors)
	Uninhabited area ^a or owners of 25 percent of land and assessed land value	Yes	No, board action	No, board action	Uninhabited area ^a or owners of 25 percent of land and assessed land value	Yes	No, board action	Yes	Yes (by board of supervisors)	Yes (by board of supervisors)

^a Unless otherwise indicated, district's governing body receives petition and conducts hearing and election.

^b Under appropriate circumstances districts may be dissolved for nonuse of powers under Government Code Section 58980.

^c Districts may be dissolved for nonuse of powers under Government Code Section 58980.

^d Districts may be dissolved for nonuse of powers under Government Code Section 58980.

^e If the district's taxes or assessments are both computed and collected by county officials, Government Code Sections 58960-58965 are applicable—action by county officials for nonuse of powers.

^f Less than 1.5 voters in residence.

TABLE XXI. BOUNDARIES PROVISIONS—Continued

	Amendment			Withdrawal			Disolution		
	Petition ^a	Hearing	Election ^a	Petition ^b	Hearing	Election ^a	Petition	Hearing	Election ^a
Water conservation (1927)	Owners of all land (to board of supervisors)	Yes (by board of supervisors)	No action by board of supervisors	Owners of all land (to board of supervisors)	Yes (by board of supervisors)	No action by board of supervisors	50 landowners or owners of 50 percent of land (to board of supervisors)	Yes (by board of supervisors)	Yes, 60 percent of total number of active in district (to board of supervisors)
Water conservation (1927)	Majority of landowners including 50 percent of the land	Yes	Yes (districts) if board denies annexation is not in district's best interests, or if project is not in district's interest; if board denies, including 3 percent of assessed value of land in district)	Landowners (trust) contiguous to exterior boundaries of district	Yes	No unanimous vote of board	10 percent of voters or owners of 50 percent of land (to board of supervisors)	Yes (by board of supervisors)	Yes, 60 percent (conducted by board of supervisors)
Water replenishment	10 percent of voters	No	Yes	Board resolution or 10 percent of voters initiated by board	Yes, if withdrawal initiated by board	Yes	25 percent of voters (to county clerk)	No	Yes (conducted by board of supervisors)

(Alternative method in Government Code Sections 58850-58856 also applicable—action by county officials for non-use of powers)

(Alternative method in Government Code Sections 58850-58856 also applicable—action by county officials for non-use of powers)

B SPECIAL ACT DISTRICTS
1 County Flood Control and Water Conservation Districts

Alameda	No provision	--	--	Cities only may withdraw	No	Yes (conducted by city council)	No provision	--	--
Contra Costa	No provision	--	--	Cities only may withdraw	No	Yes (conducted by city council)	No provision	--	--
Lake	No provision	--	--	Cities only may withdraw	No	Yes (conducted by city council)	No provision	--	--
Lassen-Moore	No provision	--	--	No provision	--	--	300 voters ^c	No	Yes, 2/3 vote

Muni	No provision	--	--	City only may withdraw	No	Yes (conducted by city council)	No provision	--
Mendocino	No provision	--	--	No provision	--	--	No provision	--
Monterey	No provision	--	--	No provision	--	--	No provision	--
Napa	No provision	--	--	No provision	--	--	No provision	--
Plumas	No provision	--	--	No provision	--	--	200 voters ¹	Yes, $\frac{2}{3}$ vote
San Benito	No provision	--	--	No provision	--	--	No provision	--
San Bernardino	(limited to the county)	--	--	No provision	--	--	No provision	--
San Diego	50 landowners (50 percent if less than 100 in area)	Yes	Yes, if in dissection of board	50 landowners (50 percent if less than 100 in area)	Yes	Yes, if in dissection of board	No provision	--
San Joaquin	No provision	--	--	City only may withdraw	No	Yes (conducted by city council)	No provision	--
San Luis Obispo	No provision	--	--	No provision	--	--	No provision	--
Santa Barbara	No provision	--	--	No provision	--	--	No provision	--
Santa Clara	No provision	--	--	No provision	--	--	No provision	--
Santa Cruz	No provision	--	--	No provision	--	--	No provision	--
Sierra	No provision	--	--	No provision	--	--	No provision	--
Siskiyou	10 percent of voters ²	Yes	Yes, if protest by 30 percent of voters	No provision	--	--	200 voters ¹	Yes, $\frac{2}{3}$ vote
Solano	No provision	--	--	No provision	--	--	20 voters ³	Yes, $\frac{2}{3}$ vote
Sonoma	No provision	--	--	No provision	--	--	No provision	--
Tehama	No provision	--	--	No provision	--	--	200 voters ¹	Yes, $\frac{2}{3}$ vote
Yolo	No provision	--	--	Owners of majority of assessed land value	Yes (also investigation by Department of Water Resources)	No, board action	No provision	--

¹ Unless otherwise indicated, district's governing body reserves petition and conducts hearing and election.

² Under appropriate circumstances, districts may be dissolved for nonuse of power under Government Code section 58790.

³ Unless otherwise indicated, petition and election may be dissolved for nonuse of power under Government Code section 58790.

⁴ Majority unless otherwise indicated. In certain districts final board action on petition or withdrawal is subject to referendum election.

⁵ In applying the article on dissolution to the District Organization Law, Government Code sections 58200-58400, except for petition by 20 voters for petition and protest.

⁶ Incorporates the article on dissolution in the District Organization Law, Government Code sections 58300-58399.

⁷ Incorporates the article on dissolution in the District Organization Law, Government Code sections 58230-58243, which requires the district act to set the number of petitioners for petition and protest.

TABLE XXI. BOUNDARIES PROVISIONS—Continued

B SPECIAL ACT DISTRICTS—Continued
2 Flood Control Districts

	Annexation ¹			Withdrawal ¹			Dissolution ²		
	Petition ³	Hearing	Election ⁴	Petition ²	Hearing	Election ³	Petition	Hearing	Election ⁴
American River	25 percent of voters	Yes	Yes (districtwide in certain circumstances)	No provision	--	--	No provision	--	--
Del Norte County	No provision	--	--	No provision	--	--	No provision	--	--
Fresno Metropolitan	Board resolution or 25 percent of landowners (including 25 percent of land)	Yes	Yes if initiated by owners covering 25 percent of landowners	Board resolution or 25 percent of landowners (including 25 percent of land)	Yes	Yes if protest by over 25 percent of landowners	No provision	--	--
Foothill County	No provision	--	--	No provision	--	--	No provision	--	--
Los Angeles County	No provision	--	--	No provision	--	--	No provision	--	--
Morrison Creek	No provision	--	--	No provision	--	--	No provision	--	--
Orange County	No provision	--	--	No provision	--	--	No provision	--	--
San Bernardino County	No provision	--	--	No provision	--	--	No provision	--	--
San Diego County	No provision	--	--	No provision	--	--	No provision	--	--
San Mateo County	No provision	--	--	No provision	--	--	No provision	--	--
Ventura County	No provision	--	--	No provision	--	--	No provision	--	--

3 Water Agencies

Alpine County	Majority of landowners (including 50 percent of land)	Yes	Yes (districtwide) if protest by 3 percent of district landowners (including 25 percent of district assessed land value)	No provision	--	--	Incorporates Government Code Sections 5950-5950.9, providing for dissolution for change of powers by county officials by court action and by board of supervisors by resolution
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Amador County	No provision	--	No provision	--	Incorporates Government Code Sections 58950-58980, providing for dissolution for misuse of powers by county officials by court action and by board of supervisors by resolution	Yes	Yes, agencywide	25 percent of voters if bonded indebtedness paid to county clerk of principal county	No	Yes (conducted by board of supervisors of principal county)
Antelope Valley-East Kern	Yes	Yes	Board resolution or voters equal to 10 percent of voters in last gubernatorial election, 10 percent in each	Yes	Yes	Yes	No, board action	25 percent of voters if bonded indebtedness paid to county clerk of principal county	No	Yes (conducted by board of supervisors of principal county)
	No	No	Uninhabited area ¹ or Board resolution or voters equal to 25 percent of land and assessed land value	No	No	No	No, board action	20 voters ²	No	Yes, 2/3 vote
Contra Costa County	No provision	--	No provision	--	--	--	--	25 percent of voters if bonded indebtedness paid to county clerk of principal county	No	Yes (conducted by board of supervisors of principal county)
	Yes	Yes	Board resolution or voters equal to 10 percent of voters in last gubernatorial election (if total election, 10 percent in each)	Yes	Yes	Yes	Yes	25 percent of voters if bonded indebtedness paid to county clerk of principal county	No	Yes (conducted by board of supervisors of principal county)
Crestline-Lake Arrowhead	No	No	Uninhabited area ¹ or Board resolution or voters equal to 25 percent of land and assessed land value	No	No	No	No, board action	25 percent of voters if bonded indebtedness paid to county clerk of principal county	No	Yes (conducted by board of supervisors of principal county)
	Yes	Yes	Board resolution or voters equal to 10 percent of voters in last gubernatorial election (if total election, 10 percent in each)	Yes	Yes	Yes	Yes	25 percent of voters if bonded indebtedness paid to county clerk of principal county	No	Yes (conducted by board of supervisors of principal county)
Desert	No	No	Uninhabited area ¹ or Board resolution or voters equal to 25 percent of land and assessed land value	No	No	No	No, board action	25 percent of voters if bonded indebtedness paid to county clerk of principal county	No	Yes (conducted by board of supervisors of principal county)
	Yes	Yes	Board resolution or voters equal to 10 percent of voters in last gubernatorial election (if total election, 10 percent in each)	Yes	Yes	Yes	Yes	25 percent of voters if bonded indebtedness paid to county clerk of principal county	No	Yes (conducted by board of supervisors of principal county)

¹ Unless otherwise indicated, district's governing body receives petition and election

² Under appropriate circumstances districts may be dissolved for misuse of powers under Government Code Section 58980

³ Unless otherwise indicated, petition and election only in area to be amended or withdrawn

⁴ Majority unless otherwise indicated. In certain districts final board action on amendment or withdrawal is subject to referendum election

⁵ Yes unless otherwise indicated

⁶ Incorporates the article on dissolution in the District Organization Law, Government Code Sections 58900-58909.

TABLE XXI. BOUNDARIES PROVISIONS—Continued

B. SPECIAL ACT DISTRICTS—Continued
3 Water Agencies—Continued

	Annexation ¹			Withdrawal ¹			Dissolution ¹ *		
	Petition ²	Hearing	Election ³ *	Petition ²	Hearing	Election ³ *	Petition	Hearing	Election ⁴
El Dorado County	No provision	--	--	No provision	--	--	Incorporates Government Code Sections 58950-58980, providing for dissolution for nonuse of powers by county officials by court action and by board of supervisors by resolution		
Kern County	No provision	--	--	No provision	--	--	Incorporates Government Code Sections 58950-58980, providing for dissolution for nonuse of powers by county officials by court action and by board of supervisors by resolution		
Mariposa County	No provision	--	--	No provision	--	--	Incorporates Government Code Sections 58950-58980, providing for dissolution for nonuse of powers by county officials by court action and by board of supervisors by resolution		
Mayne	Voters equal to 10 percent of voters in last gubernatorial election; if cities, 20 percent in each	No	Yes	Board resolution or owners of majority of assessed value of land and improvements	Yes	No action by board	20 voters ⁵	No	Yes, 2/3 vote
	or owners of 75 percent of assessed land value	Yes	No, order of board of Supervisors of San Bernardino County						
Nevada County	Majority of landowners (including 50 percent of land)	Yes	Yes (districtwide) if petition by 3 percent of district landowners (including 3 percent of district assessed land value)	No provision	--	--	Incorporates Government Code Sections 58950-58980, providing for dissolution for nonuse of powers by county officials by court action and by board of supervisors by resolution		
Placer County	No provision	--	--	No provision	--	--	Incorporates Government Code Sections 58950-58980, providing for dissolution for nonuse of powers by county officials by court action and by board of supervisors by resolution		
Susameno County	No provision	--	--	No provision	--	--	20 voters ⁵	No	Yes, 3/4 vote

San Geronimo Pass	Voters equal to 10 percent of voters in last gubern- mental election	No	Yes	Board resolution or voters equal to 10 percent of voters in last gubern- mental election (if not in each)	Yes	Yes	Voters equal to 25 percent of voters in last gubern- mental election (to county officials in principal county)	No	Yes (conducted by board of super- visors in principal county)
	Uninhabited area ^a or 25 percent of owners of land and assessed land value	Yes	No, board action	Uninhabited area ^a or 25 percent of owners of land and assessed land value	Yes	No, board action			
Santa Barbara County	No provision	--	--	No provision	--	--	20 voters ^b	No	Yes, $\frac{2}{3}$ vote
Shasta County	No provision	--	--	No provision	--	--	No provision	--	--
Sutter County	No provision	--	--	No provision	--	--	Incorporates Government Code Sections 55860-55880, providing for dissolution for nonuse of powers by county officials by court action and by board of supervisors by resolution		
Upper Santa Clara Valley	Voters equal to 10 percent of voters in last gubern- mental election	No	Yes	Board resolution or voters equal to 10 percent of voters in last gubern- mental election (if not in each)	Yes	Yes	Voters equal to 25 percent of voters in agency in last gubernmental elec- tion, if bonded in- debtedness paid (to county, clerks of principal county)	Yes (by board of super- visors of principal county)	Yes (conducted by board of super- visors of principal county)
	Uninhabited area ^a or 25 percent of owners of land and assessed land value	Yes	No, board action	Uninhabited area ^a or 25 percent of owners of land and assessed land value	Yes	No, board action			
Yuba County	No provision	--	--	No provision	--	--	Incorporates Government Code Sections 55860-55880 providing for dissolution for nonuse of powers by county officials by court action and by board of supervisors by resolution		

^a Unless otherwise indicated district's governing body receives petition and conducts hearing and election
Under appropriate circumstances districts may be organized for nonuse of powers under Government Code Section 55880

^b Districts with less than 10 voters in residence are subject to dissolution by court action on annexation of withdrawal is subject to referendum election

^c Majority unless otherwise indicated in certain districts find board action on annexation of withdrawal is subject to referendum election

^d Less than 12 voters in residence

^e Incorporates the article on dissolution in the District Organization Law, Government Code Sections 56300-56304

TABLE XXI. BOUNDARIES PROVISIONS--Continued

B SPECIAL ACT DISTRICTS--Continued

4 Other

	Annexation ¹			Withdrawal ¹			Dissolution ^{1, 2}		
	Petition ³	Hearing	Election ⁴	Petition ³	Hearing	Election ⁴	Petition	Hearing	Election ⁴
Kings River Conservation District	Voters equal to 10 percent of voters in the adjoining board section	Yes	Yes	In city Owners of majority of land Other Owners of majority of assessed land value	Yes Yes	No, board action No, board action	No provision	--	--
Orange County Water District	Majority of land-owners of 50 percent of land	Yes	Yes. If protest by 3 percent of land-owners of district (also owning 3 percent of land value) or if board deems annexation in district's best interest (district-wide)	All landowners	Yes	No, board action	No provision	--	--
Palo Verde Irrigation District	Owners of 60 percent of land	Yes	Yes (districtwide) if project or if board deems annexation is not in district's best interest	Same as Irrigation District Law, as amended, on January 1, 1923			Majority of land-owners including majority of assessed land value If majority of owners of assessed land value of 60 percent of land and assessed land value	No	Yes, 2 vote

¹ Unless otherwise indicated, district's governing body receives petition and conducts hearing and election.

² Unless otherwise indicated, district may be dissolved for reasons of powers under Government Code Section 65980.

³ Unless otherwise indicated petition and election only in area to be annexed or withdrawn.

⁴ Majority unless otherwise indicated. In certain districts final board action on annexation or withdrawal is subject to referendum election.

Incidental Action by Attorney General for nonuse of powers

The various requirements include, a majority of landowners, holding a majority of the land (California water, irrigation, and water conservation (1931)), owners of a majority of the land (California water storage and county waterworks), owners of all land (water conservation (1927)), and either a majority of landowners, owners of a majority of land or majority of voters (county water).

The County Waterworks District Act, the County Water District Act, and the Municipal Water District Act of 1911 each provide different petition, hearing and election requirements for uninhabited area (defined as area with less than 12 voters in residence). Generally no elections are held in these cases.

All district acts except the Municipal Water District Act (with respect to annexation of inhabited area) and the Water Replenishment District Act (and County Waterworks District Act when owners of all land sign petition) expressly require a public hearing on the annexation petition. Hearings for water storage districts are conducted by the Department of Water Resources and for water conservation districts (1927) by the county board of supervisors. The governing bodies of all other districts conduct these hearings.

Only the County Waterworks District Act, the Municipal Water District Act of 1911 and the Water Replenishment District Act require that an election always be held on the proposed annexation. Municipal water district and water replenishment district elections are in the area to be annexed only and county waterworks district elections are held in the existing district and the area to be annexed.

The California Water District Act requires an election if owners of 3 percent of the district's assessed value or 3 percent of the district landowners protest. The Irrigation District Act, and the Water Conservation Act of 1931 require an election only if protests to the annexation are filed by 3 percent of the district landowners (including 3 percent of the assessed land value in the district). All these elections are district wide. The California Water District Act and Water Conservation Act of 1931 also permit the board to order an election if it deems the proposal not in the best interests of the district. The California Water Storage District Act requires an election if the board protests or if 3 percent of the district landowners protest. The County Water District Act requires only board action (this action is subject to a normal referendum election procedure, however).

Special Act Districts

As was explained in the discussion of formation of special act districts, the area and boundaries of these districts are always specified in the original special district act which is enacted by the Legislature. In many cases these are countywide districts. As a result only 13 of the 55 special district acts in this study include provisions for annexation of additional territory at the local level (additional territory can be added to the district, of course, by legislative amendment of the special district act).

The San Benito and Siskiyou County Flood Control and Water Conservation District Acts each provide for annexation. The San Benito District Act requires a petition signed by 50 landowners or 50 percent

of the landowners (if less than 100 in area). A hearing is required but an election is at the discretion of the board (The San Benito district act may not annex outside of the county.) The Siskiyou district act incorporates the annexation provisions of the District Organization Law.

Of the special act flood control districts, only the Fresno Metropolitan District Act and the American River District Act include annexation provisions. In the case of the Fresno district, the governing body of the district may initiate the proceedings (which also may be initiated by a petition signed by 25 percent of the landowners including 25 percent of the land). Provision is made for a hearing and an election is held if there is a protest by more than 25 percent of the landowners in the area to be annexed. The American River District requires a petition of 25 percent of the district voters and requires both a hearing and an election.

Eight of the special water agency acts have annexation procedures (Alpine County, Antelope Valley-East Kern, Crestline-Lake Arrowhead, Desert, Nevada County, Mojave, San Geronimo Pass and Upper Santa Clara Valley). All require a petition signed by voters equal to 10 percent of the voters in the last gubernatorial election except the Alpine Act, which requires a majority of landowners (including a majority of land) and the Nevada Act in which the provisions are identical to those of the Irrigation District Act. The Alpine County Water Agency Act expressly requires a public hearing with an election required only if a protest is filed by 3 percent of the district landowners, including 3 percent of the land. All six other agencies do not require a hearing but do require an election in the area to be annexed. Five of these agency acts also establish special procedures for annexation of uninhabited area. However, the Mojave Water Agency Act contains an alternative procedure for annexation under which owners of 75 percent of the assessed value may petition. A hearing is held and annexation is ordered by the board of supervisors.

Of the other special water district acts, the Kings River Conservation District, the Orange County Water District and the Palo Verde Irrigation District Acts all permit annexation.

The extent to which special districts may annex additional territory is exemplified by the Antelope Valley-East Kern Water Agency, which annexed 68,000 acres in the first eight months of 1962 alone.³

WITHDRAWAL (Exclusion)

The provisions for withdrawal (termed "exclusion" in some acts) differ between districts as greatly as those of annexation.

When the governing body is charged with making the decision whether or not to permit a proposed withdrawal, it is usually required to use two principal criteria regarding the withdrawal: (1) Is it in the best interest of the district to permit the withdrawal? and (2) Will the area proposed to be withdrawn be substantially and directly benefited by continued inclusion in the district?

³ Feather River Project Association, *Newsletter*, August 30, 1962, p. 4.

General Act Districts

As with annexation, 9 of the 10 general district acts (again excluding Flood Control and Flood Water Conservation District Act) provide for the withdrawal of territory from a district (See Table XXI)

The petition requirements for withdrawal are even greater than those for annexation. Three general district acts (California water, California water storage and water conservation of 1927) require that owners of *all* the land in the area to be withdrawn sign withdrawal petitions and no election is required. The Irrigation District Act and County Water District Act require petitions to be signed by the owners of a majority of land and land and improvements respectively. Two district acts (municipal water of 1911 and water replenishment) require petitions to be signed only by voters equal to 10 percent of the voters at the last gubernatorial election. The Water Conservation Act of 1931 sets no minimum number of signatures for withdrawal petitions. The County Waterworks District Act includes special provisions for the involuntary withdrawal of part of a district only when it is included within an incorporated city as county waterworks districts are primarily for unincorporated areas.

Three district acts (county water, municipal water of 1911 and water replenishment) permit withdrawal proceedings to be initiated by the governing body of the district. Hearings are required in municipal water district and water replenishment district withdrawal proceedings if the proceedings were initiated by the board, and hearings are required in county water district withdrawal proceedings whether the proceedings were initiated by a petition or by the board. Elections are required in municipal water district and water replenishment district withdrawal proceedings.

In the remaining district acts permitting withdrawal, hearings are required and final action is taken without an election.

As with formation and annexation, the Department of Water Resources receives petitions, conducts hearings and makes final decisions on withdrawal for water storage districts. The county board of supervisors performs these functions for water conservation districts of 1927.

The Irrigation District Act also authorizes a city to which part of an irrigation district has annexed to begin withdrawal action.

The Municipal Water District Act of 1911 is the only general district act to establish separate petition, hearing and election requirements for withdrawal of uninhabited area.

Special Act Districts

Of the special county flood control and water conservation district acts, five (Alameda, Contra Costa, Lake, Marin and San Joaquin) include provisions that only cities may withdraw from the district, with no hearing required and the election conducted by the city council. The San Benito District Act provides for a petition, hearing and election and its withdrawal provisions are identical to its provisions for annexation. The Yolo County District Act is somewhat unusual. The petition must be signed by owners of a majority of the assessed land value. A hearing is required as well as an investigation by the Department of

Water Resources Board action, rather than an election, is necessary to complete the withdrawal.

As with annexation, the Fresno Metropolitan Flood Control District Act is the only special flood control district act with withdrawal procedures, which in this case are also identical to provisions for annexation.

Six of the water agency acts have withdrawal provisions. Four of these agency acts (Crestline-Lake Arrowhead, Desert, San Geronio Pass and Upper Santa Clara Valley) require a petition signed by voters equal to 10 percent of the votes at the last gubernatorial election, or withdrawal may be instituted by the agency board. (If cities are included in the area to be withdrawn the petition must include 10 percent in each city.) These four district acts all require a public hearing and an election.

The Mojave Water Agency Act provides for withdrawal by board action following a public hearing. Either the board or petitions signed by owners of a majority of assessed value of land and improvements may commence such action.

Similar provisions in the Antelope Valley-East Kern Water Agency Act were amended by the Legislature in 1961 and withdrawal was made much more difficult. This agency act now requires a petition of 25 percent of the landowners and 51 percent of the voters (with 51 percent of voters in each city involved) or board action to commence withdrawal proceedings. A hearing is required as well as an agencywide election. The Antelope Valley-East Kern, Crestline-Lake Arrowhead, Desert, San Geronio Pass and Upper Santa Clara Valley Water Agency Acts all provide identical additional procedures for withdrawal of uninhabited area.

Of the other special water district acts, the Kings River Conservation District Act provides two types of petitions for withdrawal, both requiring a hearing, with the board making the final decision. In cities, petitions must be signed by owners of a majority of land and in unincorporated areas, the owners of a majority of the assessed value of the area to be withdrawn. The Orange County Water District Act requires a petition signed by all landowners. A hearing is required and final action is taken by the board. The Palo Verde Irrigation District is governed by provisions of the Irrigation District Act as they existed on January 1, 1923.

DISSOLUTION

The dissolution of districts (termed "disincorporation" or "disorganization" by some district acts) can be accomplished in a number of ways. These provisions for all districts are included in Table XXI.

Involuntary

There are several involuntary methods of dissolution. First, general and special act districts may be subject to the "automatic dissolution" provisions of the Government Code (Section 58980) which provides:

"58980 When any tax, assessment, or any other district has no outstanding obligations, owns no property, and for five years has not collected taxes or other revenues or disbursed any district funds or otherwise exercised district powers it shall be dissolved by

resolution of the board of supervisors of the county in which the office of such district is located. Not less than 30 days prior to the adoption of the dissolution resolution the clerk of the board of supervisors shall send notice to the last known principal place of business of the district that under the provisions of this article will on a specified date consider a dissolution resolution concerning the district. Such district shall be deemed to be dissolved upon the filing of a certified copy of the resolution of dissolution with the Secretary of State, the State Board of Equalization and with the county clerk and assessor of each county in which any portion of such district is located."

Another article of the Government Code, "alternative method of dissolution of districts" (Sections 58950-58965) applies only to districts "whose taxes or assessments are computed and collected by county officers" and results in involuntary dissolution. The district must not be in debt and it must not have exercised its powers for three years. Other requirements must also be met by districts to be dissolved under these provisions. Under these provisions, the county official required by law to compute or collect the district's taxes may file a request with the board of supervisors asking that the district be dissolved. The board must hold a hearing on the request and if it is granted, the district attorney brings a court action to dissolve the district.

A third method of involuntary dissolution for nonuse of powers is by the Attorney General. This is provided for by specific provisions in the California Water District, County Waterworks District and Irrigation District Acts. A hearing is required. The provisions of these three different acts vary somewhat in detail.

As discussed elsewhere in this report, the District Organization Law (Sections 58000-58309, Government Code) establishes procedures for dissolution as well as formation, annexation, withdrawal and merger. Some district acts expressly incorporate one or more procedures from this law.

At least four special act districts have never been organized on the local level following their enactment by the Legislature and are now inactive. It is obvious that if proceedings under any of these involuntary provisions succeed in dissolving these districts, new special enactments of the Legislature would be necessary to create the districts again.

Voluntary

In 1961 the Legislature added a new article to the Government Code (Sections 58990-58997) providing for "dissolution by supervisors." This provision is in addition to all other procedures for dissolution. This provision for dissolution is commenced by resolution of the district board (passed unanimously). The resolution is presented to the board of supervisors.

To be eligible for dissolution in this manner, a district (1) must have no indebtedness; (2) must not be serving customers or rendering services; (3) must have no property works or assets except unexpended cash reserves; (4) the board has determined that no useful purpose

would be served by continued existence of the district, (5) the district has not or will not submit a budget for the tax year in which the dissolution is requested. The supervisors must then hold a public hearing. The district may not be dissolved under this article if a written protest of 10 percent of the registered voters of the district is filed. Following the dissolution, notice of this action is filed with the Secretary of State and the county assessor.

General Act Districts

In addition to these voluntary and involuntary provisions in the Government Code, 9 of the 10 general district acts (The only exception is the Flood Control and Flood Water Conservation District Act) also contain specific procedures for dissolution. In most cases these follow the general pattern of petition, hearing and election (or board action).

The Irrigation District and the California Water Storage District Acts require petitions signed by a majority of landowners including a majority of assessed land value. (The California Water Storage District Act incorporates the irrigation district provisions.) No hearing is required but a two-thirds majority is required to dissolve the district. For inactive irrigation districts and water storage districts the petition must include two-thirds of the voters and owners of a majority of the land and the assessed land value of the district.

The California Water District Act requires a petition signed by owners of one-third of the land in the district, no hearing, and a two-thirds majority at an election to dissolve a district.

The County Water District Act requires petitions signed by 40 percent of the voters or owners of 40 percent of the assessed value of the land and improvements of the district. If the district indebtedness exceeds 10 percent of the assessed value of land and improvements of the district, the petition must be signed by owners of 40 percent of the assessed value. A hearing and a 60 percent majority vote are required to approve the dissolution. The County Water District Act also provides an alternative procedure for dissolution by the county board of supervisors. The board of the district may, in a unanimous action, request the supervisors to dissolve the district. The district must be inactive and meet certain conditions very similar to those in the "dissolution by supervisors" provisions of the Government Code. A hearing is required and final action is taken by the supervisors. The district may not be dissolved under this alternative procedure if written protest of 10 percent of the registered voters of the district is filed.

The Municipal Water District and Water Replenishment District Acts require a petition signed by 25 percent of the district voters and the bonded indebtedness of the district must be paid in order to be dissolved. A hearing is required only for municipal water districts and for both districts a simple majority election is necessary for approval of dissolution. The county clerk receives this petition and the hearing and election are conducted by the board of supervisors.

The Water Conservation Acts of 1927 and 1931 have slightly different dissolution provisions, although the board of supervisors directs the procedures. The 1927 act requires a petition by 50 landowners or owners of 50 percent of the district land. The 1931 act requires 10 percent of the district electors or owners of 50 percent of the land to peti-

tion. A hearing and election is required by both acts. The 1927 act requires approval by voters representing 60 percent of the total number of acres in the district, while the 1931 act requires a 60 percent majority of the votes cast.

The County Waterworks District Act provides for both voluntary and involuntary dissolution. Voluntary dissolution requires a petition by 50 residents. A hearing is required and then final dissolution action is taken by the governing body.

The involuntary dissolution occurs under two conditions. First, whenever a district is annexed to, or included within, a municipality providing water service the city council may dissolve the waterworks district. Second, whenever a city, at the time of incorporation, does not have facilities for serving its residents with water and when a county waterworks district serving the city is completely within the boundaries of the city, the city council may dissolve the district.

Special Act Districts

An involuntary form of dissolution of special act districts, of course, is legislative repeal of the special district act.

A number of special district acts, however, do have regular provisions for dissolution and many expressly incorporate several of the Government Code provisions for dissolution.

Six special County Flood Control and Water Conservation District Acts (Lassen-Modoc, Plumas, Sierra, Siskiyou, Solano and Tehama) incorporate the District Organization Law dissolution procedures (several increase the required number of petition signatures from 20 to 200). Under these provisions no hearing is held and a two-thirds majority is required at an election. The other 13 district acts of this type have no such provisions, and none of the special act Flood Control District Acts has provisions for dissolution.

Eighteen of the 19 special act Water Agency Acts include dissolution procedures. Nine of these agency acts (Alpine County, Amador County, El Dorado County, Kern County, Mariposa County, Nevada County, Placer County, Sutter County and Yuba County) expressly incorporate both the "automatic dissolution" provisions (Section 58980, Government Code) and the "alternative method of dissolution of districts" (Sections 58950-58965, Government Code) which were treated above in the discussion of involuntary dissolution.

Four agency acts modeled on the Municipal Water District Act of 1911 (Antelope Valley-East Kern, Crestline-Lake Arrowhead, Desert and San Geronimo Pass) utilize the petition and election provisions of the act (discussed above under general district acts) but differ slightly in that they do not require a hearing. The Upper Santa Clara Valley Water Agency Act incorporates the Municipal Water District Act provisions without change.

Four water agency acts (Contra Costa County, Mojave, Sacramento County and Santa Barbara County) also incorporate the dissolution provisions of the District Organization Law.

Of the other special district acts, the Kings River Conservation District and the Orange County Water District Acts have no dissolution provisions and the Palo Verde Irrigation District Act incorporates the provisions of Irrigation District Law.

CONSOLIDATION AND MERGER

In the various water district acts in this study there is some confusion of the terms consolidation and merger, which are often used interchangeably. In this study both shall be considered to mean the same. That is, the combining of two or more districts into one district.

Part of the District Organization Law (Sections 58260-58269, Government Code) provides the only general consolidation provisions applicable to water districts. At the present time no water district acts authorize use of these provisions, which apply only to districts formed under the same general district act. There are no provisions in the law for the consolidation of districts formed under different general acts and this must be accomplished by special act of the Legislature. The Costa Mesa County Water District and the Coachella County Water District were both formed by special act and were the result of the consolidation of several districts formed under different general district acts.

General Act Districts

Three of the 10 general district acts (County Water District Act, County Waterworks District Act, and Irrigation District Act) include provisions for consolidation or merger of two or more districts formed under the same general district act.⁴ In a further confusion of these terms, the Irrigation District Act also includes provisions for "annexation" of a complete irrigation district by another irrigation district. (This is really a "merger" with one district losing its identity into the other.)

The procedures for consolidation or merger in the Irrigation and County Water District Acts are substantially similar. The first step is a resolution by the boards of all affected districts indicating the desirability of merger. Both acts provide that this action may be taken by the board on its own motion or if requested by a petition meeting the same requirements as a petition for formation of a district. The boards involved must then agree upon a name for the new district and the elective offices to be utilized by the new district, and this must be included in the board resolution (a copy of this resolution must be forwarded to the Department of Water Resources).

The Department of Water Resources is authorized then to "make or cause to be made any investigation that it deems necessary."⁵ Within 90 days the department must submit a report to each board recommending boundaries for the consolidated or merged district and apportionment of the outstanding indebtedness of the districts. Under the Irrigation District Act, the affected boards meet jointly to hear protests and set boundaries, etc. An election is then held with a majority required in each district to be consolidated or merged.

The County Waterworks District Act provides for initiation of consolidation or merger proceedings by the county board of supervisors (which is normally the governing body). The supervisors can consolidate or merge only those districts for which it is the governing body.

⁴ These irrigation district provisions were first enacted in 1921.

⁵ Sections 27175 and 32670, Water Code.

A public hearing is required and if 50 percent of the registered voters in any one of the districts to be consolidated file a written protest, consolidation or merger of that district must be terminated but consolidation or merger of other districts may continue.

The actual consolidation or merger is voted by the board of supervisors and an election is not required. The County Waterworks District Act also includes an interesting provision whereby "Two or more waterworks districts governed by their own governing boards may enter into agreements wherein and whereby such districts may be consolidated for all operational purposes upon such terms as such governing boards shall agree upon."⁶

The provisions of the Irrigation District Act providing for the annexation of one irrigation district to another irrigation district are substantially similar to the provisions for consolidation or merger of the same act.

The three general district acts providing for consolidation or merger include complex procedures to provide for distribution of the outstanding indebtedness of districts involved in consolidation or merger.

Special Act Districts

None of the special district acts in this study provide for consolidation or merger with other districts. Such actions have been accomplished in the past only through enactment of another special act.

JOINT EXERCISE OF POWERS

In 1921 the Legislature enacted the Joint Exercise of Powers Act.⁷ Under this act, two or more public agencies, if authorized by their governing bodies, by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting agencies is located outside this State.

"Public agency," as defined in the act, includes the federal government, any federal department or agency, the State, an adjoining state, any state department or agency, a county, city, public corporation or public district of California or an adjoining state. The act specifies in detail what must be included in an agreement, and the agency or entity provided by the agreement to execute the agreement need not be one of the parties to the agreement.

There are a number of examples of use of this act by water districts. Recently it has been suggested that this act could be used to effect basinwide ground water management where a number of public agencies are involved.

In one case, the Joint Exercise of Powers Act was used by a county waterworks district and an irrigation district. The water plant of the waterworks district was operated by the irrigation district. In another case, a county and an irrigation district jointly acquired and provided a water supply.

⁶ Section 55971, Water Code.

⁷ Sections 6500-6578, Government Code.

It would seem that a great many possibilities for joint action by different types of districts are possible under this act. It would also seem that much more use of this act could be made than has been in the past.

BOUNDARY CHANGES

In 1949 the Legislature enacted legislation⁸ providing for county boundary commissions. These commissions are composed of (1) the chairman of the board of supervisors or a supervisor designated by him to serve as chairman, (2) the county assessor, (3) the county auditor, (4) the county surveyor, or, if there is none, the county engineer, (5) the county planning engineer, or, if there is none, the director of planning of the county, (6) the county clerk or registrar of voters.

Any proposal for the formation of a new district or changes in the boundaries of an existing district exercising functions that are or may be supported by taxes or special assessment taxes levied and collected with county taxes is subject to the jurisdiction of the commission. The legislation is not applicable to special assessment districts formed for the purpose of providing various municipal and county improvements, or to municipal utility districts, or to transit districts, whose boundaries include all or portions of two or more counties.

Prior to the circulation of petitions, the proposed boundaries must be submitted to the commission which is charged with (1) comparing the proposed boundaries with other districts within the county; (2) ascertaining the extent to which overlapping or conflicting boundaries may result from the proposal, (3) ascertaining other factors that the commission regards inimical to the public interest. A 1961 amendment to the act provides that "If the adoption of the proposal would result in two or more districts possessing in any common territory the authority to perform the same or similar functions, the county boundary commission report shall contain a statement describing such facts and such area."

The boundary commission files its report with the board of supervisors (or the governing body of an existing district). If those petitioning do not accept the recommendations of the commission, they must file a statement of their reasons with the board of supervisors (or governing body of an existing district).

These provisions of the law are an attempt to prevent unwise overlapping of districts but there is no authority given to the commission to enforce its recommendations. The board of supervisors (or governing body of an existing district) are required only to "consider the recommendations of the county boundary commission and give them such weight as in its judgment the public interest requires."⁹

⁸ Sections 58850-58862, Government Code.

⁹ Statutes of 1961, Chapter 1883 (Section 58856, Government Code).

¹⁰ Section 58860, Government Code.

APPENDIXES

APPENDIX A
LIST OF SELECTED WATER DISTRICTS
IN CALIFORNIA

PART I *Districts Formed Under Selected General Acts*

- 1 California Water Districts
- 2 California Water Storage Districts
- 3 County Water Authorities
- 4 County Water Districts
- 5 County Waterworks Districts
- 6 Flood Control and Flood Water Conservation Districts
- 7 Irrigation Districts
- 8 Metropolitan Water Districts
- 9 Municipal Water Districts (1911)
- 10 Municipal Water Districts (1935)
- 11 Water Conservation Districts (1927)
- 12 Water Conservation Districts (1931)
13. Water Replenishment Districts

PART II *Districts Formed by Special Act*

- 1 County Flood Control and Water Conservation Districts
- 2 Flood Control Districts
- 3 Water Agencies
4. Other

PART I. DISTRICTS FORMED UNDER GENERAL ACTS

CALIFORNIA WATER DISTRICTS

(Water Code, Div 13 1913 387 815 DA 9125)

Name	Address	County	Year formed
Alpine Highlands*	P O Box 335, Alpine	San Diego	1957
Antelope Valley	Topaz, Mono County	Mono	1961
Angiola	P O Box 848, Corcoran	Kings, Tulare	1958
Bella Vista	1832 Butte St., Redding	Shasta	1957
Bellford Village	314 E 2d Ave., Escondido	San Diego	1954
Biggs-West Gridley	Rt 2, Box 787, Gridley	Butte	1942
Bonsall Heights	P O Box 89, Bonsall	San Diego	1954
Borrego	P O Box 6, Borrego Springs	San Diego	1961
Broadview	Rt 2, Box 57, Firebaugh	Fresno	1955
Butte	P O Box 425, Gridley	Butte, Sutter	1957
Capay-Rancho	P O Box 146, Orland	Glenn, Tehama	1956
Centunella	360 Roblar Ave., Hillsborough	Merced	1958
Chowchilla	Drawer 905, Chowchilla	Madera	1949
Chrome	Williams	Glenn	1961
Clay	926 J Bldg Sacramento	Sacramento	1956
Clayton	4831 Hwy 152, Chowchilla	Madera	1957
Clear Lake	Box 65, Clearlake Park	Lake	1961
Compton	544 10th St., Colusa	Colusa	1948
Corcoran Road	c/o J H Smith, 417 S Hill St., Los Angeles	Kern	1960
Corning	1207 Solano St., Corning	Tehama	1954
Cortina	P O Box 663, Williams	Colusa	1954
Danton	628 Plumas St., Yuba City	Yuba	1962
Davis	P O Box 47, Westley	Stanislaus	1952
Del Puerto	P O Box 37, Westley	Stanislaus	1947
Doe Palms	1610 W Crescent Ave., Redlands	Riverside	1957
Dunningan	P O Box 28, Dunningan	Yolo	1956
Eagle Field	51170 W Althia, Firebaugh	Fresno, Merced	1957
Elder Creek	Rt 2, Box 2660, Red Bluff	Tehama	1960
Elsmore	16899 Rice St., Elsmore	Riverside	1933
El Solyo	Rt 1, Box 700, Vernale	Stanislaus	1959
El Toro	1102 W 17th St., Santa Ana	Orange	1960
Farmers	P O Box 20, Fresno	Fresno	1949
Father	Rt 3, Box 345, Yuba City	Sutter	1958
Fern Valley	P O Box 30, Idyllwild	Riverside	1958
Foothill	P O Box 37, Westley	Stanislaus	1953
Fresno Slough	c/o Martin Costales, P O Box 199, Tranquility	Fresno	1955
Garfield	4113 E Copper Ave., Clovis	Fresno	1956
Grassland	636 I St., Los Banos	Merced	1953
Gravelly Ford	10546 Rd 21, Madera	Madera	1961
Hauenda	1812 L St., Merced	Kings	1958
Hops	709 2d St., Porterville	Tulare	1955
Hospital	P O Box 37, Westley	Stanislaus, San Joaquin	1947
International	406 Fruitable Bldg., Fresno	Fresno	1952
Irvine Ranch	P O Box 37, Tustin	Orange	1961
Kanawha	Willows	Glenn	1955
Kern Canon	P O Box 37, Westley	Stanislaus	1947
Kings River	1202 Guarantee Bldg., Fresno	Fresno	1950
Laguna	650 Adams, Los Banos	Fresno, Merced	1958
La Grande	Rt 1, Box 33, Williams	Colusa	1955
Lakeside Farms	11607 Lakeside Ave., Lakeside	San Diego	1958
Lansdale	P O Box 3514, San Francisco	Merced	1958
Last Chance Creek	P O Box 24, Yinton	Plumas	1956
Lewis Creek	P O Box 1032, Lindsay	Tulare	1952
Los Alisos	611 Wilshire Blvd., Los Angeles	Orange	1960
Maine Prairie	221 N 1st, Dixon	Solano	1958
McKinney	1462 Kings Lane, Palo Alto	Placer	1961
Meiga	P O Box 877, Corcoran	Kings	1953
Mercy Springs	51170 W Althia, Firebaugh	Fresno	1950

* Labeled as "Water District," e.g. "Alpine Highlands Water District"

PART I—DISTRICTS FORMED UNDER GENERAL ACTS—Continued

CALIFORNIA WATER DISTRICTS—Continued

Name	Address	County	Year formed
Mesa	1111 Fulton Suite 504, Fresno	Madera	1955
Moses	Bonsall	San Diego	1955
Moulton-Miguel	401 W 8th, Santa Ana	Orange	1960
Mustang	P O Box 37, Westley	Merced, Stanislaus	1953
Nunes	P O Box 577, Corcoran	Kings	1953
Ocean View	333 W 4th, Ventura	Ventura	1961
Omoichumne-Hartnell	Rt 2, Box 2254, Elk Grove	Sacramento	1956
Ora Loma	P O Box 156, Dos Palos	Fresno	1953
Orchard	18333 Woodson View Rd, Poway	San Diego	1954
Orestimba	P O Box 37, Westley	Stanislaus	1947
Orland-Artua	411 Walker St, Orland	Glenn	1954
Oswald	5383 Sawtelle Ave, Yuba City	Sutter	1932
Pacheco Pass	888 Central Ave, Hollister	San Benito Santa Clara	1931
Panoche	P O Box 248, S. Dos Palos	Fresno, Merced	1950
Panorama	548 S Spring St, Suite 1016, Los Angeles	Riverside	1960
Patterson	P O Box 685, Patterson	Stanislaus	1955
Plain View	P O Box 964, Tracy	San Joaquin	1951
Proberta	Rt 2, Red Bluff	Tehama	1956
Progressive	804 Security Bank Bldg, Fresno	Madera	1959
Questhaven	P O Box 1628, Escondido	San Diego	1955
Quinto	P O Box 37, Westley	Merced	1954
Rag Gulch	P O Box 1268, Delano	Kern, Tulare	1955
Rustin City	804 Security Bank Bldg, Fresno	Fresno	1952
Riverview	P O Box 356, Lakeside	San Diego	1956
Rock Creek	Farmington	Calaveras Stanislaus	1941
Romero	2424 Russell St, Berkeley	Merced	1954
Round Mountain	c/o Vito de Leonardis, 15508 344th Ave, Visalia	Fresno	1957
Ruessner	260 California St, San Francisco	Riverside	1901
Salado	P O Box 37, Westley	Stanislaus	1946
Salmon Falls	928 J Bldg, Suite 701, Sacramento	El Dorado	1960
Salton Sea	7839 Calle Casino, Cucamonga	Imperial	1962
Salton	P O Box 488, Corcoran	Kings	1953
San Ardo	P O Box 114, San Ardo	Monterey	1955
San Luis	Bank of America Bldg, Los Banos	Fresno, Merced	1951
South Sutter	P O Box 27 E, Nicolaus	Placer, Sutter	1954
Stevinson	P O Box 818, Newman	Merced, Stanislaus	1928
Sunflower	P O Box 37, Westley	Stanislaus	1952
Sutter Extension	P O Box 785, Yuba City	Butte, Sutter	1950
Talbert	401 W 8th St, Santa Ana	Orange	1954
Tea Pot Dome	Rt 4, Box 36, Porterville	Tulare	1954
Traction	P O Box 156, Dos Palos	Fresno	1957
Walnut Valley	271 S Brae Canyon Rd, Walnut	Los Angeles	1952
Westlands	P O Box 4006, Fresno	Fresno, Kings	1952
Westside	P O Box 427, Williams	Colusa	1954
Wheatland	P O Box 404, Wheatland	Sutter, Yuba	1950
Wheeler	P O Box 1019, Madera	Fresno	1955
Willow Springs	P O Box 5968, Sacramento	Amador	1954
Yolo-Zamorra	P O Box 387, Woodland	Yolo	1955

PART I—DISTRICTS FORMED UNDER GENERAL ACTS—Continued

CALIFORNIA WATER STORAGE DISTRICTS

(Water Code, Div 14 1921 914 1727 DA 9126)

Name	Address	County	Year formed
Arvin-Edison*	359 Habersfelde Bldg., Bakersfield	Kern	1942
Belridge	c/o Geo. Henderson, 2901 H St., Bakersfield	Kern	1962
Buena Vista	P O Box 756, Buttonwillow	Kern	1923
North Kern	P O Box 1195, Bakersfield	Kern	1935
Rosedale-Rio Bravo	c/o Boyle Engineering, 1601 H St., Bakersfield	Kern	1959
Tulare Lake Basin	1109 Norboe Ave., Corcoran	Kings, Tulare	1925
Semitropic	2714 L St., Bakersfield	Kern	1958
West Plains	c/o Wm. Docker, T W Patterson Bldg., Fresno	Fresno, Kings	1962
Wheeler Ridge-Maricopa	2714 L St., Bakersfield	Kern	1959

* Cite as "Water Storage District," e.g. "Arvin-Edison Water Storage District"

COUNTY WATER AUTHORITIES

(1943 545 2090 DA 9100)

San Diego County Water Authority	2750 4th Ave., San Diego	San Diego	1944
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COUNTY WATER DISTRICTS

(Water Code, Div 12 1913 592 1049 DA 9124)

Alameda*	38050 Fremont Blvd., Fremont	Alameda	1913
Aldercroft Heights	P O Box 161, Los Gatos	Santa Clara	1958
Allaghuay	Allaghuay	Sierra	1930
Amador	P O Box 53, Jackson	Amador	1960
American Canyon	110 Andrew Rd., Vallejo	Napa	1961
Applegate-Clipper Gap	Rt 1, Box 2004, Applegate	Placer	1961
Apple Valley Foothill	P O Box 914, Apple Valley	San Bernardino	1957
Apple Valley Heights	P O Box 1076, Apple Valley	San Bernardino	1957
Arcade	P O Box 4378, Sacramento	Sacramento	1954
Aromas	P O Box 323, Aromas	Monterey, San Benito	1950
Arrow Bear Park	Arrow Bear Lake	San Bernardino	1954
Atascadero	P O Box 651, Atascadero	San Luis Obispo	1948
Baldwin Park	14521 E. Ramona Blvd., Baldwin Park	Los Angeles	1926
Baywood Park	611 11th St., Baywood Park	San Luis Obispo	1961
Bellflower	16431 Bellflower Blvd., Bellflower	Los Angeles	1957
Belmont	P O Box 158, Belmont	San Mateo	1929
Brisbane*	132 Visitation Ave., Brisbane	San Mateo	1949
Brawley	Rt 1, Box 5H, Brawley	Imperial	1961
Browns Valley	Napa	Napa	n a †
Buckeye	2285 Buckeye Rt., Redding	Shasta	1951
Burney	Box 647, Burney	Shasta	1944
Buttonwillow	P O Box 26, Buttonwillow	Kern	1956
Cabazon	P O Box 297, Cabazon	Riverside	1954
Circle Oaks	4721 Monticello Rd., Napa	Napa	1962
Calaveras	P O Box 846, San Andreas	Calaveras	1946
Calipella	P O Box 112, Calipella	Mendocino	1945
Calwa	2619 S 10th St., Fresno	Fresno	1956
Cambris	P O Box 65, Cambris	San Luis Obispo	1959
Canada	117 Marva Oaks Dr., Woodside	San Mateo	1959

* Cite as "County Water District," e.g. "Alameda County Water District"

† Not available

‡ Additional powers were added by special act. (Statutes of 1981, Chapter 1042)

§ Actually created by special district act. (Statutes of 1950, 1st Extraordinary Session, Chapter 13)

PART I—DISTRICTS FORMED UNDER GENERAL ACTS—Continued

COUNTY WATER DISTRICTS—Continued

Name	Address	County	Year formed
Capistrano Beach	P O Box 26, Capistrano Beach	Orange	1948
Casa Venida	411 S Long Beach Blvd, Compton	Los Angeles	1951
Castle Rock	800 Castle Rock Rd, Walnut Creek	Contra Costa	1955
Castroville	P O Box 658, Castroville	Monterey	1952
Central Santa Cruz	400 Cox Rd, Aptos	Santa Cruz	1950
Cherryland	21559 Banyan St, Hayward	Alameda	1954
Clear Creek	Box 1171, Westwood	Lassen	1955
Clearlake Oaks	P O Box 407, Clearlake Oaks	Lake	1960
Coachella Valley ²	P O Box 1058, Coachella	Riverside	1918
Coastside	P O Box 300, Half Moon Bay	San Mateo	1947
Colusa	Rt 1, Box 32, Arbutuck	Colusa	1954
Congress Valley	1036 Sunset Rd, Napa	Napa	1950
Contra Costa	2020 Railroad Ave, Pittsburg	Contra Costa	1936
Costa Mesa ⁴	1971 Placentia Ave, Costa Mesa	Orange	1960
Cottonwood	P O Box 208, Cottonwood	Shasta	1955
Crescenta Valley	2904 Foothill Blvd, La Crescenta	Los Angeles	1950
Crest Forest	P O Box 198, Crestline	San Bernardino	1936
Crestline Village	P O Box 217, Crestline	San Bernardino	1954
Cucamonga	P O Box 635, Cucamonga	San Bernardino	1955
Cypress	9471 Walker St, Cypress	Orange	1953
Delhi	P O Box 420, Delhi	Merced	1958
Del Paso Manor	4288 Lusk Dr, Sacramento	Sacramento	1954
Desert Hot Springs	P O Box 187, Desert Hot Springs	Riverside	1953
Diablo Vista	532 Massfield Dr, Pleasant Hill	Contra Costa	1950
Diamond Springs	El Dorado County, Placerville	El Dorado	n a †
Downey ²	6348 E 2d St, Downey	Los Angeles	1929
Drytown	Drytown	Amador	1951
East Blythe	P O Box 374, Blythe	Riverside	1955
East San Bernardino	7837 Del Rosa Ave, San Bernardino	San Bernardino	1954
Eden Township	144 E Lewelling Blvd, San Lorenzo	Alameda	1919
El Dorado Hills	Room 200, Forum Bldg, Sacramento	El Dorado	1960
Elk	Elk	Mendocino	1957
El Sobrante	5258 Sunset Dr El Sobrante	Contra Costa	1946
Fairview	4020 Meadowview Dr, Castro Valley	Alameda	1931
Farmersville	Box D-8, Farmersville	Tulare	1955
Flora	P O Box 214, Flora	Sacramento	1959
Forestville	P O Box 261, Forestville	Sonoma	1960
Franklin	2961 N Airport Rd, Merced	Merced	1900
Free Water	135 S Centerville Ave, Sanger	Fresno	1955
French Corral	Smartville	Nevada	1958
Galt	550 8th St, Galt	Sacramento	1934
Garden Farm	Rt 1, Box 978, Atascadero	San Luis Obispo	1955
Gibson Park	c/o C F Culver, 500 S Virgil Ave, Los Angeles	Los Angeles	1938
Goleta	P O Box 305, Goleta	Santa Barbara	1944
Greenfield	P O Box 86, Del Kern Station, Bakers- field	Kern	1955
Gregory Gardens	1850 Shirley Dr, Pleasant Hill	Contra Costa	1951
Grover City	P O Box 407, Grover City	San Luis Obispo	1949
Idyllwild	P O Box 307, Idyllwild	Riverside	1955
Johnson Rancho	P O Box 366, Wheatland	Yuba	1958
Kings	616 W 7th St, Hanford	Kings	1953
Konocti	P O Box 997, Clearlake Highlands	Lake	1960
Laguna Beach	P O Box 987, Laguna Beach	Orange	1925
Lake	Lakeport	Lake	1916
La Presa	10595 Janscha Blvd, Spring Valley	San Diego	1957
La Puente Valley	15325 E Main St, La Puente	Los Angeles	1924
Lathrop	512 5th St, Lathrop	San Joaquin	1956
Laton	P O Box 171, Laton	Fresno	1958
Laytonville	Box 25, Laytonville	Mendocino	1957
Leucadia	1475 Neptune Ave, Leucadia	San Diego	1959
Linda	124 Scales Ave, Marysville	Yuba	1954
Linden	Linden	San Joaquin	1951

† Not available

² Actually created by special district act, Statutes of 1937, Chapter 469⁴ Actually created by special district act, Statutes of 1959, Chapter 1377⁵ Dissolved by court order, see discussion in Chapter II

PART I—DISTRICTS FORMED UNDER GENERAL ACTS—Continued

COUNTY WATER DISTRICTS—Continued

Name	Address	County	Year formed
Los Alamitos	3231 Katella, Los Alamitos	Orange	1952
Los Trancos	152 Los Trancos Circle, Menlo Park	San Mateo	1954
Malaga	36161 Harding, Malaga	Fresno	1958
Mammoth	Mammoth Lakes, Mono County	Mono	1957
Marina	Marina Dr., Monterey County, Marina	Monterey	1960
Mariana Ranches	9515 Sagebrush Rd., Apple Valley	San Bernardino	1961
Meadow Vista	P O Box 162, Meadow Vista	Placer	1950
Meiner's Oaks	202 W El Roblar, Ojai	Ventura	1948
Mentone	1877 Mentone Blvd., Mentone	San Bernardino	1956
Middletown	Lake County, Middletown	Lake	1958
Midway Heights	Rt 1, Box 1215, Colfax	Placer	1954
Millview	Rt 1, Box 706, Ukiah	Mendocino	1957
Milpitas	325 Porter Bldg., San Jose	Santa Clara	1952
Mojave River	Oro Grande	San Bernardino	1936
Montecito	583 San Ysidro Rd., Santa Barbara	Santa Barbara	1921
Monte Vista	10575 Central Ave., Montclair	San Bernardino	1927
Newell	Rt 1, Box 458, Tullake	Modoc	1860
Newhall	P O Box 328, Newhall	Los Angeles	1953
Nickerson	Rt 6, Box 755, Yreka	Tulare	1956
North Coast	P O Box 85, Pacifica	San Mateo	1944
Northstar Gardens	c/o W. T. Geary, 2307 N. Backer, Fresno	Fresno	1956
North Fork	P O Box 123, North Fork	Madera	1959
North Marin	834 Vallejo St., Novato	Marin	1948
North Mendocino	P O Box 6, Cummings	Mendocino	1956
North Palm Springs	P O Box 278, North Palm Springs	Riverside	1961
Northridge Park	5331 Walnut Ave., Sacramento	Sacramento	1952
North Yucca Valley	P O Box 153, San Mateo	San Bernardino	1966
Oak Hill	P O Box 662, Los Altos	Santa Clara	1957
Oakley	Box 241, Oakley	Contra Costa	1953
Orchard Dale	13819 E Telegraph Rd., Whittier	Los Angeles	1954
Oxnard Beach	116 Oxnard Rd., Oxnard Beach	Ventura	1950
Palm Wells	Star Rt., Morongo Valley	San Bernardino	1952
Palo Verde	Box 25, Palo Verde	Imperial	1952
Paramount	16430 Paramount Blvd., Paramount	Los Angeles	1926
Pico	4843 S Church St., Pico Rivera	Los Angeles	1926
Pine Cove	Box 2002, Idyllwild	Riverside	1956
Pinedale	480 W Birch, Pinedale	Fresno	1954
Piner-Olivet	c/o Dewey Baldocch, 3343 Piner Rd., Santa Rosa	Sonoma	1961
Pioneer-Pine Grove-Volcano	P O Box 2156, Pioneer	Amador	1956
Pleasant Hill	P O Box 105, Lafayette	Contra Costa	1940
Pleasant Valley	P O Box 2025, Oxnard	Ventura	1956
Pleasanton Township	P O Box 67, Pleasanton	Alameda	1914
Pomerado	12951 Pomerado Rd., Poway	San Diego	1957
Powersville Hills	P O Box 677, Los Altos	Santa Clara	1955
Quartz Hill	P O Box 21, Quartz Hill	Los Angeles	1954
Rahnerville-Campton Heights	2549 O'Leary St., Fortuna	Humboldt	1961
Ridgecrest	P O Box 426, Ridgecrest	Kern	1955
Rio Dell	125 Wildwood Ave., Rio Dell	Humboldt	1961
Rio Linda	P O Box 401, Rio Linda	Sacramento	1948
Round Valley	Covelo	Mendocino	1953
Rowland Area	P O Box 0, La Puente	Los Angeles	1953
Running Springs	P O Box 145, Running Springs	San Bernardino	1958
San Gabriel	829 E Las Tunas Dr., San Gabriel	Los Angeles	1923
San Juan Ridge	Box 18, North San Juan	Nevada	1961
San Lorenzo Valley	P O Box 389, Ben Lomond	Santa Cruz	1941
San Marcos	P O Box 37, San Marcos	San Diego	1955
San Miguel	375 La Cuesta Via, Walnut Creek	Contra Costa	1952
San Ramon Valley	2020 San Miguel, Walnut Creek	Contra Costa	1956
Santee	P O Box 197, Santee	San Diego	1956
Sativa-Los Angeles	2015 E Hatchway St., Compton	Los Angeles	1938
Scotts Valley	4867 Los Gatos Hwy., Santa Cruz	Santa Cruz	1961
Seelye	P O Box 149, Seelye	Imperial	1960
Shell Beach	Box 1, Shell Beach	San Luis Obispo	1958

PART I—DISTRICTS FORMED UNDER GENERAL ACTS—Continued

COUNTY WATER DISTRICTS—Continued

Name	Address	County	Year formed
Sheridan	P O Box 138, Lincoln	Placer	1958
Sierra Lakes	P O Box 38, Soda Springs	Placer	1961
Skyline	1444 Skyline Blvd., Redwood City	San Mateo	1954
Soquel Creek	P O Box 578, Soquel	Santa Cruz	1961
South Coast	P O Box A, South Laguna	Orange	1932
South Dos Palos	P O Box 278, South Dos Palos	Merced	1957
South Modesto	1901 Crows Landing, Modesto	Stanislaus	1958
South San Bernardino	10233 Tippecanoe, San Bernardino	San Bernardino	1956
Southside	P O Box 326, El Dorado	El Dorado	1954
Stanton	7455 Katella Ave., Stanton	Orange	1953
Summerland	P O Box 51, Summerland	Santa Barbara	1935
Sunnylope	1320 Hillcrest Rd., Hollister	San Benito	1955
Tia Juana Valley	P O Box 102, Nestor	San Diego	1946
Tuolumne No. 1	P O Box 67, Taam Hart	Tuolumne	1943
Tuolumne No. 2	P O Box 1044, Sonoma	Tuolumne	1947
Twentynine Palms	6544 Adobe Rd., Twentynine Palms	San Bernardino	1954
Valley of the Moon	El Verano	Sonoma	1960
Val Verde	P O Box 594, Saugus	Los Angeles	1951
Ventura River	P O Box 695, Ojai	Ventura	1956
Victorville	15445 8th St., Victorville	San Bernardino	1931
Walnut	90 Greenway Dr., Walnut Creek	Contra Costa	1960
Westborough	Rt. 1, Box 346, Daly City	San Mateo	1961
West Kern	P O Box 416, Taft	Kern	1959
West San Bernardino	102 N. Riverside Ave., Rialto	San Bernardino	1951
Willow	205 Rosemary Lane, Ukiah	Mendocino	1950
Windsor	P O Box 127, Windsor	Sonoma	1959
Yorba Linda	4806 Olinda St., Yorba Linda	Orange	1959
Yountville	c/o Bud Dhlensky, Yountville	Napa	1949
Yuba	P O Box 11, Rackerby	Yuba	1952

PART I—DISTRICTS FORMED UNDER GENERAL ACTS—Continued

COUNTY WATERWORKS DISTRICTS

(Water Code, Div. 16 1913 370 785 DA 9123)

(listed by counties)

County	Name	Address	Year
Colusa	Princeton*	Courthouse Colusa	n a †
Contra Costa	Contra Costa County Waterworks District No. 1	Courthouse Martinez	n a †
Fresno	Fresno County Waterworks District No. 1	420 Equitable Bldg Fresno	1931
Fresno	Same, No. 2	Same	1937
Fresno	Same, No. 3	1721 N. Orchard Ave. Fresno	1942
Fresno	Same, No. 4	420 Equitable Bldg Fresno	1947
Fresno	Same, No. 5	Same	1948
Fresno	Same, No. 6	449 E. Robinson, Fresno	n a †
Fresno	Same, No. 7	420 Equitable Bldg Fresno	1949
Fresno	Same, No. 8	Same	n a †
Fresno	Same, No. 9	2045 E. Ashlan, Fresno	1951
Fresno	Same, No. 10	420 Equitable Bldg Fresno	1952
Fresno	Same, No. 11	Same	1955
Fresno	Same, No. 12	2619 S. 10th St., Fresno	1953
Fresno	Same, No. 13	Same	1953
Fresno	Same, No. 14	Same	1954
Fresno	Same, No. 15	Same	1954
Fresno	Same, No. 16	P. O. Box 3322, Fresno	1956
Fresno	Same, No. 17	420 Equitable Bldg Fresno	1954
Fresno	Same, No. 18	Box 92, Frewitt	1954
Fresno	Same, No. 19	420 Equitable Bldg Fresno	1954
Fresno	Same, No. 20	4374 E. Yale, Fresno	n a †
Fresno	Same, No. 21	420 Equitable Bldg Fresno	n a †
Fresno	Same, No. 22	Same	1955
Fresno	Same, No. 23	Same	1955
Fresno	Same, No. 24	2619 S. 10th St., Fresno	1956
Fresno	Same, No. 25	420 Equitable Bldg Fresno	1955
Fresno	Same, No. 26	3221 N. Maroa St., Fresno	1958
Fresno	Same, No. 27	420 Equitable Bldg Fresno	1959
Fresno	Same, No. 28	Same	1958
Fresno	Same, No. 29	2619 S. 10th St. Fresno	1958
Fresno	Same, No. 30	420 Equitable Bldg Fresno	1959
Fresno	Same, No. 31	2619 S. 10th St. Fresno	1960
Fresno	Same, No. 32	420 Equitable Bldg Fresno	1962
Fresno	Same, No. 33	2619 S. 10th St., Fresno	1962
Lake	Kelseyville County Waterworks District No. 3	Kelseyville	1947
Lake	Lower Lake County Waterworks District No. 1	Lower Lake	1947
Lake	Mendocino County Waterworks District	Clear Lake Park	1967
Lassen	Lassen County Waterworks District No. 1	Courthouse, Susanville	1961
Los Angeles	Los Angeles County Waterworks District No. 1, (Athens Woodcrest)	Comms. Engineer, Waterworks and Utilities Division, 108 W. 24th St., Los Angeles	n a †
Los Angeles	Same, No. 4 (Lancaster)	Same	1919
Los Angeles	Same, No. 10 (Willowbrook)	Same	1927
Los Angeles	Same, No. 13 (Lomita)	Same	1927
Los Angeles	Same, No. 16 (Mountain Park)	Same	1929
Los Angeles	Same, No. 21 (Kagi Canyon)	Same	1933
Los Angeles	Same, No. 22 (Liberty Acres)	Same	1936
Los Angeles	Same, No. 24 (Peach Blossom)	Same	1950
Los Angeles	Same, No. 26 (El Porto Beach)	Same	1954
Los Angeles	Same, No. 27 (Butterick)	Same	1957
Los Angeles	Same, No. 29 (Mehlis)	Same	1959
Los Angeles	Same, No. 33 (Sun Village)	Same	1961
Los Angeles	Same, No. 34 (Desert View Highlands)	Same	1962
Madera	Madera County Waterworks District No. 1	Courthouse Annex, Madera	1959

* Cite as "County Waterworks District," e.g. "Princeton County Waterworks District."

† Not available

PART I—DISTRICTS FORMED UNDER GENERAL ACTS—Continued

COUNTY WATERWORKS DISTRICTS—Continued

County	Name	Address	Year
Mendocino.....	Mendocino County Waterworks District No 1.....	Courthouse, Ukiah.....	n a †
Mendocino.....	Same, No 2.....	Same.....	n a †
Orange.....	Orange County Waterworks District No 2.....	Courthouse, Santa Ana.....	n a †
Orange.....	Same, No 3.....	Same.....	n a †
Orange.....	Same, No 4.....	Same.....	n a †
Orange.....	Same, No 5.....	Same.....	n a †
Orange.....	Same, No 6.....	Same.....	n a †
Orange.....	Same, No 7.....	Same.....	n a †
Orange.....	Same, No 8.....	Same.....	n a †
San Bernardino.....	San Bernardino County Waterworks District No 8.....	Rt 3, Box 826, Chino.....	1929
San Joaquin.....	San Joaquin County Waterworks District No 1.....	Courthouse, 133 E Weber Ave, Stockton.....	1926
San Joaquin.....	Same, No 2.....	Same.....	n a †
San Luis Obispo.....	San Luis Obispo County Waterworks District No 1 (San Miguel).....	Courthouse, San Luis Obispo.....	1921
San Luis Obispo.....	Same, No 2 (Morro Bay).....	Same.....	1926
San Luis Obispo.....	Same, No 4 (Morro del Mar).....	Same.....	1932
San Luis Obispo.....	Same, No 5 (Templeton).....	Same.....	1935
San Luis Obispo.....	Same, No 6 (Santa Margarita).....	Same.....	1948
San Luis Obispo.....	Same, No 7 (Cayucos).....	Same.....	1947
San Luis Obispo.....	Same, No 8 (Cayucos).....	Same.....	1948
San Mateo.....	San Mateo County Waterworks District No 1 (Ravenswood).....	2277 University Ave., East Palo Alto.....	1927
San Mateo.....	Same, No 2 (East Palo Alto).....	Same.....	1927
San Mateo.....	Same, No 3 (Palomar Park).....	Courthouse, Redwood City.....	1951
Santa Cruz.....	Santa Cruz County Waterworks District.....	Courthouse, Santa Cruz.....	n a †
Sierra.....	Sierra County Waterworks District.....	Courthouse, Downieville.....	n a †
Trinity.....	Trinity County Waterworks District.....	Courthouse, Weaverville.....	n a †
Tulare.....	Tulare County Waterworks District.....	Courthouse, Visalia.....	n a †
Ventura.....	Ventura County Waterworks District No 1.....	Courthouse, Ventura.....	1921
Ventura.....	Same, No 3.....	Same.....	1938
Ventura.....	Same, No 4.....	Same.....	1941
Ventura.....	Same, No 5.....	2490 Ventura Blvd., Camarillo.....	1957
Ventura.....	Same, No 6.....	2007 Ventura Blvd., Thousand Oaks.....	1947
Ventura.....	Same, No 7.....	Courthouse, Ventura.....	1949
Ventura.....	Same, No 8.....	Same.....	1955
Ventura.....	Same, No 9.....	Same.....	1962
Yolo.....	Yolo County Waterworks District No 1.....	P O Box 126, Esparto, Yolo County.....	1918-1917

† Not available

PART I—DISTRICTS FORMED UNDER GENERAL ACTS—Continued

FLOOD CONTROL AND FLOOD WATER CONSERVATION DISTRICTS

(1931 641 1369 DA 9178)

Name	Address	County	Year formed
Cloverdale.....	28225 River Rd., Cloverdale.....	Sonoma.....	1940
Dry Creek.....	724 Dry Creek Rd., Healdsburg.....	Sonoma.....	1938
Owl Creek.....	Cedarville.....	Modoc.....	1961
Ukiah.....	c/o Harry Hoyer, Ukiah.....	Mendocino.....	1946
Westside.....	4060 Westside Rd., Healdsburg.....	Sonoma.....	1948

IRRIGATION DISTRICTS

(Water Code Div. 11 1897 189 254 DA 3854)

Alpaugh*.....	P O Box 127, Alpaugh.....	Tulare.....	1916
Alta.....	P O Box 715, Dinuba.....	Tulare, Fresno, Kings.....	1888
Anderson-Cottonwood.....	2810 Silver St., Anderson.....	Tehama, Shasta.....	1914
Banta-Carlons.....	Box 239, Tracy.....	San Joaquin.....	1921
Bard.....	Box 1, Eard.....	Imperial.....	1927
Beaumont.....	P O Box 2037, Beaumont.....	Riverdale.....	1919
Big Springs.....	P O Box 485, Yreka.....	Siskiyou.....	1927
Big Valley.....	P O Box Y1, Baker.....	Lassen, Modoc.....	1925
Browns Valley.....	Browns Valley.....	Yuba.....	1898
Butte Valley.....	P O Box 84, Macdonel.....	Siskiyou.....	1920
Byron-Bethany.....	P O Box 273, Byron.....	Contra Costa, Alameda, San Joaquin.....	1919
Camp Far West.....	P O Box 308, Whetland.....	Yuba, Placer.....	1924
Carmichael.....	P O Box A-B, Carmichael.....	Sacramento.....	1916
Carpenter.....	401 8th St., Santa Ana.....	Orange.....	1928
Central California.....	830 6th St., Los Banos.....	Merced, Fresno.....	1951
Citrus Heights.....	6230 Sylvan Rd., Citrus Heights.....	Sacramento.....	1920
Consolidated.....	Box 209, Selma.....	Fresno, Tulare, Kings.....	1921
Corcoran.....	P O Box 566, Corcoran.....	Kings.....	1919
Cordua.....	Box 264, Marysville.....	Yuba.....	1910
Deer Creek.....	114 S. Main St., Chico.....	Tehama.....	1926
Delano-Earlsware.....	Rt. 1 Box 990, Delano.....	Kern, Tulare.....	1938
Duoc.....	P O Box 73, Duoc.....	Tulare.....	1938
Durham.....	P O Box 76, Durham.....	Butte.....	1947
East Contra Costa.....	P O Box 698, Brentwood.....	Contra Costa.....	1928
El Cajon Valley.....	1347 E. Broadway, El Cajon.....	San Diego.....	1950
El Camino.....	Rt. 1 Box 390, Gerber.....	Tehama.....	1921
El Dorado.....	P O Box 152, Placerville.....	El Dorado.....	1926
Elk Grove.....	P O Drawer Y, Elk Grove.....	Sacramento.....	1953
El Nido.....	P O Box 64, El Nido.....	Merced.....	1929
Empire West Side.....	P O Box 667, Lemoore.....	Kings.....	1931
Exeter.....	P O Box 546, Exeter.....	Tulare.....	1937
Fair Oaks.....	P O Box 383, Fair Oaks.....	Sacramento.....	1917
Fallbrook.....	Fallbrook.....	San Diego.....	1925
Fresno.....	P O Box 187, Fresno.....	Fresno.....	1920
Galt.....	P O Box 187, Fresno.....	Sacramento.....	1953
Glen-Colusa.....	P O Box 150, Wilows.....	Glen, Colusa.....	1920
Grenada.....	P O Box 485, Yreka.....	Siskiyou.....	1921
Helix.....	P O Box 518, La Mesa.....	San Diego.....	1916
Hills Valley.....	5035 Hills Valley Rd., Orange Cove.....	Fresno, Tulare.....	1948
Hot Spring Valley.....	P O Box 1627, Alturas.....	Modoc.....	1919
Imperial.....	582 State St., El Centro.....	Imperial.....	1911
Ivanhoe.....	33777 Road 164, Visalia.....	Tulare.....	1948
Jackson Valley.....	P O Box 285, Ione.....	Amador.....	1956
James.....	P O Box 757, San Joaquin.....	Fresno.....	1920
Kanawon.....	112 W. 10th St., Tracy.....	San Joaquin.....	1921
Kings River Delta.....	Rt. 1, Box 521, Paso Robles.....	Kings.....	1937
Kinneloa.....	3127 Doyle Rd., Pasadena.....	Los Angeles.....	1953
La Canada.....	P O Box 37, La Canada.....	Los Angeles.....	1924
Laguna.....	5065 19 1/2 Ave., Riverdale.....	Fresno, Kings.....	1920

* Cite as "Irrigation District," e.g. "Alpaugh Irrigation District."

PART I—DISTRICTS FORMED UNDER GENERAL ACTS—Continued

IRRIGATION DISTRICTS—Continued

Name	Address	County	Year formed
Lakeside.....	P O Box 638, Lakeside.....	San Diego.....	1925
Lemoore.....	311 D St., Lemoore.....	Kings.....	1920
Linden.....	P O Box 595 Linden.....	San Joaquin.....	1929
Lindsay.....	P O Box 995, Lindsay.....	Tulare.....	1937
Lindsay-Strathmore.....	P O Box 1205 Lindsay.....	Tulare.....	1915
Littlerock Creek.....	P O Box 188, Littlerock.....	Los Angeles.....	1892
Lower Tule River.....	P O Box 511, Woodville Rural Sta Porterville.....	Tulare.....	1950
Lucerne.....	P O Box 13, Hanford.....	Kings.....	1925
Madera.....	P O Box 217, Madera.....	Madera.....	1920
Maxwell.....	P O Box 182, Colusa.....	Colusa.....	1918
Mendota.....	P O Box 1019, Madera.....	Fresno.....	1921
Merced.....	P O Box 759, Merced.....	Merced.....	1919
Modesto.....	P O Box 1371, Modesto.....	Stanislaus.....	1887
Mokelumne River.....	906 California Bldg., Stockton.....	San Joaquin.....	1941
Montague Water Conservation District**.....	P O Box 247, Montague.....	Siskiyou.....	1925
Naglee Burk.....	112 W 10th St., Tracy.....	San Joaquin.....	1909
Nevada.....	144 S Auburn St., Grass Valley.....	Nevada, Placer.....	1921
Oakdale.....	P O Box 188, Oakdale.....	Stanislaus, San Joaquin.....	1909
Orange Cove.....	P O Box 308 Orange Cove.....	Fresno.....	1937
Oroville-Wyanlotte.....	P O Box 229 Oroville.....	Butte.....	1921
Palmale.....	816 E Ave Q-7, Palmale.....	Los Angeles.....	1918
Palm Ranch.....	P O Box 70, Quartz Hill.....	Los Angeles.....	1950
Paradise.....	P O Box 1016, Paradise.....	Butte.....	1916
Piedley.....	P O Box 447, Pyley.....	Tulare.....	1958
Porterville.....	P O Box 1248 Porterville.....	Tulare.....	1949
Potter Valley.....	Potter Valley.....	Mendocino.....	1924
Princeton-Colora-Glenn.....	Princeton.....	Glenn, Colusa.....	1916
Provident.....	P O Box 191 Willows.....	Glenn, Colusa.....	1918
Ramona.....	202 8th St., Ramona.....	San Diego.....	1925
Richvale.....	P O Box 147, Richvale.....	Butte.....	1930
Riverdale.....	P O Box 983 Riverdale.....	Fresno.....	1920
San Diegoito.....	59 E D St., Encinitas.....	San Diego.....	1922
Santa Fe.....	P O Box 408 Rancho Santa Fe.....	San Diego.....	1923
Sancelito.....	20712 Ave 120, Porterville.....	Tulare.....	1911
South Valley.....	Fort Jones.....	Siskiyou.....	1917
Serrano.....	18021 E Lincoln St., Orange.....	Orange.....	1928
Shafter-Wasco.....	P O Box 158 Wasco.....	Kern.....	1937
Solano.....	P O Box 536, Vacaville.....	Solano.....	1948
South Bay.....	371 E St., Chula Vista.....	San Diego.....	1951
South Fork.....	P O Box 1527, Alturas.....	Modoc.....	1914
South Montebello.....	864 W Washington Blvd., Montebello.....	Los Angeles.....	1921
South San Joaquin.....	P O Box 71, Manteca.....	San Joaquin.....	1909
Stinson.....	Burrell.....	Fresno.....	1921
Stone Corral.....	37656 Rd 172, Yuba.....	Tulare.....	1948
Stratford.....	Box 194 Stratford.....	Kings.....	1916
Surprise Valley.....	No address found.....	Modoc.....	1913
Table Mountain.....	Rt 1 Box 153 Oroville.....	Butte.....	1922
Terra Bella.....	P O Box 176, Terra Bella.....	Tulare.....	1915
Thermalito.....	1985 4th St., Oroville.....	Butte.....	1922
Tranquillity.....	P O Box 277, Tranquillity.....	Fresno.....	1918
Tulare.....	P O Box 169, Tulare.....	Tulare.....	1889
Tule.....	125 S. Cleveland St., Anaheim.....	Los Angeles.....	1922
Tulelake.....	P O Box 787, Tulelake.....	Siskiyou, Modoc.....	1952
Turlock.....	333 E Canal Dr., Turlock.....	Merced, Stanislaus.....	1887
Vandah.....	P O Box 1026, Porterville.....	Tulare.....	1924
Vista.....	P O Box 1088, Vista.....	San Diego.....	1923
Walnut.....	9570 Gallatin Rd., Downey.....	Los Angeles.....	1943
Waterford.....	P O Box 197, Waterford.....	Stanislaus.....	1913
West Side.....	P O Box 177, Tracy.....	San Joaquin.....	1880
West Stanislaus.....	P O Box 37, Westley.....	Stanislaus, Merced.....	1920
Woodbridge.....	Rt 2, Box 148, Lodi.....	San Joaquin.....	1924

** This Irrigation district is officially known as "Montague Water Conservation District."

PART I—DISTRICTS FORMED UNDER GENERAL ACTS—Continued

METROPOLITAN WATER DISTRICTS

(1927 429 694 DA 9129)

Name	Address	County	Year formed
The Metropolitan Water District of Southern California	306 W 3d St., Los Angeles	Los Angeles	1928

MUNICIPAL WATER DISTRICTS

(1911 671 1290 DA 5243)

Alpine Heights*	Rt 1, Box 361, Alpine	San Diego	1959
Anacapa	326 S. A St., Oxnard	Ventura	1961
Bakersfield	1107 Truxtun, Bakersfield	Kern	1942
Bueno Colorado	P O Box 1, Vista	San Diego	1954
Calleguas	P O Box E, Sonoma	Ventura	1953
Carlsbad	P O Box 278, Carlsbad	San Diego	1954
Central Basin	7439 E Florence Ave., Downey	Los Angeles	1952
Cirno Basin	P O Box 697, Cucamonga	San Bernardino	1949
Coastal	P O Box 913, Laguna Beach	Orange	1941
Colona	326 S. A St., Oxnard	Ventura	1960
Dehesa Valley	5964 Dehesa Rd., El Cajon	San Diego	1960
Del Norte	P O Box 1532, Ventura	Ventura	1960
Eastern	P O Box 248, Hemet	Riverside	1950
Elmore Valley	16755 Grand Ave., Lisimote	Riverside	1950
Encinitas	Box 488, Encinitas	San Diego	1959
Foothill	4508 Hampton Rd., La Jolla	Los Angeles	1951
Hidden Valley	Rt 1, Box 40, Thousand Oaks	Ventura	1960
Humboldt Bay	P O Box 95, Eureka	Humboldt	1956
Huntington	3329 San Pasqual	Los Angeles	1960
Lake Hemet	P O Box 97, Hemet	Riverside	1955
Las Virgenes	25229 Ventura Blvd., Agoura	Los Angeles	1958
Marin	220 Nellen Ave., Corte Madera	Marin	1912
Monterey Peninsula	Seaside Professional Bldg., Seaside	Monterey	1955
Novato	San Rafael	Marin	1948
Ocean View	P O Box 312, Oxnard	Ventura	1960
Olivehram	P O Box 517, Encinitas	San Diego	1959
Orange County	60 Plaza Orange	Orange	1951
Otay	787 3d Ave., Chula Vista	San Diego	1950
Paluma	P O Box 517, Fallbrook	San Diego	1960
Plains Valley	P O Box 2025, Oxnard	Ventura	1961
Pomaj	12116 Oak Knoll Rd., Poway	San Diego	1954
Questhaven	P O Box 1628, Escondido	San Diego	1959
Rainbow	124 S. Main St., Fallbrook	San Diego	1953
Ramona	202 6th St., Ramon	San Diego	1956
Rimco (d) Double	634 W 5th Ave., Escondido	San Diego	1954
Rio San Diego	P O Box 656, Lakeside	San Diego	1955
Russell Valley	Rt 1, Box 682, Thousand Oaks	Ventura	1960
San Bernardino Valley	P O Box 1115, San Bernardino	San Bernardino	1954
San Gabriel Valley	111 S 1st St., Alhambra	Los Angeles	1959
San Luis Rey	Pukey Ranch, Bonsall	San Diego	1958
Tri-Cities	P O Box 410, San Clemente	Orange	1959
Upper San Gabriel Valley	417 E Valley Blvd., El Monte	Los Angeles	1959
Valley Center	Rt 4, Box 651, Valley Center	San Diego	1954
Ventura River	P O Box 37, Oak View	Ventura	1952
West Basin	1334 Hermosa Ave., Hermosa Beach	Los Angeles	1947
Western Municipal Water District of Riverside County	P O Box 2038, Riverside	Riverside	1953
Whispering Pines	420 San Diego Trust and Savings Bldg., San Diego	San Diego	1961

* Cite as "Municipal Water District" e.g. "Alpine Heights Municipal Water District"

MUNICIPAL WATER DISTRICTS

(1935 78 423 DA 9131)

Torrance Municipal Water District No. 3	1510 Cravens Ave., Torrance	Los Angeles	1952
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PART I—DISTRICTS FORMED UNDER GENERAL ACTS—Continued

WATER CONSERVATION DISTRICTS

(1927.91 160 DA 9127a)

Name	Address	County	Year formed
Kaweah Delta*	P O Box 1247, Visalia	Kings, Tulare	1927
Perris Valley	Address unknown	Riverside	1922
San Antonio	Rt 1, Box 51-A, Ojai	Ventura	1949
San Luis Rey	Pankey Ranch, Bonsall	San Diego	1950
Tehachapi-Cummings	City Hall, Tehachapi	Kern	1961
Woodbridge Water Users	906 California Bldg, Stockton	San Joaquin	1956

* Cite as "Water Conservation District," e.g. "Kaweah Delta Water Conservation District"

WATER CONSERVATION DISTRICTS

(1931 1020 2045 DA 9127c declared to be a continuation and re-enactment of 1929 166 307 DA 9127b)

Central San Joaquin*	309 Bank of Stockton Bldg, Stockton	San Joaquin	1958
Chino Basin	139 N Euclid Ave, Upland	San Bernardino	1949
North San Joaquin	225-230 W Pine, Lodi	San Joaquin	1949
San Bernardino Valley	8 W Citrus Ave, Redlands	San Bernardino	1932
Santa Clara Valley	15420 Almaden Rd, San Jose	Santa Clara	1929
Santa Maria Valley	P O Box 364 Santa Maria	San Luis Obispo	
		Santa Barbara	1937
Santa Ynez River	Box 157 Santa Ynez	Santa Barbara	1939
South Santa Clara Valley	City Hall, Gilroy	Santa Clara	1938
Stockton and East San Joaquin	605 Bank of America Bldg, Stockton	San Joaquin	n a
United	P O Box 432, Santa Paula	Ventura	1950

* Cite as "Water Conservation District," e.g., "Central San Joaquin Water Conservation District"

WATER REPLENISHMENT DISTRICTS

(Water Code, Div 18 1955 1514 2755)

Central and West Basin*	7430 E Florence Ave, Downey	Los Angeles	1959
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* Cite as "Water Replenishment District," e.g. "Central and West Basin Water Replenishment District"

PART II. DISTRICTS FORMED UNDER SPECIAL ACTS

COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICTS

Name	Address	County	Year enacted
Alameda*	224 W. Winton Ave., Hayward	Alameda	1949
Contra Costa	2400 Oak Grove Rd., Walnut Creek	Contra Costa	1951
Lake	P O Box 898, Lakeport	Lake	1951
Lassen-Modoc	County Auditor, Lassen County, Susanville	Lassen/Modoc	1950
Marin	1711 Grand Ave., San Rafael	Marin	1953
Mendocino	County Courthouse, Ukiah	Mendocino	1949
Monterey	P O Box 419, Salinas	Monterey	1947
Napa	Courthouse, Napa	Napa	1951
Plumas	Quincy	Plumas	1950
Riverside	4600 Crestmore, Riverside	Riverside	1945
San Benito	3220 Southside Rd., Hollister	San Benito	1953
San Joaquin	133 E. Weber Ave., Stockton	San Joaquin	1956
San Luis Obispo	943 Santa Rosa St., San Luis Obispo	San Luis Obispo	1945
Santa Barbara	123 E. Anapamu St., Santa Barbara	Santa Barbara	1955
Santa Clara	70 W. Rosa St., San Jose	Santa Clara	1951
Santa Cruz	1543 1/4 Pacific Ave., Santa Cruz	Santa Cruz	1955
Sierra	Downsville	Sierra	1959
Siskiyou	County Auditor, Yreka	Siskiyou	1959
Solano	Courthouse, Fairfield	Solano	1951
Sonoma	Sonoma County Administration Bldg., Santa Rosa	Sonoma	1949
Tehama	P O Box 792, Red Bluff	Tehama	1957
Yolo	P O Box 767, Woodland	Yolo	1951

* Cite as "County Flood Control and Water Conservation District," e.g. "Alameda County Flood Control and Water Conservation District."

FLOOD CONTROL DISTRICTS

American River*	907 5th St., Sacramento	Sacramento	1927
Del Norte County	Courthouse, Crescent City	Del Norte	1955
Fresno Metropolitan	Rowell Bldg., Fresno	Fresno	1955
Humboldt County	1020 H St., Eureka	Humboldt	1945
Los Angeles County	Box 2418, Terminal Annex, Los Angeles	Los Angeles	1915
Morrison Creek	827 7th St., Sacramento	Sacramento	1953
Orange County	P O Box 1078, Santa Ana	Orange	1927
San Bernardino County	County Board of Supervisors, San Bernardino	San Bernardino	1939
San Diego County	1600 Pacific Hwy., San Diego	San Diego	1945
San Mateo County	Courthouse, Redwood City	San Mateo	1959
Ventura County	Courthouse, Ventura	Ventura	1944

* Cite as "Flood Control District," e.g. "American River Flood Control District."

PART II—DISTRICTS FORMED UNDER SPECIAL ACTS—Continued

WATER AGENCIES

Name	Address	County	Year enacted
Alpine County*	Courthouse, Markleville	Alpine	1961
Amador County	P O Box 53, Jackson	Amador	1959
Antelope Valley-East Kern	P O Box 905, Lancaster	Kern/Los Angeles	1950
Contra Costa County	Rm 117 Hall of Records, Martinez	Contra Costa	1957
Crestline-Lake Arrowhead	None available (formation election, 1/5/63)	San Bernardino	1962
Desert	190 W Arundo Rd, Palm Springs	Riverside	1961
El Dorado County	495 Main St, Placerville	El Dorado	1959
Kern County	1100 20th St, Bakersfield	Kern	1961
Mariposa County	Board of Supervisors, Mariposa	Mariposa	1959
Mojave	Box L, Oro Grande	San Bernardino	1959
Placer County	Courthouse, Auburn	Placer	1957
Sacramento County	County Courthouse Annex, Rm 30, Sacramento	Sacramento	1952
San Geronimo Pass	560 Magnolia Ave, Beaumont	Riverside	1961
Santa Barbara County	P O Drawer CC, Santa Barbara	Santa Barbara	1945
Shasta County	P O Box 963, Redding	Shasta	1957
Sutter County	Board of Supervisors, Yuba City	Sutter	1959
Upper Santa Clara Valley	None available	Los Angeles	1962
Yuba County	P O Box 28, Marysville	Yuba	1950

* Title as "Water Agency," e.g. "Alpine County Water Agency"

OTHER

Kings River Conservation District	1302 Security Bank Bldg, Fresno	Fresno/Kings/Tulare	1951
Orange County Water District	1629 W 17th St, Santa Ana	Orange	1933
Palo Verde Irrigation District	P O Box 33, Blythe	Riverside/Imperial	1923
Santa Clara-Alameda-San Benito Water Authority	15420 Almaden Rd, San Jose	Santa Clara/Alameda/San Benito	1955
Yuba-Bear River Basin Authority	Loyalton	Nevada/Placer/Sierra	1959

APPENDIX B
CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON WATER
WATER DISTRICT LAWS STUDY QUESTIONNAIRE

Instructions

Please return in the accompanying post-paid, self-addressed envelope by Friday, May 25, 1962

Please answer directly on the questionnaire. Attach additional sheets if necessary.

In this questionnaire the terms "general district act" and "special district act" are used as follows. A "general district act" is an enabling statute which does not create any district in particular but rather sets forth the organization and procedure under which a district may be created locally (an example is the Irrigation District Law of 1897). A "special district act" is that type of act by which the Legislature specifically creates a particular district (an example of this type is the Kern County Water Agency Act of 1961).

Please answer all questions as completely as possible; all replies will be kept confidential.

QUESTIONS TO BE ANSWERED BY ALL DISTRICTS

1. How many directors does your district have? _____

2. Have your district's eminent domain provisions proved satisfactory? _____
If not, why, and what changes would be desirable? _____

3. What are your district's maximum assessment limitations (cents per \$100 assessed valuation)? _____
What rate are you presently using? _____

4. (a) What are your district's methods of financing (for example, general obligation bonds, revenue bonds, warrants, notes, etc.)? _____

And for what purposes? _____

WATER DISTRICT LAWS STUDY QUESTIONNAIRE—Continued

(b) What maturity periods does your district use for each method?

(c) Which methods do you find most satisfactory?

(d) What electorate majority is required for your district's bonds?
 (for example, two-thirds or a simple majority)

5 Does your district have the authority to create improvement districts or benefit zones?
 Has your district actually created such improvement districts or benefit zones? If so, for what purposes?

6 What is your district's water pricing policy?

7. Has your district used any of the following acts?

Please check
 Yes No

- | | | |
|--|------|------|
| (a) Street Opening Act of 1903
(Streets and Highways Code, Secs 4000-4443) | ---- | ---- |
| (b) Improvement Act of 1911
(Streets and Highways Code, Secs 5000-6794) | ---- | ---- |
| (c) Municipal Improvement Act of 1913
(Streets and Highways Code, Secs 10000-10609) | ---- | ---- |
| (d) Improvement Bond Act of 1915
(Streets and Highways Code, Secs 8500-8851) | ---- | ---- |
| (e) Other improvement act(s)

----- | ---- | ---- |

Comments: -----

8 Is your district confronted with ground water management or replenishment problems which may lead it to ask for new legislation?

What are those problems?

WATER DISTRICT LAWS STUDY QUESTIONNAIRE—Continued

9. Does your district feel that a uniform election procedure should be established for all water district acts?

Comments:

10. Is your district satisfied with its present procedures for the following:

(a) annexation

(b) consolidation

(c) exclusion (withdrawal)

(d) dissolution

Comments

11. Are there any terms or provisions in any of the water district laws which are too complex, too vague, or not readily understandable (do not include those mentioned above)?

If so, which ones?

12. (a) What services or supervision does your district receive from State agencies?

(b) Of what value to your district are these services or supervision?

(c) Does your district desire any services or supervision that is not available?

WATER DISTRICT LAWS STUDY QUESTIONNAIRE—Continued

QUESTIONS TO BE ANSWERED ONLY BY GENERAL LAW DISTRICTS

13. (a) Under what general enabling act was your district formed?
-
-

(b) In what year was your district formed?-----

(c) If you know, why did your district form under that act?-----

QUESTIONS TO BE ANSWERED ONLY BY SPECIAL ACT DISTRICTS

- 14 (a) If you know, why was your district formed by special district act rather than under a general district act?-----
-
-
-
-

(b) If you know, was your district's act modeled after any particular act(s)?----- If so, which one(s), and why?

-----(c) Does your district feel that it is related to any particular group of water district acts?-----

15. If your district act does not contain the 1961 uniform validation procedure in Sections 860-870 of the Code of Civil Procedure, do you believe it would be desirable for your district to adopt this procedure?-----
-
-

Comments:-----

THANK YOU VERY MUCH FOR YOUR ASSISTANCE

Name and title of person answering questionnaire-----
Name of district-----
Mailing address of district

APPENDIX C

CONSOLIDATION OF DISTRICTS—No. 4026

State of California
Office of Legislative Counsel
Sacramento, California—June 11, 1962

Honorable Carley V Porter

Dear Mr. Porter,

You have asked whether legislation authorizing the consolidation or merger of two or more districts which are formed under different general laws and which are not necessarily contiguous could be enacted, and what general problems would be involved in such a consolidation or merger.

As our Supreme Court stated in *Petition of Sanitary Board East Fruitvale Sanitary District* (1910), 158 Cal 453, 457

"In the absence of any constitutional restriction, the legislature has absolute power over the organization, the dissolution, the extent, the powers, and the liabilities of municipal and other public corporations established as agencies of the state for purposes of local government. *What shall be the effect of the enlargement or diminution of the boundaries of such corporations, or of the consolidation of two into one . . . is a question to be answered by a determination of the legislative intent.*" (Emphasis added)

Pursuant to this authority, the Legislature could, in our opinion, enact legislation to authorize the consolidation or merger of two or more districts that have been organized under different general laws. The form that such legislation might take would be a matter of legislative policy and discretion. Two possibilities, however, in this regard are noted below.

I

Article 9 (commencing with Section 58260), Chapter I, Division 1, Title 6 of the Government Code, a part of the District Organization Law, provides for the consolidation of contiguous districts organized under the same principal act.

Such a consolidation is initiated either by a resolution of a district's governing body or by a petition filed with such body (Secs. 58261, 58262, Gov.C.) A special election on the consolidation is then called (Sec. 58264, Gov.C.) at which a governing body and other officers of the consolidated district are elected (Sec. 58265, Gov.C.) The district is formed if a majority of the votes cast favor the consolidation, and upon the filing and recording of a resolution of such consolidation (Secs. 58267, 58268, 58269, Gov.C.)

This method of consolidation could, by appropriate legislation, be adapted to authorize the consolidation or merger of noncontiguous districts formed under different general laws. The legislation providing for such method might indicate the law under which the district is to be governed, i e., whether the one or the other of the laws under which the consolidated districts were organized or under some entirely new law. Some provision might also be made for the assumption by the new district of the indebtedness of the merged districts (see Secs. 32717, 32718, Wat. C.).

II

A consolidation or merger might also be effected by special law. The Costa Mesa District Merger Law (Pt. 91 (commencing with Sec. 332000), Div. 12, Wat. C.) is illustrative.

This law declares the need for a special rather than a general law, and provides for the merger into a single district of the Newport Heights Irrigation District, the Fairview County Water District, the Newport Mesa County Water District, the Newport Mesa Irrigation District and a portion of the City of Costa Mesa (Sec. 33215, Wat. C.).

The old districts are dissolved (Sec. 33218, Wat. C.) and provision is made for the operation of the new district as provided in the law governing the operation of county water districts generally (Sec. 33240 et seq., Wat. C.).

With respect, particularly, to irrigation districts, reclamation districts and drainage districts, we note that the State Constitution (Art. XI, Sec. 13) specifically vests the Legislature with power "to provide for the supervision, regulation and conduct" of their affairs "in such manner as it may determine." These districts may, accordingly, be consolidated pursuant to such authority without any state constitutional restriction (see *Oakdale Irrigation District v. County of Calaveras* (1955), 133 Cal. App. 2d 127, 134).

Very truly yours,

A. C. MORRISON
Legislative Counsel

By KENT L. DECHAMBEAU
Deputy Legislative Counsel

APPENDIX D

COMMITTEE BILL No. 1

An act to add Sections 20962 5, 21405, 27229 1, 27266 1, 30321 5, 30586, 32226 5, 32475, 34503, 31808, 37658, 40104, 40659, 55187, 55309, 55917, 55930.5, 55950 5, 55959 5, 55967 5, 60122 5, and 60156 to; to add Chapter 2 5 (commencing with Section 27050) to Part 11 of Division 11, Chapter 6 (commencing with Section 28000) to Part 11 of Division 11, Chapter 2.5 (commencing with Section 37600) to Part 8 of Division 13, Chapter 2 5 (commencing with Section 48300) to Part 10 of Division 14, and Chapter 2 6 (commencing with Section 55905) to Part 5 of Division 16 of, and to amend Sections 30321, 30322, 60122, 60123, and 60124 of the Water Code; to amend Section 3 of, and to add Section 14 1 to, the Municipal Water District Act of 1911 (Chapter 671, Statutes of 1911); to add Sections 8.5, 20 5, 40 5, and 41 5 to the Water Conservation Act of 1927 (Chapter 91, Statutes of 1927); to add Sections 4.5 and 7 1 to Chapter 641 of the Statutes of 1931; to add Sections 8 5, 19 5, 47 5, 49 6, 50 5, and 57 5 to the Water Conservation Act of 1931 (Chapter 1020, Statutes of 1931); and to add Section 12171 to the Government Code, relating to information regarding the formation, change of boundaries, merger, consolidation, and dissolution of water districts

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

SECTION 1 Section 20962 5 is added to the Water Code, to read:

20962 5 The county clerk of the principal county shall immediately file with the Secretary of State a certificate listing:

- (a) The name of the district
- (b) The date of formation
- (c) The county or counties in which the district is located, and a description of the boundaries of the district.

If the order declaring the district formed contains all of the information required to be in the certificate, the county clerk may file a copy of the order in lieu of the certificate

SEC 2 Section 21405 is added to the Water Code, to read

21405. The board of a district in existence on the effective date of this section shall file a certificate with the Secretary of State on or before January 1, 1964, listing:

- (a) The name of the district.
- (b) The date of formation
- (c) The county or counties in which the district is located, and a description of the boundaries of the district

If the order declaring the district formed contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate.

SEC 3 Chapter 25 (commencing with Section 27050) is added to Part 11 of Division 11 of said code, to read -

CHAPTER 25 NOTIFICATION OF SECRETARY OF STATE OF
EXCLUSION OR INCLUSION

27050 Whenever land is excluded from the district or land is included in the district pursuant to this part, the board shall file a certificate with the Secretary of State listing:

- (a) The name of the district.
- (b) The effective date of the exclusion or inclusion
- (c) The county or counties in which the district is located, and a description of the excluded or included land.

If any order adopted by the board pursuant to this part with respect to the exclusion or inclusion of land contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate.

SEC 4 Section 27229 1 is added to said code, to read

27229 1. The board of the consolidated district shall file a certificate with the Secretary of State listing -

- (a) The name of the consolidated district and the names of the districts which have been consolidated
- (b) The effective date of consolidation.
- (c) The county or counties in which the consolidated district is located, and a description of the boundaries of the consolidated district

If the consolidation order contains all of the information required to be in the certificate, the board of the consolidated district may file a copy of the consolidation order in lieu of the certificate

SEC 5 Section 27266 1 is added to said code, to read

27266 1. The board of the annexing district shall file a certificate with the Secretary of State listing -

- (a) The name of the annexing district and the annexed district
- (b) The effective date of annexation
- (c) The county or counties in which the districts are located, and a description of the annexing district as enlarged by the annexed land

If the resolution of the combined boards adopted pursuant to Section 27266 contains all of the information required to be in the certificate, the board of the annexing district may file a copy of the resolution in lieu of the certificate

CHAPTER 6 NOTIFICATION OF SECRETARY OF STATE
OF DISSOLUTION

28000 Whenever a district is dissolved pursuant to this part, the clerk of the court entering the final decree or judgment shall file a certificate with the Secretary of State listing -

- (a) The name of the district.
- (b) The effective date of dissolution
- (c) The county or counties in which the district was located

In lieu of the certificate, the clerk of the court may file a copy of the final decree or judgment if it contains all of the information required to be in the certificate.

SEC 7 Section 30321 of said code is amended to read

30321. The county clerk shall immediately cause ~~to be filed with the Secretary of State and shall cause~~ to be recorded in the office of the county recorder of the county in which the district is situated; each, a certificate stating that the formation of the district was approved by the voters

SEC 8 Section 30321 5 is added to said code, to read

30321 5 The county clerk shall immediately cause to be filed with the Secretary of State a certificate listing:

- (a) The name of the district
- (b) The date of the order declaring the district formed
- (c) The county or counties in which the district is located, and a description of the boundaries of the district

If the order declaring the district formed contains all of the information required to be in the certificate, the county clerk may cause a copy of the order to be filed in lieu of the certificate

SEC 9 Section 30322 of said code is amended to read

30322 Upon the receipt of the certificate *or a copy of the order declaring the district formed*, the Secretary of State shall within 10 days issue his certificate reciting that the district, naming it, has been duly incorporated according to the laws of the State. A copy of this certificate shall be transmitted to and filed with the county clerk of the county in which the district is situated

SEC 10 Section 30586 is added to said code, to read

30586. The board of a district in existence on the effective date of this section shall file a certificate with the Secretary of State on or before January 1, 1964 listing

- (a) The name of the district
- (b) The date of formation
- (c) The county or counties in which the district is located, and a description of the boundaries of the district

If the order declaring the district formed contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate. If the certificate filed with the Secretary of State stating that the formation of the district was approved by the voters contains all of the information required by this section, no further certificate need be filed

SEC 11 Section 32226 5 is added to said code, to read

32226.5. The board shall file a certificate with the Secretary of State listing:

- (a) The name of the district
- (b) The effective date of the exclusion
- (c) The county or counties in which the district is located, and a description of the excluded land

If the exclusion ordinance contains all of the information required to be in the certificate the board may file a copy of the ordinance in lieu of the certificate

SEC 12. Section 32475 is added to said code, to read:

32475 The provisions of Sections 32449 to 32452, inclusive, are applicable to the inclusion of land pursuant to this article

SEC 13 Section 34503 is added to said code, to read

34503 The county clerk of the principal county shall immediately file with the Secretary of State a certificate listing:

- (a) The name of the district
- (b) The date of formation
- (c) The county or counties in which the district is located, and a description of the boundaries of the district

If the order declaring the district formed contains all of the information required to be in the certificate, the county clerk may file a copy of the order in lieu of the certificate

SEC 14 Section 34808 is added to said code, to read

34808 The board of a district in existence on the effective date of this section shall file a certificate with the Secretary of State on or before January 1, 1964, listing

- (a) The name of the district
- (b) The date of formation
- (c) The county or counties in which the district is located, and a description of the boundaries of the district

If the order declaring the district formed contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate

SEC 15 Chapter 25 (commencing with 37600) is added to Part 8 of Division 13 of said code, to read

CHAPTER 25 NOTIFICATION OF SECRETARY OF STATE OF EXCLUSION OR INCLUSION

37600 Whenever land is excluded from the district or land is included in the district pursuant to this part, the board shall file a certificate with the Secretary of State listing

- (a) The name of the district
- (b) The effective date of the exclusion or inclusion
- (c) The county or counties in which the district is located, and a description of the excluded or included land

If any order adopted by the board pursuant to this part with respect to the exclusion or inclusion of land contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate

SEC 16 Section 37658 is added to said code, to read

37658 The clerk of the court shall file a certificate with the Secretary of State listing

- (a) The name of the district
- (b) The effective date of dissolution
- (c) The county or counties in which the district was located

In lieu of the certificate, the clerk of the court may file a copy of the final decree or judgment if it contains all of the information required to be in the certificate

SEC 17 Section 40104 is added to said code, to read:

40104 The department shall immediately file with the Secretary of State a certificate listing

- (a) The name of the district
- (b) The date of formation
- (c) The county or counties in which the district is located, and a description of the boundaries of the district

If the order declaring the district formed contains all of the information required to be in the certificate, the department may file a copy of the order in lieu of the certificate

SEC 18 Section 40659 is added to said code, to read:

40659 The board of a district in existence on the effective date of this section shall file a certificate with the Secretary of State on or before January 1, 1964, listing:

- (a) The name of the district.
- (b) The date of formation.
- (c) The county or counties in which the district is located, and a description of the boundaries of the district.

If the order declaring the district formed contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate

SEC 19. Chapter 25 (commencing with Section 48300) is added to Part 10 of Division 14 of said code, to read:

CHAPTER 25 NOTIFICATION OF SECRETARY OF STATE OF EXCLUSION OR INCLUSION

48300 Whenever land is excluded from the district or land is included in the district pursuant to this part, the board shall file a certificate with the Secretary of State listing:

- (a) The name of the district.
- (b) The effective date of the exclusion or inclusion
- (c) The county or counties in which the district is located, and a description of the excluded or included land.

If any order adopted by the board pursuant to this part with respect to the exclusion or inclusion of land contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate

SEC 20 Section 55187 is added to said code, to read

55187 The county clerk of the county shall immediately file with the Secretary of State a certificate listing:

- (a) The name of the district.
- (b) The date of formation.
- (c) The county in which the district is located, and a description of the boundaries of the district

If the order declaring the district formed contains all of the information required to be in the certificate, the county clerk may file a copy of the order in lieu of the certificate.

SEC. 21 Section 55309 is added to said code, to read

55309 The board of a district in existence on the effective date of this section shall file a certificate with the Secretary of State on or before January 1, 1964, listing:

- (a) The name of the district.
- (b) The date of formation.

(c) The county in which the district is located, and a description of the boundaries of the district.

If the order declaring the district formed contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate

SEC 22 Chapter 26 (commencing with Section 55905) is added to Part 5 of Division 16 of said code, to read.

CHAPTER 26 NOTIFICATION OF SECRETARY OF STATE OF INCLUSION

55905 Whenever territory is included within the district pursuant to this part, the clerk of the board of supervisors shall file a certificate with the Secretary of State listing.

- (a) The name of the district
- (b) The effective date of the inclusion
- (c) The county in which the district is located, and a description of the included land.

If any order, ordinance or resolution adopted by the board pursuant to this part contains all of the information required to be in the certificate, the clerk may file a copy of the order, ordinance, or resolution in lieu of the certificate

SEC 23 Section 55917 is added to said code, to read
55917. The board shall file a certificate with the Secretary of State listing.

- (a) The name of the district
- (b) The effective date of dissolution
- (c) The county in which the district was located

If the resolution or ordinance ordering dissolution contains all of the information required to be in the certificate, the board may file a copy of the resolution or ordinance in lieu of the certificate

SEC 24 Section 55930.5 is added to said code, to read
55930.5 Upon dissolution of the district, the legislative body of the city shall cause a certificate to be filed with the Secretary of State listing

- (a) The name of the district.
- (b) The effective date of dissolution
- (c) The county in which the district was located

If the resolution declaring the district dissolved contains all of the information required in the certificate, the legislative body may cause a copy of the resolution to be filed in lieu of the certificate

SEC 25 Section 55950.5 is added to said code, to read
55950.5 Upon dissolution of the district, the legislative body of the city shall cause a certificate to be filed with the Secretary of State listing

- (a) The name of the district
- (b) The effective date of dissolution
- (c) The county in which the district was located

If the resolution declaring the district dissolved contains all of the information required in the certificate, the legislative body may cause a copy of the resolution to be filed in lieu of the certificate

SEC 26 Section 55950.5 is added to said code, to read

55959.5 The legislative body of the city shall cause a certificate to be filed with the Secretary of State listing

- (a) The name of the district
- (b) The effective date of the withdrawal of land from the district
- (c) The county in which the district is located, and a description of the land withdrawn

If the resolution of the legislative body of the city contains all of the information required to be in the certificate, a copy of the resolution may be filed in lieu of the certificate

SEC. 27. Section 55967.5 is added to said code, to read:

55967.5 The board shall file a certificate with the Secretary of State listing

- (a) The name of the consolidated district and the names of the districts which have been consolidated

- (b) The effective date of consolidation

- (c) The county in which the consolidated district is located and a description of the boundaries of the consolidated district

If the resolution declaring the districts consolidated contains all of the information required to be in the certificate, the board may file a copy of the resolution in lieu of the certificate

SEC. 28. Section 60122 of said code is amended to read

60122. Within seven (7) days after such election the vote shall be canvassed by said board of supervisors of the principal county. If a majority of the votes cast in such election shall be in favor of organizing such district, said board shall, by order, entered on its minutes, declare the territory included within the proposed boundaries duly organized, as a water replenishment district under the name theretofore designated, and the county clerk of the principal county shall immediately cause to be filed with the Secretary of State, and cause to be recorded in the offices of the county recorders of each affected county a certificate stating that such proposition was adopted

SEC. 29. Section 60122.5 is added to said code, to read

60122.5 The county clerk of the principal county shall immediately cause to be filed with the Secretary of State a certificate listing

- (a) The name of the district

- (b) The date of formation

- (c) The county or counties in which the district is located, and a description of the boundaries of the district

If the order declaring the district organized contains all of the information required to be in the certificate, the county clerk may file a copy of the order in lieu of the certificate

SEC. 30. Section 60123 of said code is amended to read

60123. Upon receipt of said certificate or a copy of the order declaring the district organized, the Secretary of State shall, within ten (10) days, issue his certificate reciting that the named water replenishment district has been duly incorporated according to the laws of the State of California. A copy of such certificate shall be transmitted to and filed with the county clerk of each affected county

SEC. 31. Section 60124 of said code is amended to read

60124. Upon filing said certificate of the county clerk of the principal county, or a copy of the order declaring the district organized, with the Secretary of State, the district shall be deemed incorporated

as a water replenishment district, with all the rights, privileges and powers set forth in this act

Sec 32 Section 60156 is added to said code, to read:

60156 The board of a district formed prior to the effective date of this act shall file a certificate with the Secretary of State on or before January 1, 1964, listing

- (a) The name of the district
- (b) The date of formation
- (c) The county or counties in which the district is located, and a description of the boundaries of the district

If the order declaring the district organized contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate. If the certificate filed with the Secretary of State stating that the formation of the district was approved by the voters contains all of the information required by this section, no further certificate need be filed.

Sec 33 Section 3 of the Municipal Water District Act of 1911 (Chapter 671, Statutes of 1911) is amended to read:

Sec 3 A petition, which may consist of any number of separate instruments, shall be filed with the county clerk of the county in which the proposed municipal water district is located, signed by voters residing within the boundaries of the proposed district equal in number to at least 10 per centum of the number of such voters voting for all candidates for the office of Governor of this State at the last general election prior to the filing of such petition. Provided, that where one or more cities are included in such proposed district, such petition must be signed by at least 10 per centum of the voters of each such city so voting at such election. Such petition shall set forth and describe the boundaries of such proposed district, and shall contain a prayer that such proposed district be incorporated under the provisions of this act.

Within 10 days of the date of the filing of such petition, the county clerk shall examine the same and ascertain whether or not said petition is signed by the requisite number of voters, and if requested by the county clerk, the board of supervisors shall authorize him to employ persons specially for that purpose, in addition to the persons regularly employed in his office, and shall provide for their compensation. When the county clerk has completed his examination of the petition, he shall attach to the same his certificate, properly dated, showing the result of such examination, and if from such examination he shall find that said petition is signed by the requisite number of voters residing within the boundaries of such proposed district, and within the boundaries of each city included therein, or is not so signed, he shall certify that the same is sufficient or insufficient, as the case may be.

If by the certificate of the county clerk the petition is found to be insufficient, he shall also certify to the number of voters required to make such petition sufficient, and it may be amended by filing a supplemental petition or petitions within 10 days from the date of such certificate. The county clerk shall, within 10 days after the filing of such supplemental petition or petitions, make like examination of the same and certify to the result of such examination as hereinbefore provided.

If his certificate shall show any such petition, or such petition as amended, to be insufficient, it shall be filed by him with the board of supervisors and kept as a public record, without prejudice, however, to the filing of a new petition to the same effect. But if, by the certificate of the county clerk, such petition, or such petition as amended, is shown to be sufficient, the county clerk shall present the same to the board of supervisors without delay.

If any supplemental petition be filed, all the signatures appended to the petition and to the supplemental petition or petitions shall be considered in determining the number of voters signing the petition.

After an election for the incorporation of such proposed district the sufficiency of such petition in any respect shall not be subject to judicial review or be otherwise questioned.

If the county in which such proposed district is located shall have a registrar of voters other than the county clerk, upon the filing of the petition herein mentioned with the county clerk, he shall forthwith deliver the same to such registrar of voters, who shall perform the duties herein required to be performed by the county clerk respecting the examination and certification of such petition, and said registrar of voters shall return said petition, immediately upon the completion of such examination, together with his certificate showing the result of such examination, to the county clerk, who shall thereupon present such petition, together with the certificate of the registrar of voters attached thereto to the board of supervisors.

When such petition is presented, the board of supervisors shall make an order dividing the district into five divisions according to and based upon the population as estimated by the board of supervisors from the register of voters used at the last general election, in such manner as to equalize, as nearly as practicable, the population in the respective divisions. Such divisions shall be numbered first, second, third, fourth, and fifth, and one director, who shall be a resident thereof, shall be elected for each division by the voters thereof and shall take office as hereinafter provided.

When such order dividing the proposed district into five divisions is made, the board of supervisors shall call and provide for the holding of an election to be held in said proposed district for the purpose of determining whether or not the same shall be incorporated and for the purpose of electing the first board of directors if the district is incorporated. The date of the election shall be not less than 90 days nor more than 120 days from the date of adoption of the resolution or ordinance calling the election. The notice of such election shall describe the boundaries of the proposed district and of the divisions thereof as so established and shall state the proposed name of the proposed district (which name shall contain the words "----- Municipal Water District"), and shall state that the first directors will be elected at such election, who shall take office if the district is incorporated, and shall set forth the names of the candidates for the offices of directors from the respective divisions. Such notice of election shall be published once, not less than one week and not more than four weeks prior to such election in at least one, but not to exceed three newspapers printed and published in said county.

At such election the first directors shall be elected and the following measure shall be submitted. "Shall the proposition to organize-----Municipal Water District under the Municipal Water District Act of 1911 as amended, be adopted?" The candidates shall declare their candidacy and shall be nominated, the election shall be held and conducted, the vote canvassed, the result declared and the certificates of election issued in accordance with the provisions of the Elections Code, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of voters under the Elections Code.

Within seven days after such election the vote shall be canvassed by the board of supervisors. If a majority of the votes cast at such election shall be in favor of organizing such municipal water district, said board shall by an order entered on its minutes declare the territory included within the proposed boundaries duly organized as a municipal water district under the name theretofore designated, and the county clerk shall immediately ~~cause to be filed with the Secretary of State and shall cause to be recorded in the office of the county recorder of the county in which said district is situated; each,~~ a certificate stating that such a proposition was adopted.

The county clerk shall immediately cause to be filed with the Secretary of State a certificate listing:

(a) The name of the district

(b) The date of formation.

(c) The county or counties in which the district is located, and a description of the boundaries of the district.

If the order declaring the district organized contains all of the information required to be in the last-mentioned certificate, the clerk may file a copy of the order with the Secretary of State in lieu of the certificate

If a majority of the votes cast at such election are in favor of organizing such district, the persons voted for as directors who received the highest number of votes within the respective divisions shall be duly elected as directors of the district.

Upon the receipt of such last-mentioned certificate *or a copy of the order declaring the district organized*, the Secretary of State shall, within 10 days, issue his certificate reciting that the municipal water district (naming it) has been duly incorporated according to the laws of the State of California. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such municipal water district is situated. From and after the date of filing said certificate with the Secretary of State, the district named therein shall be deemed incorporated as a municipal water district, with all the rights, privileges and powers set forth in this act, and necessarily incident thereto.

In case less than a majority of the votes cast are in favor of said proposition the organization fails, but without prejudice to renewing proceedings at any time after six months from date of said election.

SEC 34 Section 141 is added to the Municipal Water District Act of 1911 (Chapter 671, Statutes of 1911), to read:

Sec. 14.1. The board of directors of a district in existence on the effective date of this section shall file a certificate with the Secretary of State on or before January 1, 1964, listing:

- (a) The name of the district.
- (b) The date of formation.
- (c) The county in which the district is located, and a description of the boundaries of the district.

If the order declaring the district organized contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate.

If the certificate filed with the Secretary of State stating that the proposition for formation of the district was adopted contains all of the information required by this section, no further certificate need be filed.

SEC. 35. Section 8.5 is added to the Water Conservation Act of 1927 (Chapter 91, Statutes of 1927), to read:

Sec. 8.5. The clerk of the board of supervisors shall immediately file with the Secretary of State a certificate listing:

- (a) The name of the district.
- (b) The date of formation.
- (c) The county or counties in which the district is located, and a description of the boundaries of the district.

If the order declaring the district organized contains all of the information required to be in the certificate, the clerk of the board may file a copy of the order in lieu of the certificate.

SEC. 36. Section 20.5 is added to the Water Conservation Act of 1927 (Chapter 91, Statutes of 1927), to read:

Sec. 20.5. The board of directors of a district in existence on the effective date of this section shall file a certificate with the Secretary of State on or before January 1, 1964, listing:

- (a) The name of the district.
- (b) The date of formation.
- (c) The county or counties in which the district is located, and a description of the boundaries of the district.

If the order declaring the district organized contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate.

SEC. 37. Section 40.5 is added to the Water Conservation Act of 1927 (Chapter 91, Statutes of 1927), to read:

Sec. 40.5. In the event the board of supervisors shall exclude or include lands, the clerk of said board shall file a certificate with the Secretary of State listing:

- (a) The name of the district.
- (b) The effective date of the exclusion or inclusion.
- (c) The county or counties in which the district is located, and a description of the excluded or included land.

If the exclusion or inclusion order contains all of the information required to be in the certificate, the clerk of the board may file a copy of the order in lieu of the certificate.

SEC. 38. Section 41.5 is added to the Water Conservation Act of 1927 (Chapter 91, Statutes of 1927), to read:

Sec. 41.5 Upon dissolution of a district, the clerk of the board of supervisors shall file a certificate with the Secretary of State listing:

- (a) The name of the district.
- (b) The effective date of dissolution.
- (c) The county or counties in which the district was located.

If the order declaring the district dissolved contains all of the information required to be in the certificate, the clerk of the board may file a copy of the order in lieu of the certificate.

SEC. 39. Section 4.5 is added to Chapter 641 of the Statutes of 1931, to read:

Sec. 4.5. The clerk of the board of supervisors shall immediately file with the Secretary of State a certificate listing:

- (a) The name of the district.
- (b) The date of formation.
- (c) The county in which the district is located, and a description of the boundaries of the district

If the order declaring the district organized contains all of the information required to be in the certificate, the clerk of the board may file a copy of the order in lieu of the certificate.

SEC. 40. Section 7.1 is added to Chapter 641 of the Statutes of 1931, to read:

Sec. 7.1. The board of trustees of a district in existence on the effective date of this section shall file a certificate with the Secretary of State on or before January 1, 1964, listing:

- (a) The name of the district.
- (b) The date of formation.
- (c) The county in which the district is located, and a description of the boundaries of the district.

If the order declaring the district organized contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate.

SEC. 41. Section 8.5 is added to the Water Conservation Act of 1931 (Chapter 1020, Statutes of 1931), to read:

Sec. 8.5. The clerk of the board of supervisors shall immediately file with the Secretary of State a certificate listing:

- (a) The name of the district.
- (b) The date of formation.
- (c) The county or counties in which the district is located, and a description of the boundaries of the district

If the order declaring the district organized contains all of the information required to be in the certificate, the clerk of the board may file a copy of the order in lieu of the certificate.

SEC. 42. Section 19.5 is added to the Water Conservation Act of 1931 (Chapter 1020, Statutes of 1931), to read:

Sec. 19.5. The board of directors of a district in existence on the effective date of this section shall file a certificate with the Secretary of State on or before January 1, 1964, listing:

- (a) The name of the district.
- (b) The date of formation.

(c) The county or counties in which the district is located, and a description of the boundaries of the district.

If the order declaring the district organized contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate

SEC. 43. Section 47.5 is added to the Water Conservation Act of 1931 (Chapter 1020, Statutes of 1931), to read

Sec. 47.5 Upon a change of the boundaries of a district being made, the board of directors shall file a certificate with the Secretary of State listing:

(a) The name of the district

(b) The effective date of the change of the boundaries

(c) The county or counties in which the district is located, and a description of the included land.

If the order changing boundaries contains all of the information required to be in the certificate, the board of directors may file a copy of the order in lieu of the certificate

SEC. 44. Section 49.6 is added to the Water Conservation Act of 1931 (Chapter 1020, Statutes of 1931), to read.

Sec. 49.6. Upon the annexation of the petitioning district to the annexing district pursuant to Section 49.5, the board of directors of the annexing district shall file with the Secretary of State a certificate listing:

(a) The names of the annexing district and the petitioning district.

(b) The effective date of the annexation and of the dissolution of the petitioning district.

(c) The county or counties in which the two districts are located, and a description of the annexed land

If the order annexing the petitioning district contains all of the information required to be in the certificate, the board of directors may file a copy of the order in lieu of the certificate

SEC. 45. Section 50.5 is added to the Water Conservation Act of 1931 (Chapter 1020, Statutes of 1931), to read.

Sec. 50.5. Upon dissolution of a district, the clerk of the board of supervisors shall file a certificate with the Secretary of State listing

(a) The name of the district

(b) The effective date of dissolution.

(c) The county or counties in which the district was located

If the order declaring the district dissolved contains all of the information required to be in the certificate, the clerk of the board may file a copy of the order in lieu of the certificate

SEC. 46. Section 57.5 is added to the Water Conservation Act of 1931 (Chapter 1020, Statutes of 1931), to read:

Sec. 57.5 Upon exclusion of land from the district, the board of directors shall file a certificate with the Secretary of State stating:

(a) The name of the district.

(b) The effective date of the exclusion

(c) The county or counties in which the district is located, and a description of the land excluded

If the exclusion order contains all of the information required to be in the certificate, the board may file a copy of the order in lieu of the certificate.

SEC. 47. Section 12171 is added to the Government Code, to read :

12171. The Secretary of State shall compile and maintain a complete list of all districts for which certificates or copies of orders declaring districts formed or organized have been filed pursuant to the provisions of the Water Code, the Water Conservation Acts of 1927 and 1931, the Municipal Water District Act of 1911, and Chapter 641 of the Statutes of 1931. This list shall contain the name of each district, the date of formation, and the county or counties in which the district is located.

The list of districts, and all certificates or copies of orders filed with the Secretary of State in connection with the formation, change of boundaries, merger, consolidation, or dissolution of districts, shall be open to inspection by the public.

APPENDIX D

COMMITTEE BILL No. 2

An act to repeal the California Water Storage and Conservation District Act (Chapter 1253, Statutes of 1941), relating to water storage and conservation districts.

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

SECTION 1. The California Water Storage and Conservation District Act (Chapter 1253, Statutes of 1941), is hereby repealed.

The repeal, effectuated by this act, shall not affect the organization, existence, or powers of any district heretofore created by, or organized pursuant to, the California Water Storage and Conservation District Act. Any such district shall continue to exist and may exercise any of the powers conferred upon it by said act as fully as if said act had not been repealed.

APPENDIX E

OTHER LAWS AFFECTING DISTRICTS

THE SPECIAL ASSESSMENT INVESTIGATION, LIMITATION AND MAJORITY PROTEST ACT OF 1931

(Sections 2800-3012, *Streets and Highways Code*)

This act provides that before any ordinance or resolution may be adopted by the legislative body of any city, county, district or other public corporation ordering the construction of any public improvement or the acquisition of any property for public use where the cost of such construction or acquisition is to be paid in whole or in part by special assessments or through special assessment taxes upon land, the proceedings required by the act shall be taken.

The act requires a determination by the legislative body initiating the assessment or project of the boundaries of the area subject to repay the cost and a definition of the project. The legislative body shall cause a report to be made showing the estimated cost and its relation to the assessed value of the land in the district, and then the legislative body shall hold a hearing on the report and after meeting stated requirements may proceed with the improvement. The act contains provisions that a protest made by the owners of more than one-half of the area of the property to be assessed, or more than one-half of the frontage if the assessment is based on frontage, shall terminate the proceedings. It also contains provisions limiting debt which may be incurred and provisions covering notice of the proposed assessment, cost of the proceedings under this act, and the method to be used to determine objections (other than majority protests) made to the improvement.

The act specifically exempts from its coverage irrigation districts, irrigation district improvement districts, fire districts, fire protection districts, or public cemetery districts and any proceedings which would otherwise be subject to the act when: (1) the proceedings are undertaken by a district or public corporation within one year of its incorporation and the proposed improvements are substantially described in an investigation proceeding had under the District Investigation Act of 1933, (2) the proceedings are by a chartered city or a chartered county and said city or county has complied with the provisions of Section 17 of Article XIII of the Constitution, or (3) all of the owners of more than 60 percent in area of the property subject to assessment for the proposed improvement have signed and filed with the clerk or secretary of the legislative body a written petition for the improvements and a waiver of the investigation proceedings.

Also, this act specifically exempts from its provisions bonds issued or to be issued to provide money with which to acquire, construct or complete any public improvement, work, or public utility.

Bonds which have been voted by a majority or two-thirds vote, as may be required by the law under which the bonds are issued, are also specifically exempted from the provisions of this act.

The act does not apply to any maintenance district proceedings or to any assessment levied for the maintenance of any improvements

The act does not apply to proceedings for the construction of sanitary sewers, sewage disposal works, and storm water drains, where such proceedings have been recommended by the health officer of the city or county in which such proceedings are instituted as a necessary health measure, if such recommendation is given in writing and spread upon the minutes of the legislative body conducting the proceedings and such necessity is found to exist by a resolution adopted by a four-fifths vote of the members of the legislative body

DISTRICT INVESTIGATION LAW OF 1933

(Sections 58500-58732, Government Code)

The District Investigation Law of 1933 prescribes certain proceedings which must be taken in organizing districts which are subject to its provisions. It contains requirements for reports, notice and hearing, tax and assessment limitations, and termination of proceedings upon majority protest.

The District Investigation Law of 1933 is not now applicable to any water districts (see Section 58501).

APPENDIX F

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ASSEMBLY INTERIM COMMITTEE REPORTS
1961-63

VOLUME 26

NUMBER 6

**SUBCOMMITTEE REPORTS AND REPORTS
ON REFERRED BILLS**

A REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON WATER
TO THE CALIFORNIA LEGISLATURE

MEMBERS OF THE COMMITTEE

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PAUL J. LUNARDI, *Vice Chairman*

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December 1962

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

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Speaker pro Tempore
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Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WATER

December 7, 1962

HONORABLE JESSE M. UNRUH,
Speaker of the Assembly

MEMBERS OF THE ASSEMBLY

State Capitol

Sacramento, California

GENTLEMEN: The Assembly Interim Committee on Water submits herewith its report on referred bills and the reports of its Subcommittee on Relocation of Utilities (House Resolution 435, 1961 General Session) and its Subcommittee on Expenditure Control (House Resolution 316, 1961 General Session). The report of the Subcommittee on Saline Conversion and Nuclear Energy is being published separately.

As more fully set forth in the body of this report, your committee has thoroughly studied the following referred bills and makes the recommendations shown:

<i>Title</i>	<i>Recommendation</i>
House Resolution No. 106 (Carrell), 1962 Budget Session, covering AB 776 (1961 General Session)	To be reintroduced by committee
House Resolution No. 368 (Davis) covering AB 917 (1961 General Session)	No action. Same results achieved by other legislation.
Assembly Bill No. 2 (Carrell) (1962 1st Extraordinary Session)	No action
Assembly Bill No. 2136 (Porter) (1961 General Session)	Subject matter to be reintroduced by committee
Assembly Bill No. 2216 (Nisbet) (1961 General Session)	Insufficient data to justify enactment
Assembly Bill No. 2988 (Williamson) (1961 General Session)	No action

The following bills were referred to interim study but were not the subject of a hearing for the reasons shown:

<i>Title</i>	<i>Reason Not Heard</i>
Assembly Bill No. 37 (Porter) (1962 First Extraordinary Session)	Author's request
Assembly Bill No. 586 (Z'berg) (1961 General Session)	Author's request
Assembly Bill No. 578 (R. Brown) (1961 General Session)	Author's request
Assembly Bill No. 2013 (Porter) (1961 General Session)	Author's request.
Assembly Bill No. 2205 (Lowrey) (1961 General Session)	Subject matter covered by other legislation
Assembly Bill No. 2824 (Monagan) (1961 General Session)	Enacted by another bill

The following matters referred to the Committee have been reported on in other reports as shown:

<i>Title</i>	<i>Report Title</i>
Assembly Bill No 1905 (Porter) (1961 General Session)	Report entitled <i>Ground Water Problems in California</i> , Vol 26, No 4
Assembly Bill No 3042 (Porter) (1961 General Session)	Report entitled <i>Ground Water Problems in California</i> , Vol 26, No 4
House Resolution No 179 (Porter) (1961 General Session)	Report entitled <i>Ground Water Problems in California</i> , Vol 26, No 4
Assembly Concurrent Resolution No 120 (Garrigus) (1961 General Session)	Report entitled <i>Ground Water Problems in California</i> , Vol 26, No 4
House Resolution No 434 (Porter) (1961 General Session)	Report entitled <i>Study of Water District Laws</i> , Vol 26, No 5
Saline Conversion	<i>Report of Subcommittee on Saline Conversion and Nuclear Energy</i> , Vol 26, No 7.

Your committee wishes to express its appreciation to the organizations, state agencies and citizens who testified on the matters contained in this report. The chairman and the committee wish to thank the committee staff, the Legislative Counsel Bureau and the Office of the Legislative Analyst for their services.

Respectfully submitted,

CARLEY V PORTER, *Chairman*

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¹ Accepting the Committee Report on Assembly Bill 2988 "with reservations" See also Minority Report No 2

² Dissenting from Committee Report on Assembly Bill 2988 See Minority Report No 2

³ Dissenting from Committee Report on Assembly Bill 2988 See Minority Reports Nos 1 and 2

⁴ Accepting the Committee Report on Assembly Bill 2988 "with reservations"

⁵ Dissenting from Committee Report on Assembly Bill 2988 See Minority Report No 1

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I. REPORT OF SUBCOMMITTEE ON RELOCATION OF UTILITIES

CARLEY V. PORTER, *Chairman*

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House Resolution No. 435, 1961 General Session, requested the Department of Water Resources "to submit copies of each relocation agreement proposed in connection with the construction of the State Water Facilities upon completion of the negotiations . . . at least 30 calendar days before execution of the agreement," and the Assembly Interim Committee on Water, to which the subject matter was assigned, was authorized to study the agreement and hold a public hearing, if in the committee's judgment "a hearing is appropriate to protect the public interest."

Since the adoption of House Resolution No. 435, the Department of Water Resources has submitted copies of four relocation agreements which were reviewed by the committee. The review by the committee does not imply approval or endorsement of the agreements but means only that no new policy problems were found which required study or hearings as authorized by House Resolution No. 435. The four agreements are.

1. Contract between the department and the Division of Highways for the relocation of State Highway Sign Route 152 around the San Luis Reservoir. The department's cost is limited to \$11,500,000.

2. Agreement with the Western Pacific Railroad Company for realigning the relocated railroad due to slide conditions. Departmental cost not shown.

3. Agreement with the Western Pacific Railroad Company for extension of the Poe Siding. Departmental cost about \$450,000.

4. Agreement with the Pacific Gas and Electric Company for design of the company's facilities to be relocated at Oroville. Departmental cost not to exceed \$130,000.

House Resolution No. 435 was introduced by the Chairman of the Assembly Committee on Water after Assembly Bill No. 2136 failed to pass in the 1961 General Session. Assembly Bill No. 2136 was prepared by the Assembly Committee on Water after hearings held December 7, 1960, as reported in a memorandum report to the Assembly dated January 2, 1961. The committee stated in its report on page 3,

"Your committee concluded from the experience to date under the existing sections of the Water Code and the probability of further unsatisfactory experiences if future relocations are made under the existing law, that the law should be amended. The committee is working on a draft of a bill which will (1) require the

State to relocate facilities by substituting facilities of equal usefulness rather than new facilities of at least equal usefulness, (2) require that credits for betterments and salvage be received by the State, (3) require the Public Utilities Commission to review all agreements made by the Department of Water Resources with common carriers and utilities for major relocations before they become effective and (4) provide for lump sum payment for existing facilities where relocation is neither necessary nor realistic "

The authorization for a hearing on any relocation agreement was included in House Resolution No 435 because the committee felt the existing Water Code Sections 11590 to 11592 did not adequately protect the public interest, as demonstrated in the committee's memorandum report of January 2, 1961

Assembly Bill No 2136, 1961 General Session, was introduced by the chairman of the committee, based substantially on the outline above and did not pass. In the 1962 First Extraordinary Session, Assembly Bill No 37 was introduced by the chairman at the request of the administration. Assembly Bill No 37 amended existing Water Code Sections 11590 to 11592 to exclude common carrier railroads and public utilities so as to provide the department with full powers of eminent domain in the acquisition of utility property. State agency property was left under the existing Water Code sections. Assembly Bill No 37 did not pass.

On March 21, 1962, the Feather River Railway, whose property is to be relocated by the Department of Water Resources, commenced a proceeding before the Public Utilities Commission. The proceeding is a petition for an order under Water Code Section 11592 to determine and decide the character and location of new facilities to be provided by the State of California and to determine and decide all controversies between the railroad and the State of California concerning requirements imposed by Water Code Sections 11590-11592.

For purposes of defense in the action, the Attorney General's office has responded that (1) the Interstate Commerce Commission has exclusive jurisdiction of the matter presented to the Public Utilities Commission for decision, (2) Water Code Sections 11590-11592 are in conflict with federal statutes pertaining to Federal Power Commission licensees which statutes specifically authorize licensees to exercise eminent domain in the District Court of the United States or in the state courts (Title 16 U.S.C.A. Sec 814), (3) Section 11590 is unconstitutional on its face because it violates Article IV, Sections 22 and 31 of the Constitution in that it permits a gift to public utilities in violation of said sections, (4) Section 11590 is unconstitutional on its face as to railroad and other utility property because it constitutes a special law with respect thereto in violation of Article IV, Section 25, subdivision 33 of the State Constitution providing that the Legislature shall not pass any special law "when a general law can be made applicable," and (5) Section 11590 is unconstitutional on its face as to railroad and other utility property because it violates Article I, Section 11 of the Constitution providing that "all laws of a general nature shall have a uniform operation" since 11590 infringes upon the uniform operation of Section 1248, Code of Civil Procedure with respect to providing just compensation.

In a letter to the chairman, dated May 9, 1962, Mr. E. G. Bernard, Assistant Attorney General, has indicated that "if this office, or the Department of Water Resources or the Department of Finance is not satisfied with the determination of the Public Utilities Commission, we can proceed directly to the California Supreme Court." At the time of preparation of this report, no hearing on the proceeding is expected before the first of the year. If there is a subsequent appeal to the California Supreme Court, the end result of this proceeding may not be known for several years.

Meanwhile, the department has proceeded to advertise for bids to construct a bridge over the Middle Fork of the Feather River as part of the county road relocation. No relocation agreement has been executed with the county nor has an agreement been reached. Naturally, no copy of an agreement has been received by the committee for review pursuant to House Resolution No. 435. It appears that the Department of Water Resources intends to proceed without an agreement.

The above brief review of recent events indicates that there is complete confusion regarding the legal status of the department's relocation and the applicable provisions of law. Because of this confusion, no parties know for sure what their rights are nor is it possible to evaluate whether the department is progressing properly in the construction of the project. Neither the committee nor the Department of Water Resources is satisfied with the present law, and its meaning becomes more uncertain as time goes on. More importantly, the developing litigation may interrupt the orderly construction of the state water facilities.

In drafting Assembly Bill No. 2136 two years ago, the committee attempted to prepare a bill which would be fair and equitable to the State, the utilities whose property is being taken and to agencies of state government whose property is also being taken for the construction of the state water facilities. Assembly Bill 2136 did this by specifying that payment should be made for all advantages and disadvantages received or given whenever utility or state agency property is needed for construction purposes. The medium for the determination of the payments for advantages and disadvantages was a written agreement between the utility or state agency and the Department of Water Resources. The committee still feels that such an agreement is the first, proper and logical step to be taken in the relocation process and that only subsequent points of disagreement should be submitted to the courts or the Public Utility Commission for decision if any should remain. Pretrial discussions between litigants in an effort to narrow the issues under dispute in a condemnation case tend to serve the same purpose but are conducted in an adversary atmosphere.

It is clear from the litigation now underway that the present Water Code sections will be contentious as long as they remain on the books. It is also clear from the position taken by the Attorney General before the Public Utilities Commission that the Interstate Commerce Commission and other regulatory bodies have functions to perform in the relocation of utilities. In other words, condemnation of utility property is not the same as condemnation of property belonging to private individuals and not devoted to a public use. Condemnation is not a shortcut answer to the problem, but may actually result in interminable delays pending appeals to higher courts. The committee, therefore, continues

to feel that concentration on reaching a fair and equitable agreement with the utility, under statutes designed to produce such a fair and equitable agreement, is still the best approach to the problem

The committee intends to reintroduce the subject matter of Assembly Bill No. 2136 (1961 General Session) since none of the intervening events have demonstrated any better approach. In reintroducing Assembly Bill No. 2136 the committee proposes to repeal Water Code Sections 11131 and 11577 to be sure that conflicting language is removed and that Sections 11590 through 11594 of the committee's bill contain the only authority for departmental acquisition of utility and state agency property. Other revisions to Assembly Bill No. 2136 simplify and clarify language.

II. REPORT OF SUBCOMMITTEE ON EXPENDITURE CONTROL

CARLEY V. PORTER, *Chairman*

JOHN L. E. COLLIER
PAULINE L. DAVIS
HOUSTON I. FLOURNOY

FRANK LANTERMAN
ROBERT T. MONAGAN
JOHN C. WILLIAMSON

Findings

The Subcommittee on Expenditure Control has found that substantial progress has been made during the last two years in the solution of many problems involved in the fiscal management of the construction, operation and maintenance of the state water facilities. The subcommittee also found that continued attention is needed in this area both to improve present management and to solve new problems.

Recommendation

It is recommended that the committee continue to review the progress in fiscal management of the Department of Water Resources.

House Resolution No. 316 authorized a study of "the control and expenditure of funds under the (Burns-Porter) act by the Department of Water Resources and other agencies directly and indirectly involved." This resolution was introduced because of certain problems in accounting and handling of funds which were called to the attention of the Legislature by the Legislative Analyst and the fact that many difficult problems requiring legislative attention were involved in the fiscal management of the State Water Facilities.

The resolution authorizing the study enumerated some of the problems such as "the nature and extent of departmental charges for operations and general administration costs which may legally be charged to the state projects, differentiation between costs to be paid from revenues and those to be capitalized, the definition of project costs to be repaid by water users of the state projects; the reporting of expenditures by the Department of Water Resources pursuant to Section 12930 of the Water Code; and the proper accounting for and control of all funds expended under Section 12938, among other matters."

The Subcommittee on Expenditure Control held a hearing in Sacramento on August 30, 1961, pursuant to notice. Testimony was received from Messrs. James F. Wright, Chief Deputy Director, Department of Water Resources, Samuel J. Cord, Chief, Accounting Division, State Controller's Office, John E. Finnstrom, Audits Manager, Auditor General's Office and Roy M. Bell, Chief, Budget Division, Department of Finance. The testimony received from these witnesses was primarily technical. It provided valuable information on the accounting, budgeting and management procedures and problems involved in the construction, operation and maintenance of the state water facilities.

The results of this hearing were detailed in a letter from the chairman to members of the subcommittee dated January 3, 1962, which was also widely distributed to state officials and legislative officers. The more important matters discussed in this memorandum are recapitulated in this report.

A review of events which transpired during calendar years 1961 and 1962 shows that substantial progress has been made in providing for the fiscal management of the State Water Facilities. These events may be briefly noted as follows:

1. Enactment of Chapter 1955, Statutes of 1961, providing that Government Code Sections 13320 through 13326, which prescribe the budgetary authority of the Department of Finance over state agencies, will apply to the Department of Water Resources in the construction of the State Water Facilities. This bill assured that the Department of Finance has full authority to establish and revise an annual budget for the construction of the State Water Facilities as represented by the printed Governor's Budget.

2. The Governor has charged the Director of Finance "with the principal review function in the executive branch" for the construction of the State Water Facilities.

3. The Legislature, in enacting the Budget Act of 1962, placed a limitation in Budget Item 263(f) on the amount of money the department can spend for general administration. This limitation is by source of funds and removes the freedom the department had previously had to increase its general administration expenditures by increasing the overhead charges it makes. At the same time it brings the general administration expenditures of the Department under budget bill control.

4. Publication of a report entitled "Application of Indirect Costs in the Department of Water Resources," dated June 1962, which sets forth the method used by the department in accounting for its general administration costs. This report lists all the positions which charge to general administration and explains the method of charging.

5. Publication in July 1962 of the department's Accounting Manual. This document is designed to provide basic information on the department's accounting system and to describe the system of accounts used.

6. Included in a separate section of the Accounting Manual is the department's new Utility Accounting Manual which covers the handling of funds of the State Water Resources Development System. The system is stated by the department to be in conformity with the accounting system prescribed by the State Administrative Manual for Public Service Enterprises Funds, refined as necessary to reflect generally accepted utility accounting procedures, legal requirements, provisions of contracts between the State and water service agencies, and accounting policies recommended by Ernst and Ernst in their report (to the department) on January 1962. Establishing a utility accounting system is an important step forward initially in the fiscal management of the State Water Facilities and eventually for the State Water Resources Development System.

7. In February 1962 the "Report of the California Water Resources Development Finance Committee and the Department of Water Resources to the Legislature" was released pursuant to Water Code Section 12938. This first report was prepared after consultation with the committee staff and receiving the views of the chairman. The report covers the expenditures of the department in the construction of the State Water Facilities and certain other matters specified in the Water Code. The first report was sketchy, but as construction progresses and as the department's accounting system improves, subsequent reports should be more informative.

In addition to the points enumerated above, events associated with enactment of the Budget Bill have determined that funds for contract construction and land acquisition for the State Water Facilities will not be included in the Budget Bill. The Legislative Analyst had recommended such action to the Legislature during the last two sessions and the Senate had amended the funds into the Budget Bill. In 1961 the Governor blue-lined the funds. In 1962 the Governor did not include the funds in the Budget Bill; he resubmitted to the special session after the budget failed to pass during the regular budget session. As a result the Legislature will not be in a position to express its views on these contract construction and land acquisition expenditures of the department under the Burns-Porter Act and control of the program will be in the Executive Branch to be exercised by the Departments of Finance and Water Resources as contemplated in the Burns-Porter Act.

Even though substantial progress has been made in the past two years, a number of problems remain. These may be listed as follows.

1. The department is considering various approaches to provide tighter management and scheduling of its construction contracts. Involved are questions of scheduling work by the contractor and the department to accomplish the necessary construction by the completion date and the wise and orderly making of decisions in the execution of construction contracts as large as \$120,000,000. The department is considering several closely related approaches, but to date no decisions have been reached. It will be necessary for the department to move quickly and decisively into a contract management system if the State is to receive full benefit from its construction funds.

2. The department has indicated that some legislation may be necessary in the future to implement the utility accounting system. Such legislation will need to be worked out and presented to the Legislature for consideration.

3. During the 1962 Budget Session there was extended legislative discussion of the problems involved in auditing the funds expended by the department for construction of the State Water Facilities. Both the Department of Water Resources and the Department of Finance requested and were granted funds to conduct independent audits of construction expenditures. In addition, both the federal government and the water service agencies contracting with the State may desire their own audits. The possibility of a single integrated audit has been considered but has not been agreed on. In the meantime the Auditor Gen-

eral, who performs audit work for the Legislature, is conducting a survey of the State's audit functions and may make recommendations on the type of audit found to be most appropriate.

4 Throughout the subcommittee's work on expenditure control it has been clear that the fiscal management involved is necessarily complex but perhaps it is also too complex. As solutions to the fiscal management problems are worked out, special emphasis should be given to simplicity in all aspects of accounting, budgeting and fiscal management.

III. REPORT ON HOUSE RESOLUTION 106 (1962 Budget Session) ASSEMBLY BILL NO. 776 (1961 General Session)

Findings

Conflicting testimony was presented to the committee as to the benefits which will accrue to the El Dorado and West Side Park Mutual Water Companies as a result of continued inclusion within the Antelope Valley-East Kern Water Agency. The committee is not convinced that there is conclusive evidence that the companies' service areas will so benefit by such inclusion.

The committee found that the basic reasons for legislative approval of Assembly Bill 776 in 1961 still exist. The committee believes that the haste with which Senate Bill 1068 was amended in 1959 to include the Antelope Valley-East Kern Water Agency Act, in addition to the Mojave Water Agency Act, produced a situation whereby adequate consideration of the boundaries of the AVEK Agency was not possible. As a result of the unusual circumstances surrounding the passing of Senate Bill 1068, an inequity existed in the act as finally approved in 1959. Assembly Bill 776 corrected this inequity in the Legislature's original determination of the agency's boundaries.

The committee found that the actions of the officers and board of directors of the Antelope Valley-East Kern Water Agency since organization of the district indicate that the exclusion of these mutual water company service areas can only be accomplished by legislative action.

Recommendation

The committee recommends that the Legislature exclude the service areas of these two mutual water companies from the Antelope Valley-East Kern Water Agency. The committee further intends to introduce appropriate legislation at the 1963 session to once again rectify the inequity resulting from hasty action on the original agency act in 1959. (See page 23 for committee bill.)

Report on Hearing

Assembly Bill 776 was introduced by Assemblyman Tom Carrell at the 1961 session of the Legislature on January 25, 1961, was passed unanimously by both houses, and was pocket vetoed by the Governor. The subject matter of the bill, however, was referred to interim study by the passage of House Resolution 106 during the 1962 Regular Budget Session of the Legislature.

The bill excludes the service areas of the El Dorado Mutual Water Company and the West Side Park Mutual Water Company from the Antelope Valley-East Kern Water Agency, a special act district created in 1959 (Statutes of 1959, Chapter 2146, commencing with Section 49) and located in the Antelope Valley of Los Angeles and Kern Counties.

The two contiguous mutual water company service areas comprise approximately 1,400 acres out of the total agency area of 1,400,000

acres and are located near the southern boundary of the agency between the cities of Lancaster and Palmdale in Los Angeles County. The bill provides that the property in the area to be excluded shall be subject to taxation for indebtedness incurred prior to the exclusion.

A hearing on Assembly Bill 776 was held by the committee at Lancaster on November 14, 1962, pursuant to notice. Representatives of the mutual water companies, proponents of the bill, based their support of the bill on a series of agreements over the exclusion, dating to the original passage of the Antelope Valley-East Kern Water Agency Act in 1959.

Mr. Randle Lunt, General Manager and Chief Engineer of the Agency, in opposition to the bill, presented geologic and other background information on the district designed to "conclusively show that the lands within AVEK will receive tangible and direct benefit from the functions performed by the Antelope Valley-East Kern Water Agency and that the removal of land from AVEK, such as the service areas of El Dorado and West Side Park Mutual Water Companies, would result in those lands being benefited by the efforts of AVEK and escape the financial responsibility."¹

Mr. Lunt explained that the purpose of the agency is the resolution of water problems including importation of supplemental Burns-Porter Act water from the State Water Facilities, prevention of destruction of the local ground water basin which currently is being overdrafted, and recovery and use for beneficial purposes of waste waters.

He stated that

"... these functions can be performed logically and most economically by AVEK and that the lands which have been considered for withdrawal from the agency cannot escape being benefited by the activities of this agency and, therefore, cannot logically escape paying their proportionate share of the cost. It is a principle which applies to the establishment of the boundaries of improvement districts that all lands be included therein which shall benefit therefrom, and that conversely, all lands shall be excluded which are not so benefited." (Transcript, pages 6-7)

Mr. Lunt's statement included a number of ground water basin profiles indicating that the ground water supply

"... existing in the vicinity of the El Dorado Mutual Water Company and the West Side Park Mutual Water Company is not secure. The depth to water is increasing due in part to the pumping taking place in the immediate vicinity but due largely to the heavy pumping in other areas. Well records indicate the existence of a ground water mound in that area which will gradually disappear. Water will flow away from the mound and the apex will flatten out. The water basin tends to become level. This will take place whether or not any more water is pumped from the El Dorado Mutual Water Company service area." (Transcript, pages 11-12.)

* All documents submitted to the committee are presented in full in the published hearing transcript.

¹ Transcript, page 5.

Mr Lunt admitted, however, that the ground water profiles he presented were not of the specific conditions underlying the two mutual water company service areas but only "show generally the water situation as it exists in the valley"² Mr Warner S Briggs, Secretary-General Manager of El Dorado and West Side Park Mutual Water Companies, testified that he did not agree that the mutual water companies' service areas would benefit from continued inclusion in AVEK Mr Briggs further testified that water levels in the companies' wells were dropping only from two to three feet a year Mr Briggs indicated that he felt that underground conditions varied greatly from area to area within the valley and ground water conditions in the companies' service areas were good Regarding the ground water supply of the companies, Mr Briggs stated "we'll be in good shape for a long, long time"³

Similar conflicting testimony was presented regarding the benefits which will accrue to the mutual water companies' service areas as a result of underground replenishment and waste water reclamation by AVEK Adequate technical data are not available for the committee to assess local ground water hydrology in detail and to determine the extent of any benefits received

Mr Briggs; Mr Joe Brooks, President of the West Side Park Mutual Water Company, Mr Leslie J Miller, President of the El Dorado Mutual Water Company, and Mr John M Coffeen President of the South Antelope Valley Water Basin Association, made a joint presentation to the committee in support of Assembly Bill 776 Their testimony centered around a complex series of agreements which were related to the original passage of the Antelope Valley-East Kern Water Agency Act

This agency act was most unusual in that it was introduced late in the 1959 session as an amendment to SB 1068, another agency act Senate Bill 1068, as introduced by Senator Stanford Shaw on March 26, 1959, created the Antelope-Mojave Water Agency (substantially the area of the Mojave Water Agency which was finally enacted) wholly in San Bernardino County The bill then passed the Senate on May 13, 1959

On May 28, 1959, an amendment to SB 1068 longer than the bill itself was adopted by the Assembly after being reported out of the Assembly Water Committee The amendment, sponsored by Assemblyman Allen Miller, was the Antelope Valley-East Kern Water Agency Act.

On June 3, 1959, Senate Bill 1068 was further amended to exclude certain lands in the Palmdale area from the proposed AVEK Agency On June 15, just four days before final adjournment of the Legislature, an additional amendment was made in the Mojave Water Agency part of SB 1068

Mr Briggs and other proponents of the bill repeated to the committee their 1961 contentions that the companies' representatives had been assured by Assemblyman Miller and the administrative assistant to Senator Shaw that following the formation of the AVEK Agency the

² Transcript, page 22.

³ Transcript, page 69.

service areas of the mutual water companies would be excluded on the local level.

Mr Coffeen testified that he

" . . . was present at a meeting held in Sacramento June 1, 1959, which meeting was also attended by Judge Allen Miller, then Assemblyman Allen Miller, and Mr Robert Wirsing, then legislative administrator [sic] for and acting in behalf of Senator Stanford C Shaw, and that this meeting was held for the purpose of discussing the possibility of further amending the amendment to Senate Bill 1068, the Antelope Valley-East Kern Water Agency Act, to exclude the service areas of the El Dorado Mutual Water Company and the Westside Park Mutual Water Company from the boundaries of the Agency and that both Assemblyman Miller and Mr Wirsing at the meeting explained to representatives of the mutual water companies who were also present . . . *that a further amendment at this late date would probably preclude the passage of the bill and further, that if the agency were formed, including the two mutual companies within its boundaries, that they would assist the two mutual water companies in excluding their areas from the agency after it was formed.*" (Emphasis added) (Transcript, pages 47-48)

Mr Briggs substantiated this statement On July 6, 1960, Assemblyman Miller, then a Superior Court Judge, stated in a letter to Mr Briggs that

"I distinctly recall that during the 1959 session, you . . . visited me in Sacramento and expressed concern over the inclusion of the area served by the El Dorado Mutual Water Company in the Bill S B 1068, creating the Antelope Valley-East Kern Water Basin Agency

"I further recall advising you that any attempt at that time to achieve an exclusion in the bill could possibly result in the defeat of the bill primarily due to the fact that the amendment in resubmission would cause delay and might prevent adoption prior to the adjournment I also advised you at that time that there was a provision in the act for the withdrawal of any area, and that undoubtedly upon application to the board of the agency, exclusion would be granted

"However, I do not recall that I assured you I would help you in any attempt to withdraw from the district, despite the recitation of that fact in your letter of June 1, to me This is the extent of my recollection, and I do not believe it would be advisable for me at this time to be an advocate or to press for the exclusion which you are seeking, this being a matter for negotiation between you and the agency board " (Emphasis added) (Transcript, page 70)

A later communication from Judge Miller dated April 6, 1961 (in which the judge restated his position somewhat differently), was submitted to the committee In this telegram to Mr Robert J Atkins, then Secretary of the Board of AVEK, Judge Miller said

"There was no commitment of any kind between Senator Shaw and myself in reference to S B 1068, 1959 session whereby we or either one of us would support the withdrawal of any area of water district from the agencies created by S B 1068. I have this day verified this recollection with Senator Shaw." (Transcript, page 62)

In response to Assemblyman Collier's question, "Did you have an agreement with these two mutual agencies at that particular time [at passage of the agency act] that they would be excluded?", Mr. Launt replied, "No, sir" ⁴

However, Assemblyman Lanterman, at the same Lancaster hearing on November 14, 1962, stated that

"I was very, very careful to inquire of Assemblyman Miller at that time he introduced this tremendous sheaf of amendments [AVEK Agency amendment to S B 1068, 1959] . . .

"**Acting Chairman Lowrey:** I recall quite vividly.

"**Assemblyman Lanterman:** and I said . . . Assemblyman Miller, I am reluctant to vote on this. I almost feel that I should ask for a delay on this thing because due hearings cannot be given here and I don't want anybody hurt. I just don't want anything happening by having what you call precipitate action the last minute by this kind of a device. And he said, 'I give you my assurance that there will be no hardships from this and I will be the first to try and rectify any kind of hardship, if it should occur.' Now on that assurance, I went along with these amendments and only on that assurance." (Transcript, page 67-68)

During the 1961 session the Antelope Valley-East Kern Water Agency sponsored Assembly Bill 2256, which Mr. Atkins said was to "clarify our act." ⁵

This bill included a number of technical corrections to the AVEK act but also included substantive revision of Section 84, covering exclusion. This bill increased exclusion petition requirements from 10 percent of the voters in the last gubernatorial election to 25 percent of the property owners and 51 percent of the registered voters. The exclusion election was also changed from the area to be excluded only to an agencywide election. Other changes were also made in this section.

A B 2256 was introduced on March 17, but was heard in the Senate Water Resources Committee simultaneously with A B 776. Both bills also received final passage in the Senate on the same day.

Mr. Briggs explained to the committee that

" . . . at the time it [A B 776] went out of the last committee there was absolutely no opposition. We found out that the Governor had set the bill aside and was not going to sign it. We found out this at almost the deadline of signing the bill.

" . . . Mr. Atkins, who was representing and handling the legislative opposition to A B 776, agreed at the last moment with Mr. Wirsing [then a legislative representative for the two mutual water

⁴ Transcript, page 30

⁵ Letter quoted in transcript, page 76

companies] and myself that they'd [AYEK] drop all further opposition to our bill [A B. 776] This bill went out on consent [calendar] from the last committee, as I was told; so, therefore, the agency had dropped its opposition. We did not expect any further opposition, based on this, and therefore were not concerned

" . However, on June the 23rd, 1961 . . . a letter was sent to Alex Pope, Legislative Secretary to Governor Brown, regarding A B 776 and A B 2256 " (Emphasis added) (Transcript, page 72)

This letter reads as follows.

"Dear Mr Pope :

"I am taking the liberty at this time to request that the above referenced Assembly Bill A B 2256 be processed and presented to the Governor for his approval, and A B 776 be processed and presented to the Governor for his disapproval

"A quick review of the two bills will readily show the reason for this agency's position and request

"A B 776 was presented to the Legislature as a means of exclusion for a parcel of ground somewhat less than 1 $\frac{1}{4}$ square miles. Proponents of this legislation stated in effect, ' they had been promised exclusion upon the completion of the formation of this agency '

"Attached hereto is a copy of a telegram addressed to me from Superior Court Judge Allen Miller clarifying the position he and Senator Stan Shaw took in the 1959 session of the Legislature. I am sure that the telegram is self-explanatory [See page 19]

"A B 2256 is our agency bill to clarify our act (Statutes of 1959) and, in addition, we rewrote Section 84 of the act defining exclusion procedures

"Our agency felt the exclusion procedures as originally written in the act were not in the best public interest, and the new legislation was a result of a study and public hearings regarding this particular feature of the agency act

"We feel in the agency that approval and passage of the agency bill, A B 2256, with the Governor's signature will be the reason for denial of A B 776

"As information, the Department of Water Resources has consistently endorsed our agency's legislative program, including the aforementioned bills at this session

"This note is written in conjunction with our telephone conversation of June 22 regarding this matter.

"I would appreciate a conference with the Governor if there is in your or his opinion any action to be taken contrary to the position of the agency's request

"Thank you very much for this consideration

"Yours very truly,

*"ROBERT J AIKINS
Secretary of the Board
Antelope Valley-East
Kern Water Agency"*

Assemblyman Lauterman recalled that

"When this bill, A B 2256, was brought before us to provide much tighter restrictions on the exclusion process, I was given public assurance by the author of the bill [Assemblyman Carrell] that all problems concerned with [A B.] 776 and your exclusion had been reconciled and that there had been no further objection and no possible difficulties could arise as a result of the enactment of these increased prohibitions, as it relates to exclusion. Now I want to make that very clear . . . I would not have voted for this bill [A B 2256] if that hadn't been agreed to "

Mr Briggs replied

" . . . when I informed him [Assemblyman Carrell] that we'd found out that the Governor was going to veto our bill, he was astounded and he said it was his understanding that both bills were going to be signed " (Transcript, page 73)

Mr Lunt, the principal AVEK witness at the committee's Lancaster hearing, has been employed by the agency only since April 1962. Mr Robert Atkins, now AVEK Administrative Assistant but secretary of the agency in 1961 and legislative representative at that time, was not in attendance at the Lancaster hearing and was, therefore, not able to comment on events of 1959 and 1961. The role which Mr Lunt played in the formation of AVEK (Senate Bill 1068) and in the 1961 legislative amendments to the act (Assembly Bills 776 and 2256) is not clear.

At the Lancaster hearing Mr. Lunt testified that "I was involved in this committee which attempted to organize the district " He had previously explained that a committee first tried to form a valley-wide district under a general act. He continued, "I was not on that committee that made the decision to go to the Legislature and see if they could get essentially the same thing as the Municipal Water District Act of 1911 enacted by the Legislature and it was done. . . . Essentially then this law is exactly the same in all its powers and functions as the Municipal Water District Act of 1911 " ⁶

Several months earlier in San Bernardino, however, Mr Lunt told this committee that "I was the author of, and aided in organizing, the Antelope Valley-East Kern Water Agency " ⁷

On several occasions, both before and after the effective date of the new exclusion provisions of A B 2256, the two mutual water companies filed petitions with the AVEK board requesting exclusion:

1. December 15, 1959—Petition for El Dorado exclusion filed
April 5, 1960 —Petition denied
2. December 13, 1960—Motion to grant El Dorado exclusion by ordinance denied
3. December 13, 1960—Petition for West Side Park exclusion filed
March 28, 1961 —Petition denied

⁶ Transcript, page 38. For a comparison of the Antelope Valley-East Kern Water Agency Act and the Municipal Water District Act of 1911 see this committee's *Study of Water District Laws*, Assembly Interim Committee Reports, 1961-1963, Vol 26, No 5.

⁷ San Bernardino transcript, May 15, 1962, p 166

4. September 12, 1961—Petition for El Dorado and West Side Park exclusion filed
January 9, 1962 —Petition denied

At the Lancaster hearing Mr. Aikin's letter to the Governor was the subject of a brief colloquy between Assemblyman Lanterman and Mr. Al Skelton, a member of the AVEK board and its auditor. The inconsistencies in the AVEK position relative to the exclusion are obvious

"Assemblyman Lanterman: the question I have raised about this [original AVEK act] at all times was the manner in which this was introduced at the last minute in the closing days of the session. We shouldn't have major legislation of the kind that created AVEK brought before us without the opportunity for everyone involved to have a hearing before their Legislature. The issue that I have raised is very simple; that any misunderstanding, any disagreement or any lack of equity that is involved in a matter of this kind should be rectified, period.

"Mr. Skelton: I agree with you

"Assemblyman Lanterman: All right

"Mr. Skelton: But that was your responsibility, and you stated that you went along with it and if you had it to do over, you wouldn't

"Assemblyman Lanterman: No, my responsibility was to correct this by legislation; and that we did. But it was your board, through your agent, your representative, who went to the Governor and said veto this bill.

"Mr. Skelton: I object to that

"Assemblyman Lanterman: . . . Is the letter . . . as it was read to us—by Mr. Aikins to Mr. Pope—a copy of the letter that was sent?

"Mr. Skelton: I'll grant that it is. . . . We wrote a letter stating that we didn't think there should be any exclusions and if you'll give me a chance later, I'll explain that." (Transcript, page 92, 93)

Later Mr. Skelton explained that "This act, whether it's wrong or something's wrong with it that needs changing, I'm for changing. But it's an act that you fellows [Legislature] made . . ."⁸

Following further discussion with Assemblyman Lanterman, Mr. Skelton reiterated, "But Mr. Briggs said that if the Legislature lets us out—lets them [the mutual water companies] out. That's okay with me."⁹

Mr. Briggs explained that the two companies were "not trying to get out of paying our cost of the [State's] aqueduct. We know we're going to pay that. . . . But we will certainly contract, be part of a contracting agency, as soon as we can get out of AVEK." He continued by reassuring the committee that "We're immediately going to protect ourselves by getting into another agency—whether it's the PID [Palmdale Irrigation District] or the South Antelope Valley Water District, or whatever they're going to call it."¹⁰

⁸ Transcript, page 95

⁹ Transcript, page 95.

¹⁰ Transcript, page 84.

Mr. Lowell Felt, Engineer-manager of the Palmdale Irrigation District, testified briefly and explained that ground water levels in his area were receding at a rate of about five feet a year. . . . "Our situation there is certainly not any worse than it is within AVEK,"¹¹ he added.

The Department of Water Resources, which opposed the bill in 1961, was represented at the hearing on A B 776 by Mr. Vernon Valentine, a senior engineer in the department's southern district office. Mr. Valentine stated that "the department has not taken any position towards the renewal or final disposal of A B 776 at this time. . . ."¹²

COMMITTEE BILL

An act to amend Section 50 of the Antelope Valley-East Kern Water Agency Law (Chapter 2146, commencing with Section 49, of the Statutes of 1959), relating to the Antelope Valley-East Kern Water Agency, declaring the urgency thereof, to take effect immediately.

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

SECTION 1 Section 50 of the Antelope Valley-East Kern Water Agency Law (Chapter 2146, commencing with Section 49, of the Statutes of 1959) is amended to read:

Sec 50 The Antelope Valley-East Kern Water Agency is hereby created, organized and incorporated and shall be managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied, and may include contiguous or non-contiguous parcels of both unincorporated and incorporated territory and territory included in any public district having similar powers and shall include all territory, except Section 9 of, and the north $\frac{1}{2}$, and the north $\frac{1}{2}$ of the southwest $\frac{1}{4}$, of Section 16 of, Township 6 North, Range 12 West, San Bernardino Base and Meridian, lying within the following described boundaries.

Beginning at the northwesterly corner of Section 2, Township 8 North, Range 17 West, San Bernardino Base and Meridian; thence southerly along the westerly line of said last mentioned section and continuing southerly along section lines to the southwesterly corner of Section 11 of said last mentioned township and range; thence easterly along the southerly line of said last mentioned section and continuing easterly along section lines to the northeasterly corner of Section 17, Township 8 North, Range 16 West, S B B & M, thence southerly along the easterly line of said last mentioned section and continuing southerly along section lines to the boundary of the Antelope Valley Soil Conservation District as same existed on March 13, 1959, thence easterly along said last mentioned boundary and following the same in all its various courses to the northeasterly corner of Section 17, Township 9 North, Range 7 West, S B B & M, thence northerly along the easterly boundary of the County of Kern as same existed on said last mentioned date of the northeasterly corner of Section 1, Township 31 South, Range 40 East, Mount Diablo Base and Meridian, a point on the northerly boundary of the Edwards Town Community Services District as

¹¹ Transcript, page 96

¹² Transcript, page 82

same existed on said last mentioned date; thence westerly along the northerly boundary of said last mentioned district and following the same in all its various courses to the southeasterly corner of Section 36, Township 30 South, Range 38 East, M D B & M , thence northerly along the easterly line of said last mentioned section and continuing northerly along section lines to the northeasterly corner of Section 1, said last mentioned township and range, thence westerly along the northerly line of said last mentioned section and continuing westerly along section lines to the northeasterly corner of Section 1, Township 30 South, Range 36 East, M D B & M , thence southerly along the easterly line of said last mentioned section and continuing southerly along section lines to the southeasterly corner of Section 36, said last mentioned township and range, thence westerly along the southerly line of said last mentioned section and continuing westerly along section lines to the northwesterly corner of Section 6, Township 31 South, Range 36 East, M D B & M , thence southerly along the westerly line of said last mentioned section and continuing southerly along section lines to the southwesterly corner of Section 31, Township 32 South, Range 36 East, M D B & M , thence westerly and southerly along the northerly and westerly lines of fractional Section 33, Township 12 North, Range 12 West, S B B & M , to the northeasterly corner of Section 5, Township 11 North, Range 12 West, S B B & M , thence westerly along the northerly line of said last mentioned section and continuing westerly along section lines to the northwesterly corner of Section 6, Township 11 North, Range 13 West, S B B & M ; thence southerly along the westerly line of said last mentioned section and continuing southerly along section lines to the boundary of the Antelope Valley Soil Conservation District, thence westerly along said last mentioned boundary to the northwesterly corner of Section 6, Township 10 North, Range 14 West, S B B & M ; thence southerly along the westerly line of said last mentioned section and continuing southerly along section lines to the southeasterly corner of Section 36, Township 10 North, Range 15 West, S B B & M , thence westerly along the southerly line of said last mentioned section to the northwesterly corner of Section 1, Township 9 North, Range 15 West, S B B & M , thence southerly along the westerly line of said last mentioned section and continuing southerly along section lines to the southeasterly corner of Section 23 of said last mentioned township and range; thence westerly along the southerly line of said last mentioned section and continuing westerly along section lines to the southeasterly corner of Section 19 of said last mentioned township and range, thence northerly and westerly along the easterly and northerly lines of said last mentioned section and continuing westerly along section lines to the northwesterly corner of Section 19, Township 9 North, Range 16 West, S B B & M , thence southerly along the westerly line of said last mentioned section and continuing southerly along section lines to the southeasterly corner of Section 25, Township 9 North, Range 17 West, S B B & M ; thence westerly along the southerly line of said last mentioned section and continuing westerly along section lines to the northwesterly corner of Section 35 of said last mentioned township and range, thence southerly along the westerly line of said last mentioned section to the point of beginning, excluding all the following described land (except that which is within

the Los Angeles County Waterworks Districts Nos. 24 and 27 as their boundaries exist on the effective date of this act) beginning at the NW corner of Sec 22, T 6 N, R 12 W, SBBM, thence southerly along the west line, Secs 22, 27, 34 to the north line, T 5 N, thence westerly on the north line of T 5 N to the NW corner of Sec 4, T 5 N, R 12 W, SBBM; thence southerly along the section lines in T 5 N, R 12 W to the southerly boundary of the Antelope Valley Soil Conservation District as same existed on March 14, 1959, thence southerly, easterly, and northerly along said last mentioned boundary and following the same in all of those various courses to the east $\frac{1}{2}$ corner of Sec. 13 T 5 N R 8 W, SBBM, thence westerly along the center section lines of Secs. 13, 14, 15, 16, 17, 18, T 5 N R 8 W, Secs 13, 14, 15, 16, 17, 18 T 5 N R 9 W, and Secs 13, 14, 15, T 5 N R 10 W, thence northerly along the westerly lines of Secs 15, 10 and 3, T 5 N R 10 W; thence easterly along the north line of T 5 N to the SE corner, Sec 34, T 6 N R 10 W; thence northerly along easterly lines of Sec 34 and 27 to the NE corner of Sec 27, T 6 N R 10 W; thence westerly along the north section lines of Secs 27, 28, 29, 30, T 6 N R 10 W and along the north lines of Secs 25, 26, 27, T 6 N R 11 W to the SE corner of Sec 21, T 6 N R 11 W; thence northerly along the east line of Sec 21 to the NE corner of said Sec 21; thence westerly along the north lines of Secs 21, 20 and 19, T 6 N R 11 W and along the north line of Sec 24, T 6 N R 12 W to the south $\frac{1}{2}$ corner of Sec 13, T 6 N R 12 W, thence northerly along the center line of said Section 13 to the center of said Sec 13, thence westerly to the W $\frac{1}{2}$ corner of Sec 13; thence southerly to the SW corner of said Sec 13, thence westerly along the northern line of Secs. 23 and 22, T 6 N R 12 W, SBBM to the point of beginning

SEC 2 The property in the territory excluded from the Antelope Valley-East Kern Water Agency by this act shall continue to be subject to taxation to pay the principal and interest on any indebtedness of that agency, and on any indebtedness of an improvement district in which such property is situated, which is incurred prior to the effective date of this act.

As used in this section, "indebtedness" means any bond, formation warrant, or promissory note for the payment of which property in the district is taxable

SEC 3. This act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

These boundary changes must be made immediately so that the area excluded can join another water district in time to meet the deadline for contracting with the Department of Water Resources for a supplementary water supply from the State Water Facilities. It is therefore necessary that this act take immediate effect.

IV. REPORT ON HOUSE RESOLUTION 368 (1961) ASSEMBLY BILL 917 (1961 General Session)

Finding and Recommendation

The committee found that the purposes of Assembly Bill 917 in the form referred for interim study are essentially contained in the existing provisions of the Davis-Grunsky Act.

Report on Hearing

Assembly Bill 917 was referred to interim study by House Resolution No 368. The bill would provide blanket authorization for state financial assistance in the form of loans to distressed areas for the planning and construction of domestic water distribution systems. The loans would be administered by the Department of Water Resources and would be available only to areas (1) unable to raise funds by customary means to construct domestic distribution systems, and (2) upon submission of a report showing the existence of a health hazard. The bill is patterned substantially after Water Code Sections 12880 to 12891.1 which are generally known as the Davis-Grunsky Act. Originally, the bill required no interest payment on the loan but an interest payment was added by amendment during the 1961 session and the bill as referred to interim study provided for payment of interest.

A hearing was held by the committee at Sacramento on August 2, 1962, pursuant to notice. The bill was briefly explained by its author, Assemblywoman Davis. Testimony was received from Mr. Edward Reinke, Chief of the Bureau of Sanitary Engineering, State Department of Public Health. Mr. Reinke described the problem confronting some of the small communities in the northern and eastern mountainous areas of the State which face health hazards because they do not have the ability to finance construction of needed domestic water systems.

Mr. Porter Towner, Chief Counsel, Department of Water Resources, testified that Assembly Bill 917 is unnecessary for the following reasons:

"1. Assembly Bill 217, sponsored also by Mrs. Davis, was enacted at the 1961 session (Chapter 1286, Statutes of 1961). This act added Section 12880.2 to the Water Code to authorize the department to make loans for either irrigation distribution system projects or municipal distribution system projects in cases which involve extreme hardship which jeopardizes the public health, safety or welfare. With the approval of the California Water Commission, loans for such projects may be made in the amount of up to \$1,000,000. Loans in larger amounts may be made upon specific approval by the Legislature. The sum of \$130,000,000 has been appropriated by the California Water Resources Development Bond Act (Chapter 8, commencing at Section 12930, of Part 6 of Division 6 of the Water Code), for Davis-Grunsky Act projects.

Therefore, money is available now for making loans for municipal distribution systems where the public health is in danger

"2. In addition, in case the local agency is not able to finance preparation of feasibility reports for securing such loans, the department is authorized under Water Code Sections 12880(e) and 12883.5 to make loans for preparation of feasibility reports on a proposed project, not exceeding 2 percent of the estimated cost of the proposed project or \$25,000, whichever is less. Loans for larger amounts may be made upon approval by the Legislature

"For these reasons we conclude that the existing law is adequate to provide for the hardship cases envisioned in Assembly Bill 917 "

Mr. Roy Bell, Assistant Director, Department of Finance, presented testimony which generally supported the position of the Department of Water Resources that the bill as now amended is not needed in view of the present provisions of the Davis-Grunsky Act. In addition, Mr. Bell suggested that a definition of a distressed area is needed and that if any interest subsidy is added to the bill the source of the subsidy should be stated.

Mrs. Davis indicated that, even though Assembly Bill 917 had been amended in the 1961 General Session, to include interest payment on the loan made by the State to a local area, the main problem was that the State's interest rate is too high. Mrs. Davis indicated an interest in amending the Davis-Grunsky Act to reduce the interest cost for distressed areas.

V. REPORT ON ASSEMBLY BILL NO. 2 (1962 First Extraordinary Session)

Findings

Testimony presented to the committee indicated that adequate arrangements have been made through a Joint Exercise of Powers Agreement to provide a water supply to the Quartz Hill County Water District as well as the area described in Assembly Bill 2 (including the Portals Senior Citizens Village)

In addition, the annexation of the territory of the Portals Senior Citizens Village and certain other lands to Los Angeles County Waterworks District No 4 effective May 1, 1962, accomplished one of the two major objectives of Assembly Bill 2

The remaining major objective of the bill—the exclusion of the territory of the Portals Senior Citizens Village from the Quartz Hill County Water District—is an action which should most properly be taken on the local district level pursuant to appropriate provisions of the County Water District Act (Division 12 of the Water Code), under which this district is organized

The committee further concluded that disagreements and questions of rights and equity over certain aspects of contracts, as well as other local problems presented to the committee, are more properly the province of the courts

Recommendation

The committee recommends that no further action be taken on Assembly Bill 2.

Report on Hearing

Assembly Bill 2 was introduced by Assemblyman Tom Carrell at the First Extraordinary Session of 1962 Following its passage by the Assembly the Senate Committee on Governmental Efficiency referred the bill to interim study. The bill directs the Board of Supervisors of Los Angeles County “. . . by resolution which describes the boundaries of the Senior Citizens Village in Antelope Valley in Los Angeles County and other lands described in . . . this act, [to] withdraw the property from the Quartz Hill County Water District and include such property in the Los Angeles County Waterworks District No 4 ” Both are general act districts.

A hearing was held on Assembly Bill 2 at Lancaster on November 15, 1962, pursuant to notice The need for the bill was described by Mr George McLain, Chairman of the League of Senior Citizens and President of the Portals Senior Citizens Village, and Messrs Robert Brown and David Smith, representing the League of Senior Citizens

The Portals Senior Citizens Village is sponsored by the California League of Senior Citizens and is located at Avenue M and 65th Street in the Portal Heights area of the Antelope Valley of Los Angeles County near Quartz Hill.

Mr McLain explained that at the time preparations for construction of the Senior Citizens Village were beginning the village was included within the Quartz Hill County Water District.

At the time of the committee's hearing, the village, covering 47 5 acres with facilities for 1,000 elderly residents, was completed but could not be occupied due to a lack of water supply.

According to Mr McLain, in the spring of 1961 the Quartz Hill County Water District agreed to provide a water supply for the village. At that time the construction contractor for the village, Metcalf Construction Company, estimated the cost of a water main to bring a water supply to the village from existing facilities of the Quartz Hill County Water District at \$43,470. Mr. McLain said that "accepting in good faith the Quartz Hill County Water District engineer's confirmation that the installation of water to the village would not exceed \$43,470, [the League of Senior Citizens] proceeded to seek a commitment from the Federal Housing Administration to construct the Portal Senior Citizens Village."¹³ Project construction began on June 20, 1961.

A great deal of testimony, not all of which was in agreement, was presented to the committee relative to subsequent events. Mr McLain explained that

"Early in September 1961 we were informed by the attorney and engineer for Quartz Hill that the water level of their wells had lowered and were sanding up and that an extension of their facilities was required before they could supply us with water. We were overwhelmed when we were coldly told that the village would have to put up \$353,000 against their \$170,000 in unsold bonds to get our water service. We naturally strenuously objected and raised the question as to their representations made that the village would be supplied water at a cost not to exceed \$43,470. In desperation we turned to the Los Angeles County Board of Supervisors for help."

The county board of supervisors is the governing body of County Waterworks District No. 4, located in Lancaster. The boundary of this district was several miles from the village at that time.

Mr Randle Lunt, who at the time was employed by the County of Los Angeles and was in charge of county waterworks districts, including No. 4, testified that in May 1961

"Information was furnished to me by Mr Thomas S Maddock [representing the Quartz Hill County Water District] relating to the method of providing a water supply for Quartz Hill County Water District including the Senior Citizens Development, which would cost in the neighborhood of \$350,000, which would be largely chargeable to the California Institute of Social Welfare [now the League of Senior Citizens]. Mr Maddock and I studied the general water supply conditions in the area and concluded and agreed that the water supply source would have to be developed for an area where wells could be located in the deeper alluvium. We further concluded that such a project would be too expensive for the Quartz Hill County Water District to undertake alone and that the

¹³ All quotations in this report are from prepared statements of witnesses.

pipeline running from the wells could benefit properly [lands] which were then being considered for annexation to [Los Angeles] County Waterworks District No. 4 [in Lancaster]. In a subsequent conference, which I arranged among officials between the County of Los Angeles . . . the California Institute of Social Welfare, the Metcalf Construction Company, Mr. Leo Seltzer [owner of land adjacent to the village] the Quartz Hill County Water District . . . and my staff, we discussed a proposal which Mr. Maddock and I believed could most economically solve the water problem both for the Quartz Hill County Water District and the areas seeking to annex to County Waterworks District No. 4. The plan seemed acceptable. This plan required that a large area be annexed to County Waterworks District No. 4, and it was agreed that this would be the first step taken in the solution to the water problem."

Mr. James Rostron, representing the Los Angeles County Engineer, testified to the committee that

"On April 24, 1962, a successful election was held in the area on the west side of Antelope Valley which annexed territory to Waterworks District No. 4, Lancaster, effective May 1, 1962. This annexation included the overlapping of certain lands within the Quartz Hill County Water District which are described in Assembly Bill No. 2. The Quartz Hill County Water District gave consent to County Waterworks District No. 4 to the overlapping of said lands within their district.

"The land of the Portals Senior Citizens Village on the west side of Antelope Valley is within the boundaries of County Waterworks District No. 4, Lancaster [as a result of the annexation].

"As a result of said annexation, County Waterworks District No. 4 and Quartz Hill County Water District have entered into a Joint Exercise of Powers Agreement for the purpose of constructing water system facilities which will be of mutual benefit to both districts and result in a substantial savings of funds for both agencies.

"The project consists primarily of the construction of the Lancaster-Quartz Hill Feeder, pumping and storage facilities . . .

"By this Joint Powers Agreement, the Quartz Hill County Water District shall be the local purveyor of water to lands within their jurisdiction [including the Senior Citizens Village], and County Waterworks District No. 4 will provide the water supply to the Quartz Hill District as well as being the local purveyor of water to all lands within said annexation which do not overlap the Quartz Hill District.

"Said Joint Powers Agreement was executed by the Los Angeles County Board of Supervisors, as Governing Body of County Waterworks District No. 4, on October 2, 1962 . . .

"The Quartz Hill County Water District awarded a contract on October 11, 1962, for the installation of 14-inch and 18-inch diameter water mains . . .

" . . . said water main will provide water service to the Portals Senior Citizens Village by about January 1, 1963."

Mr. John Holtom, counsel for the Quartz Hill County Water District, testified and explained that

" . . . this joint powers agreement has been approved by the Board of Directors of the Quartz Hill County Water District . . . As part of its contribution to the joint project, Quartz Hill agreed to contribute the sum of \$315,000. This sum consisted of \$170,000 derived by Quartz Hill through the sale of authorized, but then unsold, General Obligation Bonds of the District, and \$145,000 derived from the Portals Senior Citizens Village as its fair share of the cost of the project. The Senior Citizens Village was advised of this cost, and by letter dated August 16, 1962, the Portals Senior Citizens Village authorized the allocation of \$145,000 . . . for offsite water facilities . . .

" . . . it can readily be seen that the project for the construction of a joint water system to serve the Portal Heights and adjacent areas in accordance with the terms of the joint powers agreement is progressing smoothly. Enactment of Assembly Bill No. 2 at this time would only confuse the implementation of the joint powers agreement. To illustrate, by the terms of the agreement, Quartz Hill is the purveyor of water to users within the boundaries of the Quartz Hill District as it existed at the time of the execution of the agreement. Removal of Portal Heights [including the village] from Quartz Hill would not affect this clause. And yet Section 31023 of the Water Code provides that a county water district may dispose of water outside of its district only if there is a surplus. Thus you would have a conflict in the implementation of the agreement between the sale of water outside of the boundaries of the Quartz Hill County Water District and compliance with the joint powers agreement.

" . . . It is understood that the disparity in tax rates between Quartz Hill and Waterworks District No. 4 is the reason for consideration to be given to the enactment of Assembly Bill No. 2. Specifically the bill would give Portals Senior Citizens Village a tax relief from the higher rate existing in Quartz Hill. But what is being referred to here is an ad valorem tax rate set by Quartz Hill. It was our understanding that the Portals Senior Citizens Village was a charitable institution within the meaning of Article XIII, Section 1(c) of the California Constitution and therefore exempt from taxation as provided in Article XIII, Section 1, of the Constitution. Therefore, Assembly Bill No. 2 would not affect this in any way.

" . . . Assuming the reverse to be the case and that the Portal Heights area, including the Portals Senior Citizens Village, was subject to the ad valorem tax rate established by Quartz Hill, enactment of Assembly Bill No. 2 still would not affect the tax rate since under the provisions of Section 32245 of the Water Code land excluded from a district in any manner shall continue to be subject to taxation to pay the principal and interest on bonds of the District outstanding at the time of exclusion."

Mr McLam, in discussing aspects of the financing of the village and the disparity between the original estimated cost of a water supply (\$13,470) and the eventual cost (\$145,000, under the Joint Powers Agreement), told the committee that

"You have perhaps wondered why we didn't take this matter to the courts. We did consider this, but were informed by the [Los Angeles] County Counsel as well as your own Legislative Counsel that there is no state law under which property that is included within a county water district may be transferred directly from the county water district to a county waterworks district.

"Because the county boards of supervisors have no authority to act in the public interest in matters of this kind, months of valuable time have been lost—thousands of dollars in unnecessary interest spent, and hundreds of elderly people have been deprived of living in this beautiful Senior Citizens Village . . ."

In lengthy questioning by committee members, Mr McLam brought up a number of other matters relating to the events described above, including a discussion of contractual matters relative to the securing of title to the property on which the village was constructed.

Through the hearing the committee was unable to ascertain the specific effect passage of Assembly Bill No 2 would have on the village and the arrangements, including the Joint Powers Agreement, already made for facilities under construction to provide a water supply to the village.

The committee also felt it was not the proper body to pass on the validity of various alleged agreements made by various parties during the period the negotiations for the water supply were in progress.

Mr Lowell Felt, Engineer-manager of the Palmdale Irrigation District, testified in opposition of A B 2. Mr Felt opposed in particular the provisions in the bill which provided that the boundaries changes be made by the Los Angeles County Board of Supervisors. Mr Felt stated

" . . . we feel that a dangerous precedent would be set by the enactment of a law that would empower the Board of Supervisors to withdraw territory from a District organized under the laws of this State and to include same within a County Waterworks District. Such a law would deprive these public water purveying districts of their basic protection heretofore afforded by law and thereby eventually destroying same . . ."

At the present time both the County Waterworks District Act (Division 16, Water Code) and the County Water District Act (Division 12, Water Code) include procedures for annexation and withdrawal of territory on the local district level.

Mr Elmer Cleary, representing the Lancaster Chamber of Commerce, Mr. Otis Dyar, representing the Palm Ranch Irrigation District, and Mr T C Gibson, representing Mr Leo Seltzer, also testified in opposition to Assembly Bill 2.

VI. REPORT ON ASSEMBLY BILL NO. 2216 (1961 General Session)

Findings

The committee found no logical relationship between the program proposed in Assembly Bill 2216 for state payment of costs of lands, easements and rights-of-way for local flood control projects and the current state policy of paying these costs on federal projects. The committee did find a gray area between federal flood control programs and local projects concerning which no data were available. In addition, the committee found that there is presently no means provided in Assembly Bill 2216 or suggested in the testimony on the bill to finance the cost of the local assistance proposed.

Recommendation

The committee recommends that Assembly Bill 2216 not be enacted until data is available justifying its adoption and a means of financing is found.

Report on Hearing

Assembly Bill 2216 was referred to the Assembly Interim Committee on Water for interim study. The bill would provide blanket authorization for appropriations from the General Fund to pay the costs of lands, easements, and rights-of-way (including relocation of utilities) required for flood control projects constructed by local agencies of government. In essence the bill is patterned after Water Code Sections 12800-12875, which provide state funds to reimburse local agencies for such costs in federal flood control projects.

A hearing was held by the committee at Long Beach on July 19, 1962, pursuant to notice. The bill was briefly explained by its author, Assemblyman Nisbet. Testimony supporting the bill was received from Mr. Lewis Keller, representing the League of California Cities, and Mr. Donald Currin, representing the Santa Clara County Flood Control and Water Conservation District. Mr. William E. Warne, Director of the Department of Water Resources, presented factual testimony which pointed out a number of legal or drafting problems the department felt should be resolved if the bill were to be enacted. Mr. Warne also noted that the bill did not identify the source of funds to finance the program.

The testimony from the Santa Clara County Flood Control and Water Conservation District was the only example of the possible application of the bill. Mr. Currin stated:

"I would like to point out that certain rapidly growing areas in California have found that the solicitation of federal aid for flood control projects is not always practical. Because of the need to keep pace with the rapid development, certain areas in California

—such as Santa Clara County—have found it necessary to assume the entire cost burden of construction of necessary flood control works. Financial aid from the State of California has been foregone by these local agencies in their necessary haste to accomplish needed work because the existing body of state law has been coupled to the concept of federal-state partnership in the construction of needed works. Aid from the State of California is presently not forthcoming to those agencies who are willing to shoulder the heavier financial burden of constructing the projects themselves. Assembly Bill 2216 would provide for direct co-operation between state and local agencies, provided that the local agencies are willing to shoulder the construction costs. Briefly stated, Assembly Bill 2216 would create a procedure whereby local agencies would be substituted in performing the functions of the federal government on flood control projects. The bill, as stated previously, provides safeguards to the State in that the Department of Water Resources must find that the benefits of the proposed works will reasonably exceed the costs. Appropriations must be recommended by the department and approved by the Legislature. It may be that the adoption of this bill would have substantial advantages to the State, as compared to the present situation.”

Mr. Warne pointed out the financial problems involved in expanding the State's flood control program as follows:

“In considering whether state assistance should be extended to nonfederal local flood control projects, consideration should be given, of course, to the need for such assistance and the impact thereof on the General Fund of the State. In view of the undertakings of the State in connection with the construction of the State's Water Resources Development System, pursuant to the California Water Resources Development Bond Act, and the concomitant commitment of the California Water Fund, the desirability of conformity as to policies established in the provisions of new legislation to insure equal treatment of all users and manageable overall financial commitments is obvious.

“We are not certain what the cost to the State would be under such a new program, but it would seem that the establishment of the policy in the bill would encourage construction of projects in proportion to the ease with which state assistance may be obtained.

“In many areas it would appear that the costs of lands, easements and rights-of-way, including relocation of roads and utilities, for local flood control projects, especially those in urban areas, would exceed the construction costs of the projects. If the State should assume the former costs, this would tend to make feasible, so far as local agencies are concerned, many projects which are not now considered to be economically feasible where the local agencies have to pay all the costs. In other words, the legislation might encourage the construction of economically marginal projects.

“We also point out that there is no necessary relationship between the need for assistance and the ability of the beneficiaries of a flood control project to pay and the costs of lands, easements

and rights-of-way. Presumably, sparsely settled areas would need financial assistance the most, but the cost of lands, easements and rights-of-way is greater in the urban areas which are better able to pay the costs. Thus it may be argued that there is no rational basis for the State to assume all of the costs of lands, easements and rights-of-way because such an assumption will tend to assist most those who need the assistance least.

"One reason exists for contributing to federal projects which does not apply to local projects. The difference between the two types of projects is that by contributing to the federal projects, thus encouraging and facilitating their construction, we bring money into the State that we would not otherwise have.

"If a project is worthwhile and of sufficient statewide interest, it would seem that federal authorization may and should be secured. If due to emergency conditions there is a need to accelerate a project by going ahead without federal assistance, should there be emergency requirements in the act? If recommendations have to be made to and appropriations secured from the Legislature, what happens meantime to the emergency?

"It is recommended that the Legislature consider very carefully whether the State should undertake the commitment expressed in this bill in view of the present financial obligations of the State in the water field."

During the extensive studies carried out by the Assembly Interim Committee on Water in preparation for publication of its report, *Economic and Financial Policies for State Water Projects*, Assembly Interim Committee Reports, Volume 26, Number 1, the committee evaluated the proposals which were frequently made to the committee that the State pay the costs of lands, easements and rights-of-way for all water projects as a form of assistance to state constructed and locally constructed water projects of all kinds. The committee found these proposals unacceptable and declined to endorse any of them. A discussion of a broader proposal than that contained in Assembly Bill 2216 was included in "A Study of Economic and Financial Policies for State Water Projects," published by the committee on August 5, 1959, for purposes of public review and comment on the committee's progress towards economic and financial policies. The study, on page 56, states:

"... This proposal is based upon a misinterpretation of present state and federal policy whereby the State pays the costs of rights-of-way and relocation of utilities for federal flood control levee and channel works in behalf of the local beneficiaries. This policy was established by Congress to assure that local agencies (by federal definition, this also includes the State) would assume some financial responsibility for levee and channel projects. It does not apply to federal flood control dams and reservoirs and has no application to any purposes of multiple-purpose projects. . . . The proposed application of this approach in California reverses existing federal policy while using the federal policy as justification for its adoption."

It is not known how much flood control project construction, probably in the form of levee and channel work, has been accomplished by local California agencies in past years. In a number of instances, such as in Los Angeles County and along the Sacramento River, projects that were started locally were transferred to the U.S. Corps of Engineers for completion at federal expense with the State paying for lands, easements and rights-of-way. However, some areas such as Santa Clara County have no federal projects and any work accomplished has been locally financed. In addition, there appears to be a gray area of jurisdiction and responsibility between federal and local efforts. Therefore, considerably more information is needed before the nature and impact of a state program to assist local construction of flood control projects can be assessed.

VII. REPORT ON ASSEMBLY BILL NO. 2988 (1961 General Session)

Findings

The committee found that the testimony on Assembly Bill No. 2988, which would provide for favorable pricing of agricultural water from the State Water Facilities did not show the bill to be necessary because negotiations between the Department of Water Resources and the Kern County Water Agency have not progressed to a definitive point. It is not yet clear how much water can actually be contracted for by the Agency compared to the amount it desires. The committee found the Kern County Water Agency presented testimony based on computations of ability-to-pay rather than factually establishing willingness-to-pay. The committee found, however, that repaying conservation costs resulting from early construction of Oroville Dam for flood control purposes may adversely affect agricultural water users.

Recommendation

The committee recommends no further action on Assembly Bill No. 2988.

Report on Hearing

Assembly Bill No. 2988 was referred to the Assembly Interim Committee on Water for interim study. The bill would change the pricing for agricultural water delivered by the State Water Facilities. The change would be accomplished by (1) making an allocation of project costs directly to agriculture instead of conserved water, (2) by reflecting the possible greater deficiency in agricultural water supplies from the project as a lower value for agricultural water, and (3) by allocating water transportation costs to agriculture on an incremental basis.

A hearing was held by the committee at Bakersfield on November 16, 1962, pursuant to notice. The author, Assemblyman Williamson, briefly explained the bill. Testimony was presented by the Kern County Water Agency in support of the bill. The Department of Water Resources also appeared. The department pointed out the variance between Assembly Bill No. 2988 and the prototype water supply contract it signed with the Metropolitan Water District of Southern California and seven other contractors as well as the variance from the Governor's contracting principles and the recommendations on pricing made by the Assembly Interim Committee on Water and the Senate Fact Finding Committee on Water. Representatives of both the department and the Kern County Water Agency were extensively questioned by the committee members regarding their testimony and the status of contract negotiations between the department and the Kern County Water Agency. The hearing served as a public review of the status of negotiations between these agencies on contract terms. Other brief testimony was also received.

The Kern County Water Agency stated that

"... available information and judgment factors indicate . . . the upper limit of prospective member units' capacity-to-pay at year 1990 would yield about \$15,000,000 which, on the average is \$12 00 per acre-foot. As compared to calculated state charges, this indicates a gap of about \$8,500,000 annually or \$7 00 per acre-foot at year 1990. . . .

"One study made by agency consultants indicated the possibility of obtaining about \$2,500,000 annually from assessments made on a gradually declining rate schedule under the zone of benefit provisions of the Agency Act. Assumed as benefited in accordance with the definitions set forth in the Agency Act was an area of more than a million acres with a present total assessed value of about \$450,000,000, of which the entire urban area of metropolitan Bakersfield accounted for about \$115,000,000 or about 25 percent. The assumed assessment rate commenced at 50 cents per hundred, roughly equals the tax rate originally applied by the Metropolitan Water District of Southern California when it built the Colorado River Project. The rate declined to 30 cents per hundred by year 1990, which is roughly double the present ad valorem tax rate of the Metropolitan Water District.

"It may be noted that application of this amount could reduce the gap by about \$2 00 per acre-foot when the estimated demand of 1,243,000 acre-feet would be used . . . It is important to note in this connection that although the State service area includes metropolitan Bakersfield, the use of water for urban, municipal and industrial purposes is expected to be only about 10 percent of the total demand. This is the exact reverse of the situation in Southern California where 90 percent or more of the water demand is for urban use. . . . All assumptions and tentative proposals are subject to Kern County Water Agency Board consideration, board, of supervisors action, and public hearings, and final contract proposals are subject to a vote of the people of Kern County . . .

"After careful study, the Kern County Water Agency has several suggestions which, if followed, would permit Kern County to participate in the project. Some of these suggestions would be accomplished by A B 2988. Others reflect a means for implementing the assignment of all the benefits from the project and a corresponding responsibility for costs. They include-

"1 Evaluation of the statewide benefit derived from project recreational opportunities and enhancement of fish and wildlife in accordance with the legislative directive contained in Sections 11900-11914 of the Water Code. The allocated cost for such functions would be nonreimbursable by water users.

"2 Recognition that early construction of Oroville dam and reservoir prior to the need for its conserved water to meet project demands is a flood control purpose. The interest on the cost allocated to the several water supply functions for the period of time between actual construction and need for conserved water would be a nonreimbursable cost to water users.

"3 Determination of the value of the additional firm project yield developed by reason of requiring agricultural water supply to absorb deficiencies during period of subnormal project runoff. This amount would be credited to such agriculture water supply costs to offset the cost of supplemental pumping facilities required to insure a firm agricultural supply.

"4 These cost-sharing suggestions may be achieved through use of the California Water Fund without any additional burden being placed on the General Fund by a combination of the following:

- "(a) Declare all expenditures and encumbrances made prior to the passage of the Bond Act for planning, design and construction as nonreimbursable costs.
- "(b) Treatment of the recovery of project construction costs financed by the California Water Fund in a different manner than bond debt service charges. Such treatment could include deferral of repayment until bond redemption requirements begin to decrease, assignment of simple or no interest on the fund, or assignment of the fund to meet nonreimbursable costs." (Extract from prepared statement, see Transcript, pages 13-18)

Testimony from the Department of Water Resources discussed the background of the pricing formulas included in the prototype contract with the Metropolitan Water District. The recommendations of the Assembly Interim Committee on Water and the Senate Fact Finding Committee on Water were reviewed and were shown to provide legislative support for the present pricing policies of the department as reflected in the contract. With respect to cost allocation on an incremental cost basis, the department stated.

"Pricing on an incremental cost basis would amount to a subsidy. The meaning of incremental costs may be illustrated by an example. Suppose two families desire to share a duplex house divided into two identical apartments and that the whole house will cost \$30,000. On a proportionate use basis each family would pay one-half. (Cf. Contract Article 24(b)). On an incremental basis, however, the cost of building one apartment would first be determined, e.g., \$20,000. One family would pay this, and the other would pay the remaining increment to complete the duplex, i.e., \$10,000. To the extent that costs of larger (size of aqueduct) construction are proportionally less than the costs of smaller construction, those who have the privilege of paying on an incremental basis will benefit."

Testimony from the Kern County Water Agency outlined the costs involved for farmers to maintain standby pumps because the yield of the State Water Facilities under the terms of the prototype contract is inadequate to supply the agricultural demand in 6 out of 66 years. The annual cost for standby pumps was estimated by the agency to be between \$8.40 and \$35.90 per acre. These costs are cited as one of the reasons why the price for state water is too high and cannot be paid. However, the costs of the deeper wells is so high that it would be cheaper for the pumpers to run the risk of losing a crop in a dry year.

occurring about every 10 years than to pay the standby costs of the pumps. In addition, arrangements could be worked out with the agency so that only the cheaper, shallower wells are maintained on a standby basis. Such action would greatly reduce the cost of standby service.

In the committee's report on *Economic and Financial Policies for State Water Projects* (Assembly Interim Committee Reports, Vol 26, No 1, pp 38 and 39), a number of factors influencing ability to pay of agriculture water users were enumerated. These factors are quoted below with the comments on the current conditions as contained in the testimony.

1. "The range in quality of lands to be irrigated by a project has a direct bearing on the ability of irrigation to repay its costs. The price which can be paid for water will tend to be limited by the poorest quality lands."

Studies of the Kern County Water Agency have shown that land quality is not too important in computing the ability of established lands to pay. No data was presented to show that it is not a significant factor in developing new lands.

2. "Including excess capacity to serve future needs directly increases construction costs and reduces the ability of irrigators to repay costs if substantial repayment of the project must occur with only partial use of the project's capacity."

No data was presented to the committee on the sealing of state facilities or local distribution facilities but these costs were included in calculations showing inability to pay.

3. "The type of crop grown and the managerial efficiency of irrigators influences repayment capacity."

The Kern County Water Agency has recognized the problem of differing managerial skills, but has been unable to project future crop patterns. As a result its computations of ability to pay are based on current, rather than future cropping patterns.

4. "The size of the farm unit can affect the repayment capacity."

The studies of the Kern County Water Agency show that larger farms do have a greater ability to pay.

5. "Cheap water will result in high-priced lands under well-established economic principles."

The studies of the Kern County Water Agency make allowances for cost of land and return on investment, but the basis for such allowances was not stated by the agency and the validity of the allowances was not established.

A final factor not established at the hearings was the willingness of the agricultural water users to pay for the water. It is clear from the testimony of the Kern County Water Agency that some lands and farmers can afford to pay the costs of state water. The ability to pay data are presented in terms of averages, as is traditional, but such averages obscure the position of those who are willing to run a risk to secure water, those who can easily pay for water and those who

cannot pay. It is reasonable that the agricultural water users cannot pay the full costs for the 1,243,000 acre-feet per year the Kern County Water Agency would like to purchase. It is not known what lesser amount can be contracted for and paid for. It is clear that under the State's present pricing policies, some amount of water can be contracted for in Kern County. Just how much is not known nor can it be known until contract negotiations have progressed further.

The committee is sympathetic with the problem confronting agricultural water users in the early construction of Oroville Dam for flood control. In its report on the Delta Pool, the committee noted that delaying construction of presently unneeded water conservation facilities included in the Delta Water Charge or reducing the expenditures on these facilities would not be reflected in reductions in the Delta Water Charge to water users during the early years of project operation. The Delta Pool report states.

"The committee . . . made an effort to ascertain whether the facilities proposed to be included in the Delta water charge are equally required at this time or whether some of them might be delayed or reduced in scope in a manner beneficial to . . . (re-payment by water users). The water pumped from the Delta during the first years of project operation involves no cost at the Delta prior to diversion and the only expenditures for regulation will be below the Delta. The committee attempted to determine why the department proposed to charge for unregulated water at the Delta in the early years of project operation and why any reduction of capital expenditures for the Delta Pool facilities in the early years of project operation does not reduce the department's Delta water charge" (Assembly Interim Committee Reports, Vol. 26, No. 2, p. 21).

The committee found in its Delta Pool report that the "department has arbitrarily established an interim Delta Water Charge of \$3.50 to give a uniform price for water during the first years of project operation." For this reason and because of the method of computing the Delta Water Charge as contained in Article 22(c) of the prototype contract, the water users are committed to the payment of a Delta Water Charge which does not directly relate to the cost of the facilities needed to serve them. The committee recommended in its Delta Pool report some modification in the Delta Water Charge and agrees now with the Kern County Water Agency that this is an area in which it might be possible to adjust the contracting principles to facilitate contracting with agricultural water users.

The Kern County Water Agency recommended that "interest on the cost allocated to the several water supply functions for the period of time between actual construction and need for conserved water . . . be nonreimbursable . . . to water users." As noted above it would still be necessary to revise the Delta Water Charge in order to pass any such savings on to the water users and, of course, it would be necessary to find some means of paying the interest costs from other sources. There is, however, logic to the position of the Kern County Water Agency that water conservation facilities at Oroville which are built now because of flood control, should be a flood control cost until

such time as they are needed for water conservation. No subsidy is involved in this proposal because no value is received by water users for the early construction.

In general the suggestions made by the Kern County Water Agency contain elements of preferential pricing or subsidy to agricultural water users similar to objectives of Assembly Bill No. 2988. The State Water Facilities were presented to the voters of the State by the Governor in November 1960 as being self-supporting and providing no subsidy. If there should be any subsidy or favorable pricing for agricultural water users considered at this time, it would be necessary to reopen the entire policy of the prototype contract and to consider anew the need for acreage limitations or other antispeculation provisions.

The extensive studies by the Assembly Interim Committee on Water in past years have clearly indicated the difficult problems of determining the willingness of water users to pay as opposed to theoretical studies of ability to pay. The committee has stressed the need for caution in project formulation to assure that costs can be repaid by water users. Testimony from the Kern County Water Agency indicates that agency can contract for a limited quantity of water. Further negotiations should determine the willingness of these water users to pay by establishing just how much water they can and will pay for. Until these factors are clear and there has been a full exploration of the flexibility in repayment contained in Article 45 of the prototype contract, the committee feels that legislation authorizing favorable pricing for agricultural water has not been justified.

MINORITY REPORTS
ON
ASSEMBLY BILL No. 2988
(1961 General Session)

MINORITY REPORT No. 1

December 19, 1962

THE HONORABLE CARLEY V. PORTER, *Chairman*
Assembly Interim Committee on Water
Room 2114, State Capitol
Sacramento 14, California

DEAR CARLEY The undersigned members of the Assembly Interim Committee on Water do not concur with the recommendation of the committee on Assembly Bill No. 2988.

We therefore respectfully submit the following statement, which represents the thinking of the undersigned members with respect to the subject matter of Assembly Bill No. 2988.

We believe that testimony received by the committee at the hearing in Bakersfield on November 16, 1962, demonstrated

1 That there appears to be a substantial difference between the price which the State considers it must receive for water delivered from the San Joaquin-Southern California aqueduct in the southern San Joaquin Valley and the ability of agricultural water users in this area to pay

2 That unless means are found to erase this difference, it is quite likely that agricultural water users will not be served by the project

3 That it is not realistic to expect this difference to be dealt with entirely by adjustments within the local area because

a. Revenues which might be derived from an ad valorem tax upon the taxable property of the area to be benefited by the importation of water would be relatively small in comparison with the total annual cost which must be met

b. Approximately 90 percent of the water imported will be used for agricultural purposes and 10 percent for municipal and industrial as contrasted to the reverse situation in other major service areas of the project

4 That the state project was conceived, developed and approved as a project which would serve agricultural as well as municipal and industrial users, and it is of concern to the Legislature that this concept be carried out, that for the project to fail to serve the agricultural lands of the San Joaquin Valley would amount to just as great a deviation from the original concept as would a departure from the original contracting principles as they relate to the price of water

We believe further that the conclusion of the majority of the committee is not supported by the findings and the summary of the hearing. These latter portions of the majority report emphasize that while the Kern County interests have made extensive studies to evaluate payment capacity, nothing has been done to determine "willingness to pay." The text of the majority report further states that negotiations between the Kern County Water Agency and the Department of Water Resources have not advanced sufficiently to know whether or not the relief that might be afforded through the provisions of A B 2988 are necessary for agriculture to participate in the State Water Program.

We therefore recommend, (1) that until such time as contracts are negotiated between the State and agencies in the San Joaquin Valley for the delivery of substantial quantities of water for agricultural use, as contemplated in the State Water Program, the Legislature must continue to keep fully abreast of such negotiations and of the problems encountered during these negotiations, and, (2) that the way should be left open for the Legislature to act upon proposals contained in A B 2988, if it should become apparent that agricultural interests in southern San Joaquin Valley will not be able to participate in the State Water Project without the benefits of some or all of the provisions of A B. 2988.

At Bakersfield the Kern County Water Agency testified that water requirements of that agency appeared to be on the order of 1,243,000 acre-feet per year, but that "at the levels of cost so far indicated by the State, the demand for state project water in Kern County will be limited." The testimony of the Kern County agency revealed that the "study of available information and judgment factors have indicated . . . that the upper limit of prospective member units' capacity to pay at year 1990 would yield about 15 million dollars (per year) which, on the average, is \$12 per acre-foot. As compared to calculated state charges," the agency stated, "this indicates a gap of about 8½ million dollars annually, or \$7 per acre-foot at year 1990."

The agency expressed the opinion that "at the levels of cost indicated by the State, the demand for water within Kern County will be limited and could come almost solely from agencies servicing domestic, municipal, and industrial water users. This would mean a not-too-lingering death for a substantial part of the present agriculture of Kern County and the end to any normal expansion that may have been anticipated."

That the difference between the indicated state prices and the apparent capacity to pay of agricultural water users in Kern County area cannot be solved by the local area alone, was made apparent by testimony of the Kern County agency. This testimony pointed out that the assessed value of the areas within the agency that would be assumed to be benefited under a contract with the State for water, is 450 million dollars, of which the entire urban area of metropolitan Bakersfield accounted for about 115 million dollars, or 25 percent. Assuming the levying of an assessment at a rate of 50 cents per \$100, "which roughly equals the tax rate originally applied by the Metropolitan Water District of Southern California when it built the Colorado River Project,"

the agency might raise \$2,500,000 annually. If applied to the estimated total required amount of water, this amount could reduce the price by \$2 per acre-foot, leaving \$5 per acre-foot to be found from some other source.

It has not been found feasible for the agency to use revenue from higher priced municipal and industrial water to reduce the price of agricultural water, inasmuch as approximately 90 percent of the water is anticipated to be used for agricultural purposes, as compared to only 10 percent for municipal-industrial use. While it might not be too difficult for users of 90 percent of the water (as in Southern California) to afford some special assistance to users of the other 10 percent, the help that users of only 10 percent of the water might give could hardly make an impression on costs assigned to the 90 percent use.

While the concept of strict full repayment may appear to answer all of the economic problems involved in a water project of this kind, its attempted application recalls certain considerations. The feasibility studies of the project indicated that the ability of agricultural water users to pay the contemplated price lay within anticipated water costs. However, it is now apparent that not only have the anticipated costs of the project facilities increased with the passage of time and the entry of certain other economic factors, but the ability of agricultural water users to pay has declined from the base period used in the studies. This base period was admittedly one of the most favorable periods in the history of California agriculture.

The State Water Program has gone through a number of authorizations, each of which resulted in some modifications of the projects. The name has changed from time to time but there is no doubt in the minds of the committee what constitutes that which is herein called the State Water Program. The first authorization was at the 1951 session of the Legislature with the enactment of Chapter 1441, Statutes of 1951, incorporated into the Water Code Article 9.5 of Division 6, Section 11260. The project as authorized was based upon the report of the State Water Resources Board of May 1951 entitled, "Report on Feasibility of Feather River Project and Sacramento-San Joaquin Delta Diversion Projects Proposed as Features of the California Water Plan." The program was reauthorized and modified in 1953 pursuant to the report of the Department of Public Works, Division of Water Resources, entitled "Program for Financing and Constructing the Feather River Project as the Initial Unit of the California Water Plan." In the 1959 legislative session a further modification was adopted pursuant to the recommendations contained in Bulletin No. 78 of the Department of Water Resources entitled "Preliminary Summary Report on Investigation of Alternative Aqueduct Systems to Serve Southern California," dated February 1959. It is to be noted that this last modification makes reference to the preliminary summary report of February 1959, Bulletin No. 78, "Investigation of Alternative Aqueduct Systems to Serve Southern California," which was not published until December 1959. It is significant to note that in each of these reports service to agriculture in the San Joaquin Valley is a major project function. The water quoted for agricultural supplies in the southern San Joaquin

Valley at points of diversion from the state aqueduct varied under the several financial analyses in the various reports from a minimum of \$7 to a maximum of about \$14. These are averages for the valley service area and actual costs could be more or less than those amounts depending upon the location of the point of diversion from the state aqueduct. The most recent quoted price from the Department of Water Resources to the Kern County Water Agency, again averaged for the entire service area, is about \$18 per acre-foot.

Thus, there has been as previously noted, an ever-increasing cost of state water, due in a large measure to increased interest rates, inflationary tendencies in construction costs, different assumptions on financing and expanded magnitude of the project.

While it may have been assumed that project users should pay the full cost involved in providing them with the products of the project, it was also assumed, on the strength of the best information available at the time, that it lay within the capacity of each of the enumerated project areas to do so.

We are of the opinion that the elimination of agriculture from a State Water Program would constitute an entirely different type of undertaking than was the legislative intent when it approved the project in accordance with the department's reports. If it should develop that agriculture no longer has the capacity to pay, and is thereby precluded from participating in the state program, then that program no longer meets the legislative intent and should be reviewed by the Legislature with due consideration, among other things, to be provisions of A. B. 2998.

In view of the above, we believe that the proposals contained in A. B. 2988 well merit consideration by the Legislature.

These are

"a. Allocations of the costs of the projects shall be made to the following functions:

- (1) Agricultural water supply.
- (2) Municipal, industrial and miscellaneous water supply.
- (3) Power generation
- (4) Flood control
- (5) Fish and wildlife
- (6) Recreation."

It must be taken into consideration that use of water for agricultural purposes involves two basic differences from municipal, industrial and miscellaneous use. These are

1. The water is used in producing a crop and the cost of water is a major factor therein.

2. Water is used by farmers in substantially larger quantities than is true of municipal water users.

During the period when this project was under consideration it was assumed, on the basis of the best information available at that time, that agricultural water users would be able to pay the costs on it.

same basis as other users. The fact that this assumption has proved to be in error due mainly to changes in cost of the project and changes in cost of operating a farm, does not relieve the State nor the Legislature from the responsibility to fulfill the requirements of existing agricultural units for supplemental water, nor from assuring water for the future development of agriculture.

"b To the extent that agricultural water supply will be subject to greater deficiencies in short water years than municipal, industrial and miscellaneous water supply, the allocation to agricultural water supply shall reflect a lower value of such supply by reason thereof."

The report of the Assembly Interim Committee titled *Economic and Financial Policies for State Water Projects (1960)* has stated, "The net effect of using a one-rate zoned price for water is to eliminate the need for the State to differentiate in either its pricing or water deliveries between water intended for agriculture, industry or domestic use." However, the State departs from this concept in the "prototype" contract with the Metropolitan Water District of Southern California and therein made agriculture subject to greater deficiencies in years of short supply than other water users. This has the net effect of providing a substantially larger firm project yield for users not subject to the deficiency while at the same time establishing agricultural water as a less firm supply and it would appear a less valuable one. For this reason we believe that a differential in the price of water for agricultural use is well warranted. The measure of this differential might well be related to the cost of the capacity of the transportation facilities allocated to agricultural users and to the cost of wells and pumping equipment that must be maintained on a standby basis in anticipation of short supply.

Studies of the Kern County Water Agency indicate that these necessary annual standby costs vary between \$8.40 per acre and \$35.90 per acre in Kern County.

"c The allocation to agricultural water supply of the costs of transportation facilities shall be the incremental cost of enlarging such facilities and the cost of providing additional appurtenant works as required to deliver such agricultural water supply."

This method of cost allocation has been suggested as a means of assisting agricultural water users to overcome the problem of ability to pay outlined above. The majority report has referred to such an incremental method of allocating costs by quoting testimony from the Department of Water Resources, as follows:

"Pricing on an incremental cost basis would amount to a subsidy. The meaning of incremental costs may be illustrated by an example. Suppose two families desire to share a duplex house divided into two identical apartments and that the whole house will cost \$30,000. On a proportionate use basis each family would pay one-half. (Cf. Contract Article 24(b).) On an incremental basis, however, the cost of building

one "apartment would first be determined, e.g., \$20,000. One family would pay this, and the other would pay the remaining increment to complete the duplex, i.e., \$10,000. To the extent that costs of larger (size of aqueduct) construction are proportionally less than the costs of smaller construction, those who have the privilege of paying on an incremental basis will benefit."

This analogy overlooks two basic points. The first is that the second family, while not able to construct a unit at a cost of \$20,000 might be able to pay more than the \$10,000 remaining increment as it is described, let us say \$12,000. This would have the net effect of reducing the cost to the first family by \$2,000 to \$18,000. This sort of an arrangement would be to the advantage of both parties and would be an advantage that could not be obtained in any other manner. Similarly, nonagricultural water users might well receive water at a lower price as a result of agriculture's participation in the project.

In the particular instance at hand such an arrangement as has been described would seem well justified if the number two family were required to vacate their premises six months out of any one year, or a total of one year out of any seven. Such a penalty has been placed upon agricultural water users as a result of the inclusion in the prototype contract of the deficiency provisions.

The report of the majority on this bill has in our opinion made two additional incorrect assumptions. The first is that where there is a difference between ability to pay and willingness to pay that willingness may be greater. It is our belief that under any circumstances we must assume the willingness to pay will be less than ability to pay. The second is the apparent assumption that those engaged in agriculture today are not constantly seeking different and more profitable uses to which to put their land. In an area such as Kern County the predominant crop is cotton. This crop is subject to federal acreage control and farmers are each year faced with the necessity of finding a use to which land not planted to cotton can be put with the greatest chance of success.

It is the view of the minority that any proposal leading to an eventual contract between the State and agricultural water users must be given consideration by the Legislature.

Respectfully yours,

JOHN C. WILLIAMSON
MYRON H. FREW (*in part*)
CHARLES B. GARRIGUS

MINORITY REPORT No. 2

December 21, 1962

HONORABLE CARLEY V. PORTER, *Chairman*
Assembly Water Committee
State Capitol
Sacramento, California

DEAR MR. PORTER The undersigned members of the Assembly Interim Committee on Water herewith respectfully submit their recommendations with regard to A B 2988

With much of the material contained in the minority report as drafted by Assemblyman John C. Williamson there is concurrence. However, there is disagreement with the inference contained in said minority report that A B 2988 should be the basis for rectifying what is obviously an inability on the part of the agricultural users to pay for water. There is concurrence in the first paragraphs marked 1, 2, 3 and 4 in that it is felt that agricultural users cannot pay the prices currently demanded of them under the Metropolitan Water District contract. Further, there is concurrence with the recommendations that the Legislature must be kept fully apprised of negotiations, and the way left open for the Legislature to act.

There is not concurrence with the Williamson minority report in that A B 2988 is the vehicle that should be used to solve this most pressing problem. The thinking of the undersigned is reflected in the minority report of the Assembly Water Committee's report dated February 1, 1960, entitled "Economic and Financial Policies for State Water Projects." In that minority report on page 53 we again wish to cite conclusion No. 2 "We disagree that in all cases water must be sold at its allocated cost with no regard to public benefit or secondary values." We also cite conclusion No. 3 "We disagree that water should be sold in unlimited quantities to agricultural users instead of limiting benefits based on a formula method."

The conclusions of the minority report of 1960 have, it seems, now been borne out by subsequent events. It was obvious at that time as it is obvious now that agricultural users cannot pay their full allocated cost and receive water in the lower San Joaquin valley. However, as that minority report stated, and now even more particularly so with an advocacy for subsidization this must only come about with a limitation on the amount of subsidy received by any individual landowner. This instant report, therefore, disagrees with the present majority report, concurs with the Williamson minority report in the recognition of the plight of agricultural users, but disagrees that subsidization should occur without limitation.

We, therefore, recommend that agricultural water be sold to agricultural users at a price that they can afford to pay, but only with limitations as to the amount of acreage that would be subsidized to any individual landowner. We, therefore, disagree with the majority report, concur in part with the Williamson minority report, and disagree in part with same.

A subsidy is essential in order to provide agricultural water, but in no circumstance should there be a subsidization without strict acreage limitation. Lastly, let me quote from Item No. 4 of the minority report of 1960.

"After careful consideration of the testimony presented to the committee by interested, informed persons at its numerous meetings, we are of the opinion that the vast majority of potential irrigation water users cannot pay sufficient sums of money to pay all the allocated production costs of the water sold. While many persons who were opposing any acreage limitation urged that water be sold at cost, even those persons were not willing to commit themselves to purchasing water at the prices indicated in the Department of Water Resources various bulletins. In order, therefore, that the vast majority of smaller farmers in the State of California enjoy any benefit from water development by the State, a limited subsidy is essential, when it is determined that the project is feasible, because of the benefits to be derived. Such a subsidy, however, can be justified only on the basis of the benefit of all of the people of the State of California, and carries with it the right of the people of the State to define the social changes to be effected by the water development project (the right of the people of the State to limit the benefits in such a manner as to provide the greatest good for the greatest number of people). We respectfully submit that it is the desire of the people that the right to the use of water from a state project be so limited in order to prevent unlimited subsidies and unjust enrichment. We believe that some such limitation can be effected by limiting each user to an amount of water as may be necessary to irrigate a given area of land (to be determined by the Department of Water Resources based on the geographic location of his land and other relevant factors) as will produce a prescribed net profit to the user. Such a procedure will preserve to a great degree what is known as family farming, and will enable such farming to compete with large corporate enterprises. It is the belief of this minority that family farming is good for the community and for the State, for the small businessman, for the lawyer, the doctor, and others dependent on the farmer for a living, and that such farming produces an economy where there are homes and communities in which children can grow up to become useful citizens. So called 'efficiency' in corporate farming carries a high price tag, which has eliminated human values and benefits."

Very truly yours,

EDWIN L. Z'BERG

MRS. PAULINE L. DAVIS
MYRON H. FREW (*in part*)

PAUL J. LUNARDI (*in part*)
CHARLES B. GARRIGUS

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SALINE CONVERSION AND NUCLEAR ENERGY

A REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON WATER
SUBCOMMITTEE ON SALINE CONVERSION AND NUCLEAR ENERGY
TO THE CALIFORNIA LEGISLATURE

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January 7, 1963

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LETTERS OF TRANSMITTAL

January 4, 1963

HON JESSE M UNRUH
Speaker of the Assembly
MEMBERS OF THE ASSEMBLY
State Capitol, Sacramento

GENTLEMEN Submitted herewith is the report of the Subcommittee on Saline Conversion and Nuclear Energy of the Assembly Interim Committee on Water

In submitting this report I should like to call the attention of the Assembly to the last section of the report pertaining to nuclear energy. The Assembly can take just pride in the foresight of Assemblyman Beaver, the subcommittee chairman, who six years ago foresaw the possibility that in 1972 nuclear energy might power the Tehachapi Mountain pump lifts of the State Water Facilities. Assemblyman Beaver acted as far back as 1957 to secure passage of House Resolution No. 88 which first authorized an Assembly subcommittee to study this possibility.

During the ensuing years Assemblyman Beaver has worked hard to assure that nuclear energy was properly evaluated as a source of pumping energy. Today, the Department of Water Resources and its engineering contractors are carefully studying its potential for the Tehachapi pump lifts and the prospect is very promising as the subcommittee's report details. Although Assemblyman Beaver is retiring from the Legislature, I feel it appropriate to call your attention to his significant contribution.

Sincerely,

CARLEY V PORTER, *Chairman*
Assembly Interim Committee on Water

ASSEMBLY INTERIM COMMITTEE ON WATER

January 7, 1963

HON JESSE M UNRUH

Speaker of the Assembly

MEMBERS OF THE ASSEMBLY

State Capitol, Sacramento

GENTLEMEN Attached is the fourth progress report of your Subcommittee on Saline Conversion and Nuclear Energy of the Assembly Interim Committee on Water This subcommittee was organized pursuant to authority granted by the Assembly Rules Committee on August 17, 1959 In this report your subcommittee reviews the progress during the past two years in saline conversion and nuclear energy as they relate to possible uses in the State's water program

Your subcommittee feels that with the initiation of construction of the State Water Facilities and the continuing high cost of sea water conversion, even though major cost reductions in sea water conversion processes have occurred, the State should concentrate its attention on the comparatively more promising technical and economic potential for conversion of brackish water and reclamation of waste water Accordingly, the subcommittee concludes that the Department of Water Resources and the University of California should shift their emphasis to these more promising conversion applications, which shift these agencies are currently undertaking

Your subcommittee is pleased to report that nuclear energy is becoming increasingly feasible both technically and economically and holds great promise of being the best source for large amounts of low-cost energy to pump water over the Tehachapi Mountains The subcommittee feels that the Department of Water Resources should give high priority to the continued study of nuclear energy for the pump lift

This is the fourth, and will be the last, progress report I have had the honor to submit during the past six years as chairman of this subcommittee The problems of developing low-cost saline conversion and nuclear energy are formidable but they can be and are being overcome I hope that the past work of this subcommittee has provided some assistance in eventually attaining both low-cost nuclear energy for our State Water Facilities and economical saline conversion With the continued support of the California Legislature and the hard work being done by many people in government, private industry and the universities the prospects are bright

As in the past I should like to express my appreciation and the subcommittee's appreciation to the Department of Water Resources and the University of California for their assistance and to the Legislative Analyst's office for staff services during the past six years.

Respectfully submitted,

JACK A. BEAVER, *Chairman*
Subcommittee on Saline Conversion
and Nuclear Energy

CHARLES B. GARRIGUS
PAUL J. LUNARDI
CARLEY V. PORTER
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SALINE CONVERSION AND NUCLEAR ENERGY

INTRODUCTION

The development of saline conversion processes and the possibilities of using nuclear fuel as a source of energy in the State's water program have been followed closely since 1957 by the California State Assembly. The Subcommittee on Water Project Uses for Atomic Power of the Assembly Interim Committee on Conservation, Planning, and Public Works was the first Assembly committee to study the matter. In its 1957 report, the subcommittee sketched the dramatic potential of nuclear energy and pointed out that the large energy requirements of the State's project for pumping water over the Tehachapi Mountains dictated consideration of the availability of so much energy. The report also pointed out that the cost of energy is an important factor in saline conversion and, therefore, nuclear energy might also be basic to the feasibility of large-scale conversion of sea water as an alternative to importing water into Southern California.

The subcommittee issued a second progress report on March 12, 1959, in which it reviewed the progress made during the two ensuing years in the technology of saline conversion and nuclear energy. The report forecast no development which would make either saline conversion or nuclear energy competitive in California at an early date but continued to recommend that their potential warranted the State to follow developments closely. The subcommittee recommended that the State join with the Office of Saline Water, U.S. Department of Interior, in financing the construction of a demonstration sea water conversion plant located on the California coast. This plant was authorized and subsequently was constructed at Point Loma. An important section of the 1959 report was a staff review of "Future Fossil Fuel Availability," in which it was concluded that the possibility of decreasing supplies of fossil fuels along with indications of decreasing costs for nuclear energy justified careful study of the future supply and demand for energy. The objective of such study should be to assure that the State had an adequate source of low-cost energy for pumping water over the Tehachapi Mountains, both in the immediate future and after 1990 when the pumps would begin operating at full capacity.

With the reorganization of the Assembly committees in 1959, a new subcommittee, under the chairmanship of Assemblyman Jack Beaver, who had chaired the previous two subcommittees, was organized within the Assembly Interim Committee on Water. The report of that subcommittee, submitted on January 2, 1961, brought up to date the conditions in the field of saline conversion and nuclear energy. After surveying developments, the subcommittee observed that the conversion of brackish water appears to have more immediate application in California than conversion of sea water. It recommended that both the Department of Water Resources and the University of California place more emphasis on brackish water conversion. The report also suggested

that the Department of Water Resources and the University of California review their saline conversion programs to assure application of their work in California. In general, the subcommittee continued to recommend diligent attention to the possible uses of nuclear energy and saline conversion in California's water problems.

Since the subcommittee's report in 1961, the subcommittee and staff have continued to follow developments in both saline conversion and nuclear energy. The chairman and staff have visited the demonstration sea water conversion plant at Point Loma, have discussed mutual problems with the Office of Saline Water and the Atomic Energy Commission in Washington, D.C., and held various conferences with the Department of Water Resources and the University of California. A hearing was held on December 12, 1961, on recent developments in saline conversion and nuclear energy. This report is primarily composed of the results derived from such meetings, hearings and additional staff work.

The last two years have been a period of significant development for saline conversion and nuclear energy. The demonstration plant program of the Office of Saline Water has progressed to the point that three of the five plants are in operation. Congress authorized the continuation of the program of the Office of Saline Water, expanded its activities, approved increased expenditures and directed it into basic research in the problems of conversion. The electro dialysis process for converting brackish water widened its lead in the installation of economic public water supplies. Greater attention was given to the possibilities of reclaiming waste water for reuse by using conversion equipment to remove excessive salt. Finally, the technological improvement of reactors to provide nuclear energy has developed to the point that nuclear energy is considered to be competitive with other sources of energy in higher cost energy areas such as California. These and other matters will be considered in the appropriate context as the programs of various agencies working in the field of saline conversion and nuclear energy are taken up in this fourth progress report. The subcommittee has concentrated on reshaping the State's saline conversion program to more directly serve the needs of California's own water problems and to assessing the increasingly favorable uses of nuclear energy for pumping water over the Tehachapi Mountains.

PROGRAM OF OFFICE OF SALINE WATER

The Office of Saline Water was established in the United States Department of the Interior in 1952 to carry out a program of research and development leading towards practical low-cost methods of converting brackish or sea water into usable fresh water. In 1955 and 1958 Congress expanded the program and then in 1959 added the demonstration plant program. In 1961, Congress further expanded the program of the Office of Saline Water by adding basic research and increasing its expenditure authorization to \$75,000,000.

The idea for the basic research program came from the Woods Hole Conference. The National Science Foundation and the Office of Saline Water sponsored a conference at Woods Hole, Massachusetts, in the

summer of 1961 to consider the future program of the Office of Saline Water. The scientists at the conference stated in their report:

" it now appears that the inefficiencies associated with all existing processes will not be markedly reduced by the use of existing basic information concerning the details of heat and material transfer processes, the properties of membranes which permit the selective movement of salts and water through them, and the properties of water and of solutions of salts in water. Some increase in efficiencies can be expected but progress in better application of existing basic information becomes more and more difficult " (Desalination Research and the Water Problem, Publication 941, National Academy of Sciences, p 3)

The conclusions of the Woods Hole Conference were expressed clearly by Dr. Thomas Sherwood, Massachusetts Institute of Technology, who reported on the conference to the U.S. Subcommittee on Irrigation and Reclamation as follows:

"The combined activity of industry and the Office of Saline Water have resulted in a most impressive decrease in the cost of producing fresh from salt waters. But it cannot be emphasized too strongly that these accomplishments result primarily from good engineering of known processes, and that further cost reductions will be very much more difficult. The fact is that we are approaching the bottom of the barrel as far as basic information is concerned. There is a lack of really good ideas. What is needed is a program of basic research to supply the concepts and understanding of the phenomena involved in separation processes and the basic data on which inventions and new developments feed.

"A word about the nature of basic research. First, I would point out we had at our recent conference, I think, about 15 industrial representatives who reported on their activity, and we asked them to come and tell us about the basic research. And it was perfectly clear from these reports that industry does relatively little of what we call basic research. . . . Since the known processes are well along, the need as we see it is certainly more support of truly basic research, to lay the foundation for new things if we are ever going to get really low-cost desalinization.

"Now, I would like to explain just a little bit what we mean by that, and here is a little statement that I prepared which has to do with the broad picture of basic research in this area. The ultimate development of inexpensive desalinization processes, and equipment, will depend on, (a) national strength in the sciences in the broadest sense, (b) the development of basic sciences relative to known or presently conceivable desalinization processes, (c) conception of or invention and ways of applying scientific knowledge and principles, (d) engineering skill in the design of plants employing processes having promise and (e) economic studies and intelligent management in the choice of processes for particular needs.

"Our concern, as I indicated, was primarily concerned with basic research relevant to desalinization. No one can foresee the possi-

bilities of developments based on new ideas and new basic research in the broad areas of the physical and biological sciences. In the long run the best assurance of success in any practical development such as that of cheap desalinization will be the strength of natural sciences in all areas" (Hearings before the Subcommittee on Irrigation and Reclamation of the House Committee on Interior and Insular Affairs, 87th Congress, First Session, Serial No. 7, pages 240 and 241.)

In the 1961 legislation, Congress also required that the construction of more demonstration plants be authorized by it and be justified with economic studies. No economic studies were made before construction of the five demonstration plants. The law was further amended to require general economic analysis and now states that the Secretary of the Interior shall "undertake economic studies and surveys to determine present and prospective costs of producing water for beneficial consumptive purposes in various parts of the United States by the leading saline water processes as compared with other standard methods" (75 Stat. 628, Section 2(e).)

At the time of the 1961 congressional hearings the House Subcommittee on Irrigation and Reclamation indicated private industry, which is now developing conversion processes, should be given full opportunity to do so. There was also an indication that the committee was not interested in subsidizing municipal and urban water supplies.

Meanwhile, the demonstration plant program of the Office of Saline Water involving construction of five moderately large conversion plants to demonstrate the reliability, engineering, operating and economic potentials of the most promising presently known processes has been moving forward. Three of the plants have been completed and are located as follows:

Freepport, Texas. A 1,000,000 gallon-per-day long-tube vertical distillation plant using sea water. Cost \$1,246,000.

Webster, South Dakota. A 250,000 gallon-per-day electrodialysis plant using well water of 1,800 parts-per-million salinity. Cost \$482,000.

Point Loma, San Diego, California. One-million gallons-per-day flash distillation plant. Cost \$1,630,000.

The remaining two plant sites have been selected and construction is either underway or impending.

Rowell, New Mexico. A 1,000,000 gallon-per-day compressor-type distillation plant using extremely brackish water of 24,000 parts-per-million salinity. Cost \$1,794,000.

Wrightsville Beach, North Carolina. A 250,000 gallon-per-day freezing plant using sea water.

Data on the five plants is included in Appendix A of this report. Details on operation and construction of the Point Loma plant will be found in Appendix A under the Point Loma plant and will not be covered here except to mention that the plant produced its first fresh water on November 9, 1961, and has generally been operating during the current year at design specifications. A ceremony to dedicate the

plant was held at Point Loma on March 10, 1962. The State of California played an important role in the dedication ceremonies because it had contributed one-half of the \$1,630,000 construction cost, had provided an engineer at the site during construction and had also provided various engineering services required during plant construction. The State's financial participation in the plant was limited to sharing the construction costs and did not involve sharing the operating costs of the plant. The City of San Diego is purchasing the product water at 20 cents per thousand gallons compared to the operating costs of approximately \$1 to \$1.25 per thousand gallons.

When sufficient operating experience with the five demonstration plants is published by the Office of Saline Water, it will be possible to assess their respective operating costs and problems. It will be several years, however, before the testing of the plants under various operating conditions and the analysis of such test data will furnish any extensive basis for conclusions about the relative merits of the five plants. It should be recalled that these are demonstration plants and that they were not constructed with the expectation of providing a water supply competitive with other sources.

PROGRAM OF THE UNIVERSITY OF CALIFORNIA

The saline water conversion research and development work of the University of California has continued during the last two years. The nature of the work at the university is long term and does not normally result in rapid changes. However, progress continues to be made at both the Berkeley and Los Angeles campuses of the university.

The magnitude of the university's work is apparent from the expenditure data compiled for the subcommittee by the Department of Water Resources and the University:

Year	Expenditures
1951-52	\$89,394
1952-53	504
1953-54	57,533
1954-55	67,971
1955-56	43,759
1956-57	70,019
1957-58	114,440
1958-59	354,338
1959-60	403,617
1960-61	432,518
1961-62	432,957 Estimated
1962-63	432,957 Estimated
	<hr/> \$2,500,297

The university's budget for 1962-63 is distributed as follows:

Berkeley—Chemical engineering	\$5,000
Berkeley—Engineering	177,177
Los Angeles—Engineering	157,780
San Diego—Sea Water Test Facility	91,000
	<hr/> \$482,957

A major accomplishment by the university has been the completion of the Sea Water Test Facility at the San Diego campus. The building is located at the inshore end of the pier used by the Scripps Institution of Oceanography. The facility was jointly financed by Scripps Institution funds and state funds available to the university for sea water conversion research. The new test facility occupies about 2,400 square feet of floor space, of which nearly 2,000 square feet are devoted to the laboratory proper. An overhead crane of five tons capacity is included for moving heavy equipment. Ample supplies of electricity, city water, filtered sea water, gas, steam and air will be available for tests of various processes and equipment for sea water conversion. The first project to be housed in the new facility will be the multiple-effect rotating evaporator by Professor L. A. Bromley which was moved from the University's Richmond Field Station to the new location last summer. This project has completed engineering development at the laboratory and is ready for tests on sea water.

Other projects under investigation by the university have also shown progress. Another project which is close to completion of development is the reversed osmosis unit of Mr. S. Loeb, although neither this nor the multiple-effect rotating evaporator have reached the point at which reliable estimates of costs can be made. A brief review of the university's program is included in Appendix B.

The progress of the university can be partially measured by the large number of inquiries from commercial organizations which are interested in commercial application of university developments. In a letter dated December 5, 1962, Professor Everett Howe, Co-ordinator for Sea Water Conversion Research, has advised the subcommittee of the following events:

- 1 The Baldwin-Lima-Hamilton Company has recently corresponded with the university regarding the possible licensing of that company for manufacture using university patents on the multiple-effect rotating evaporator.
- 2 The Aqua-Chem Company has been working with Professor C. R. Wilke on utilization of his ideas for an evaporator using immiscible liquids for heat transfer.
- 3 The Narmco Division of the Telecomputing Corporation has undertaken further development of the process involving distillation on pressure alone which was originated at the University of California at Los Angeles by Dr. Gerald Hassler. This work may be partly financed by the Office of Saline Water.
- 4 Three commercial organizations have undertaken developments based on the highly successful membranes developed by Mr. Sidney Loeb. The General Atomic Company and the Aerojet General Corporation are conducting research programs under contract with the Office of Saline Water and are using the Loeb membranes. Dr. Glenn Havens of San Diego has himself financed some development work on a desalting device using the Loeb membranes, and is soliciting support from both the Office of Saline Water and the Department of Water Resources.

- 5 The Pratt & Whitney Company, a subsidiary of the Fairbanks Whitney organization, has developed equipment based on the university's research at Richmond on a vacuum flash distiller

The university has recently approached the Office of Saline Water with proposals for basic research to be financed by that office under its new research authorization. This step is clearly in line with the subcommittee's recommendation in its 1961 report that the university and the Office of Saline Water work more closely together. The proposals are

- 1 "Research on Multicomponent Ion-exchange Equilibria and Kinetics of Interest in the Treatment of Saline Waters." This proposal is for a period of two years beginning early in 1963 and is estimated to cost \$103,000 for the two-year period
- 2 "Electrolysis in Saline Water Conversion." This is a proposal for basic research on the phenomena of polarization and scale formation in electrodialysis equipment. It is also for a period of two years beginning early in 1963 and \$102,000 has been requested

The subcommittee has been advised by Professor Howe that these two proposals have only recently been sent to the Office of Saline Water and there is no assurance of their approval. However, preliminary reactions of the Office of Saline Water were considered favorable.

In a related action the Office of Saline Water has agreed to support a basic research project at the university's Davis campus, which is not included in the sea water conversion program of the university. This work is being done by Dr. E. Epstein of the Department of Soils and Plant Nutrition under the title, "Studies of Salt Transport and Tolerant Mechanisms of Plants." The research will extend over a period of four years at a total cost of \$78,000. Funds amounting to \$39,000 have already been received from the Office of Saline Water to cover the first two years.

In its last report of two years ago the subcommittee commented on the excellent management of the university's saline conversion work which offers students and faculty opportunities for new undirected research and development work as well as undertaking process development of pilot plants. However, the subcommittee also commented on the role of the university in research and raised the question whether the university's almost exclusive concentration on sea water conversion processes is now best suited to the needs of California.

The university has recently clearly stated its role in research and indicated that it is in the process of making some shifts in its program emphasis to brackish water conversion. In a letter to the subcommittee chairman, dated September 12, 1961, Professor Everett Howe, stated

"It seems to me that the role of the university is to do basic research which may lead to future methods, to do applied research leading to improved or new engineering data, and to carry the development of new schemes to such a stage that reliable but preliminary estimates of cost, performance, and dependability can be made. When such preliminary estimates are favorable, it would

seem appropriate for private companies or for the State Department of Water Resources to take over further developments . . .

"Since receiving a copy of the subcommittee report (1961) the people in charge of the various investigations have been consulted regarding the applicability of their results to saline water problems . . . It should be noted that continuing and serious attention has been given to the three methods for which the energy demand is sensitive to the initial salinity—namely, electrodialysis, ion exchange, and reversed osmosis. An attempt has been made to interest additional faculty members in chemical engineering on the Berkeley campus in the problems of electrodialysis and ion exchange, and it is probable that both of these investigations can be stimulated. Reversed osmosis is receiving increasing support at UCLA, and the general thermodynamic and economic studies begun under Professor M. Tribus' direction are being adapted to the saline water field."

In a letter dated November 29, 1962, Professor Howe was somewhat more specific about the future of the university's program:

"Several of the present investigations have been running for three or more years and are not yet completed. Some of these may be finished by the end of the fiscal year and will be terminated at that time.

"Over the past two years the emphasis has been shifting gradually from the treatment of sea water to the 'quality improvement' of brackish waters. It is believed that this is consistent with the growing appreciation of the serious problem of water quality degradation in inland areas due to increased urban and irrigation uses of water. This trend does not rule out the need for continuing research related to sea water reclamation on the basis that this source of water may become economically competitive along the coast."

The plans for the university's program next year will be made early in 1963 and will be reviewed by the university's Technical Advisory Committee on Sea Water Conversion. The subcommittee anticipates on the basis of information provided to it that the university's program for next year will contain substantially more emphasis on brackish water conversion work and is pleased to note the re-evaluation by the university of its program.

SALINE CONVERSION PROGRAM OF THE DEPARTMENT OF WATER RESOURCES

A unit currently titled Applied Nuclear and Saline Water Conversion was organized in 1958 by the Department of Water Resources as a result of recommendations made by the subcommittee. This unit has followed developments of interest to California in saline conversion, has co-operated with the Office of Saline Water in the planning, design and construction of the demonstration conversion plant at Point Loma, and has studied the possible uses of nuclear energy as a source

of power to lift water over the Tehachapi Mountains. The unit has also assisted other parts of the department in the application of radioisotopes to soil moisture determination and soil density, in the radioisotopic inspection of welds, and the use of radioisotope tracers. Until last summer the unit devoted a considerable amount of its resources to assisting the Office of Saline Water in problems related to the construction of the Point Loma conversion plant at San Diego.

The subcommittee has been working with the Department of Water Resources in considering the nature and scope of the activities of this unit. These activities will be discussed in two parts, taking up first saline conversion and then nuclear energy.

Expenditures by the Department of Water Resources on saline conversion studies since the inception of the department's program are shown below.

Year	Study contracts	Departmental expenditures	Total
1958-59	\$25,000	\$22,000	\$47,000
1959-60	17,402	30,000	47,402
1960-61	19,549	34,000	53,549
1961-62	17,865	36,000	53,865
1962-63	7,500	39,000	46,500
			<hr/> \$248,816

The subcommittee, in its 1961 report, recommended some revision in the programs of the State to assure that its saline conversion activities have reasonably direct application to the water problems of California. The subcommittee has centered its attention on the Department of Water Resources in this search for a revised program because the department has the major administrative responsibility for solution of the State's water problems and has the capacity to devise policy and to assist the Legislature in shaping state policy.

The department in the past has devoted its energies to monitoring developments in saline conversion in general, to assisting the Office of Saline Water in the construction of the Point Loma plant and to sponsoring certain process development work. In so doing the department has concentrated on sea water conversion and has given secondary consideration to the use of brackish water in the interior areas of California. The subcommittee previously described the department's role as that of a miniature Office of Saline Water and cited two dangers which might arise from this role, (1) that the State may be working on processes which will have no application in California but instead will be used in other states or other countries, and (2) that the interests of the California taxpayers who pay the costs may be lost in enthusiasm for research that California cannot use. The subcommittee suggested that the role of the Department of Water Resources should currently center around inventorying brackish water supplies in California and analyzing the potential for economic applications of conversion equipment in California.

A considerable step was taken in changing the department's program at the 1962 session of the Legislature. The Legislature deleted

funds from the department's budget for additional process development work pending clarification of what process work should be sponsored and how this work could more directly relate to the conversion of brackish water in California, the reclamation of waste waters, or to other facets of California's water problems. The engineering position requested by the department to observe the operation of the Point Loma demonstration plant was also removed from the budget by the Legislature on the grounds that the Office of Saline Water would report on the Point Loma plant operations and the four other demonstration plants to the extent California needs the information.

During recent months the subcommittee chairman, the chairman of the Assembly Interim Committee on Water and the staff have met with the Department of Water Resources to discuss the role of the department, the future of saline conversion in California and the type of program best and most directly suited to the State's needs which can be supported with state funds. Substantial agreement has developed from these discussions and the subcommittee and the department are in general accord that more emphasis needs to be placed on conversion of brackish waters in California and the possibilities of reclaiming waste waters. There remains unresolved the nature and extent of the program which the department may need for such purposes, and in particular the economic analysis needed.

Giving more attention to economic considerations here in California does not follow from the precedent established by Congress. Rather it springs from the same basic requirement for economic information, that is, adequate economic evaluation is one of the most important factors which can assist the State in determining the nature of its future saline conversion program. Once these economic factors and other factors are clarified, it is easier to establish specific goals and select means and processes for the department and the university to accomplish. Without such information, the State has only an amorphous program which has no demonstrable direct application to California.

Among the considerations which have appeared important in evaluating changes in the State's saline conversion program are the following:

- 1 The major interest in saline conversion within California during the last few years was as a possible alternative to construction of a large project to import surface water supplies into Southern California. The Department of Water Resources, the Metropolitan Water District of Southern California, and others who studied the matter came to the conclusion that the conversion of sea water based on present technology could not provide water at less cost than importation of water through the State Water Facilities. In testimony presented to the subcommittee on December 12, 1961, the department estimated the cost of water in Southern California from the State Water Facilities on a per acre-foot basis each year during the period of demand build-up to be:

<i>Year of water delivery</i>	<i>Unit water charge per acre-foot</i>
1	\$250
2	188
3	129
4	105
5	94
6	84
7	78
8	72
9	70
10	65
—	—
—	—
—	—
20 (full project deliveries)	50

It can be seen from the above data that at all times these costs for water from the State Water Facilities are considerably below the present operating costs of the Point Loma plant which are approximately \$1 per thousand gallons or \$326 per acre-foot. Even if the plant were increased in size to realize economies of scale as estimated by the Office of Saline Water for a demonstration plant of 50,000,000 gallons per day, the costs would be reduced in half, or about the same as the actual cost of delivering surface water during the second year of project operations. Similarly the university has estimated that a plant of 10,000,000-gallons-per-day capacity using fuel shared with a power generating plant would also produce water at about the same cost of 50 cents per thousand gallons.

It has been generally agreed in California that sea water conversion is not now an economic alternative to the construction of the State Water Facilities. The voters of the State in November 1960 approved a \$1,750,000,000 general obligation bond issue to finance the construction of the State Water Facilities and construction is beginning on a major scale at this time. Therefore, an important initial phase of the study of saline conversion problems in California is completed.

2 The development of saline conversion technology during the last few years has been spectacular. Yet the order of magnitude of cost reduction required to produce a competitively priced major public water supply in California has not been reached and is not in prospect in the immediate future for conversion of sea water. This is because the population centers of California are sufficiently large to be able to transport water over long distances to supply their needs from surface diversion projects such as the State Water Facilities. Engineering Record of June 15, 1961, stated the matter as follows:

“ many critical water-short areas could supply their need for desalting water from wells close at hand without prohibitive transmission or pumping costs. Transmission costs drop so sharply with increase in quantity that big cities can afford to pipe water

many times as far as small towns without increasing the unit cost. For \$1 per thousand gallons, 100 million gallons a day could be transmitted 1,000 miles, 10 million gallons per day, 300 miles, 1 million gallons per day, 100 miles, 100,000 gallons per day, 30 miles; and 10,000 gallons per day, 10 miles for those costs."

The operation of this principle is clear in California when it is realized that the water deliveries in Southern California when full operation of the State Water Facilities will be achieved in 1990 will average approximately 1,600,000,000 gallons per day.

It appears from present evidence, since the large southern metropolitan areas of the State will receive their major water supplies from the State Water Facilities until about 1990, that saline conversion will be needed more for smaller public water supplies in the inland areas for which brackish water conversion equipment is best suited. These needs are not proposed to be satisfied by the State Water Facilities. The limited market for existing sea water conversion equipment at the present time is largely for commercial use at steam-electric generating plants for which use there is presently available commercial conversion equipment. There is presently no prospect for small-scale, low-cost sea water conversion equipment for public water supply use along the coast because the only technically feasible approach to cost reduction at the present time requires increasing the plant size.

The approach of the Office of Saline Water is to reduce costs of sea water conversion by increasing the size of the plant. However, as already pointed out, areas in California which will have a demand for a plant as large as the 50-million-gallon-per-day conversion plant considered by the Office of Saline Water, will be receiving much cheaper water from the State Water Facilities to serve their increasing needs until 1990. Thus, it appears that sea water conversion offers no benefits to California before 1990. By 1990, the emphasis on basic research in the federal program may have developed new concepts with sufficiently lowered costs to be economically useful in coastal areas of California.

The general condition in the technology of sea water conversion has been summarized in an excellent report of the Los Angeles Chamber of Commerce as follows:

"It is apparent that none of the presently operative processes for desalination of sea water will ever approach the Office of Saline Water goal of \$125 per acre-foot, and thus possibly become competitive with natural sources of water supply, except in special locations and for special purposes. Hence, it is illogical to pour millions of dollars into demonstration plants to gain more operating data and experience to verify what we already know. The only hope is a radically new process that will (a) raise the energy efficiency to at least 15 percent and preferably to 25 percent, and (b) cut the construction cost per acre-foot of capacity by a factor of three or more. None of the presently known processes that have reached the pilot-plant stage show such promise, but there is no reason to give up hope.

"If desalinization is ever to become economically feasible for large-scale plants, a scientific 'breakthrough' will be needed. For

that reason the Office of Saline Water would be well advised to continue its program of basic research to discover new ways to separate salt and water, and at such time as a 'breakthrough' would be discovered, undertake construction of pilot plants and demonstration plants. Presently constructed demonstration plants could, in the meantime, provide a means for solving operational problems and testing and improving materials and techniques." (Saline Water Conversion, Los Angeles Chamber of Commerce, December 7, 1962, p V-13)

The subcommittee feels that state-supported programs in California should shift attention from conversion of sea water to conversion of inland brackish water supplies and reclamation of water for smaller public water supplies during the interim while the federal government attempts to substantially reduce sea water conversion costs through basic research. This does not mean that the State and the university should discontinue sea water conversion research, but rather they should shift emphasis to California's highest priority conversion problems.

3. The first economic installation of conversion equipment to provide a public water supply was an electrodialysis plant at Coalunga in California. The second such installation is an improved electrodialysis plant at Buckeye, Arizona, which will become the first municipality in the United States to treat an entire municipal water supply. This 650,000-gallon-per-day electrodialysis plant will use water containing 2,200 parts per million of salt. As a result of process improvements and increased capacity, the estimated cost of water at Buckeye is \$0.50 per thousand gallons, not including supply or distribution costs, as compared to \$1.43 per thousand gallons at Coalunga. It has been estimated by the equipment supplier that if the Buckeye plant could be operated at rated capacity, the cost would be reduced to \$0.33 per thousand gallons or about \$100 per acre-foot. The Department of Water Resources has estimated that, based on certain assumed technological advances, the current estimate of costs for brackish water conversion may be reduced within a decade by 50 percent. Such a cost for a small public water supply would be competitive with the cost of a large supply from the State Water Facilities.

The reason brackish water processes may have favorable application to small public water supplies in inland areas is not just because the water is already at the site and does not need to be transported, but also lies in the lower energy demand involved in brackish water conversion compared to sea water conversion. Professor Everett Howe, Co-ordinator of the Sea Water Conversion Project, and Dr. Warren A. Hall, Director of the Water Resources Center, University of California, have stated

"... the ideal minimum energy required for desalination is approximately proportional to the salinity of the raw water. Hence, brackish waters have potentially a much smaller energy demand than does sea water. However, processes such as distillation and freeze separation are such that their energy requirements are essentially independent of the initial salinity. Ion exchange, electrodialysis, and possibly reversed osmosis are sensitive to the initial

salinity for their energy demand. All of these are in the early stages of development so far as their use for demineralizing is concerned. Much research, both basic and developmental, remains to be done before these schemes will have been thoroughly exploited."

There are many small cities and areas of California which will need water supplies but which will not receive water from the State Water Facilities. Some of these areas have brackish ground water supplies available which might be made usable by an electrodialysis installation such as at Buckeye or by other brackish water processes. The Department of Water Resources has inventoried many of these areas, the results of which are shown in the table on following page.

In order to secure further information on the possible scope and nature of the use of brackish water conversion equipment in the next few years, the subcommittee requested the State Department of Public Health to list those areas of the State which do not presently have public water supplies meeting the "full" permit requirements of that department because of excess salinity. The following areas were listed:

- 1 San Diego County coastal basins
- 2 The San Juan Capistrano area of Orange County
- 3 The Salton Sea-Coachella Valley area of Imperial and Riverside Counties
- 4 The Chino area of San Bernardino County.
- 5 The upper Mojave Desert Basin lying in parts of Los Angeles, San Bernardino and Kern Counties
- 6 A number of the Ventura County basins including Simi Valley, the vicinity of Oxnard, the vicinity of Ventura, and parts of the Santa Clara River Basin
- 7 Parts of coastal ground water basins in Santa Barbara County
- 8 Santa Barbara, Lompoc and Santa Maria and portions of Santa Barbara, San Luis Obispo and Kern Counties extending from Maricopa, Cuyama, into the Cholame and Parkfield areas
- 9 Some of the inland ground water basins of Monterey County and San Benito County

It is evident that there are many areas of the State where the economic conversion of a brackish supply of water is now needed. A state program to help develop lower cost brackish water conversion equipment would undoubtedly help these areas to grow by facilitating expansion of the water supply.

4 The work of the Assembly Interim Committee on Water during the past two years (Assembly Interim Committee Reports, Vol. 26, No. 4) has included a comprehensive study of the ground water basin problems in California. As a result of this work the committee felt strongly that the solution of many ground water problems in Southern California during the next few years might economically employ conversion equipment to remove salt from presently unusable ground water and in particular to reclaim waste waters.

An area highlighted by the committee where such a comprehensive solution to water problems may eventually be possible is in the upper

BASIC DATA ON AREAS IN SOUTHERN CALIFORNIA FOR POSSIBLE SITES FOR SALINE WATER CONVERSION PLANTS

Location	Estimated demand ^a acre-feet/year		Present water supply		Saline water		Estimated maximum cost of alternative supply to meet estimated future demand, dollar/acre foot ^c
	Present	Future	Quality TDS in ppm	Amount available year	Source	TDS range ^b in ppm	
Anboy.....	Less than 100.....	Less than 1,000.....	305-300	500-700-200-300	Bristol Valley ground water.....	1,500-350,000	180 ^d
Baker.....	Less than 60.....	Between 1,000 and 5,000	1,000-1,500	Unknown	Soda Lake Valley ground water.....	1,500-8,400	100 ^d
Interior Death Valley.....	Less than 100.....	Less than 1,000.....	600-1,400	4,400	Death Valley ground water.....	1,500-12,500	380 ^d
New and Alamo Rivers.....	Approximately 560,000 yield ^e				New and Alamo Rivers surface waters	1,500-5,000	---
NE side of Salton Sea.....	Less than 100.....	Less than 5,000.....	1,000-2,000	Unknown	Salton Sea East ground water.....	1,500-24,000	35 ^f
Randolph-Red Mountain.....	Less than 100.....	Less than 1,000.....	400	Unknown	Fremont Valley ground water.....	1,500-50,500	120 ^d
Randolph-Red Mountain.....	Less than 100.....	Less than 1,000.....	260-1,200	4,000-7,000	Cuddeback Valley ground water	1,500-5,000	120 ^d
Rulerest-Inyokern-Chino Lake ^g	Less than 4,000.....	Less than 8,000.....	200-450	1,000-3,000	Indian Wells Valley ground water	1,500-231,000	75 ^d
Trom.....	Approximately	Less than 2,000.....	340-290-400	100-300-1,000 ^h	Searles Valley ground water.....	2,100-370,000	---
Avalon.....	Less than 300.....	Less than 2,000.....	596-1,106 (up to 1,500)		Pacific Ocean surface water.....	33,600	---
Cuyama.....	Less than 300.....	Between 1,000 and 5,000	1,750	1,000+	Cuyama Valley ground water.....	1,500-1,000	145 ^f
Lompoc.....	Less than 3,000.....	Less than 5,000.....	1,350	2,800+	Lompoc Subarea ground water.....	1,500-3,800	65 ^f
Santa Maria.....	Less than 4,000.....	Less than 8,000.....	600-700	Unknown	Santa Maria Valley ground water.....	1,000-1,800	45 ^f

^a Present and future estimated water demand. Present demand was based upon estimated per capita use and 1960 census figures, or upon data available in departmental reports.^b Both present and future use must be considered very conjectural.^c These data were determined from recent water quality data.^d Costs of alternative supply which were based upon preliminary cost analyses of supplying potable water from the closest sources available. It must be noted that these sources are usually from basins of limited recharge capability, such as the desert areas. Where waters are already being used for irrigation, the cost of conversion to drinking water would be high. In some cases, there is a net water deficit and the cost of conversion would be even higher. It must also be noted that these costs were computed for maximum leaves little surplus water for export and where future development would cause a net deficit.^e Leaves little surplus water for export and where future development would cause a net deficit.^f Alternative source from basin of limited recharge ability.^g Available for exchange—this is not on estimate of local demand.^h Alternative source from basin where present development leaves little surplus water for export.ⁱ Not a source of domestic supply.^j Supplied from wells in Indian Wells Valley and fixed by contract.

Department of Water Resources, November, 1962.

Santa Ana River area. Here, a high quality ground water supply must be maintained because the ground water is reused several times as it moves downstream before it reaches the coastal portions of the Santa Ana River. In Orange County it is wasted to the ocean after its final use because excessive salinity makes it no longer capable of being reused. Under these circumstances, it is particularly important in the upper ground water basins of the Santa Ana River that as much waste water as possible be returned to the ground water basins through percolation and that these waste waters be of good quality with a low salinity content. This can be accomplished by segregating the waste waters of the upper river area so that the poor quality waste waters do not return to the ground water basins, but are disposed of by an outfall sewer to the ocean. However, if these poor quality waste waters could be salvaged through conversion equipment, only the bribe from the conversion process would need to be disposed of and a substantial saving in the size and cost of an outfall sewer to the ocean would result. In addition, since the good quality converted waste water would protect the quality of the downstream ground water basins, compared with present practices of percolating treated waste water and diluting it within the ground water basin, there would be a definite advantage to downstream water users in quality and perhaps quantity of water.

The water quality problem and the use of conversion equipment in the upper Santa Ana River area were described by the chairman of the Santa Ana Regional Water Pollution Control Board

"During the next few years, urban development will occur upon lands which now are used for irrigated agriculture. Since irrigated agriculture produces waste waters which are high in salts that percolate into the ground water basins, the shift to urban use of this land, particularly residential development, will create no more pollutants than now are being discharged. Heavy industrial waste producers and urbanization of fallow or dry cropped land will create additional pollutional loads on our water resources. The solution to this inevitable problem may first be the interchange of water wherein by careful management and control only high quality water is used in the upstream basins while the downstream area, which has upstream water rights, is furnished (in exchange for use of water rights) supplemental imported water whose quality is compatible with the downstream basins into which the lower consumers discharged.

"Certain highly saline or troublesome wastes will have to be segregated and handled separately from the wastes that are recharged to the downstream basins. Eventually the magnitude of the segregated wastes will necessitate the construction of a waste waterline to the ocean. This line should not be thought of as an outfall sewer receiving all wastes of the upper basin as this would be a wasteful practice since most of the wastes lend themselves to reuse. Only those wastes that result from a poor quality water supply, there are local supplies which are high in dissolved minerals or are wastes inherent to certain processes which render their reclamation hopelessly costly, would be discharged to the waste waterline.

"Water conversion, that is fresh water from salt water, has been often mentioned as the solution to the salt buildup problem. With all the interest in and funds allotted to water conversion studies, processes probably will be improved so as to economically produce usable water from salt or brackish water. Every process known today produces a liquid waste since all the salts removed from the original source are transferred to the waste from the process. Since these wastes must be handled separately, a waste waterline would facilitate these plants as well as those wastes which do not lend themselves to conversion.

"From the water pollution control standpoint, a waste waterline appears the most feasible solution to the water quality management problem. A means must be had to rid the upper areas of its salts and nonconvertible or nonreclaimable wastes. Water basin management, importation of high quality water and water conversion all will result in minimizing and concentrating wastes into small volumes. This in turn will extend the life of a waste waterline since its capacity requirements will not grow in the same proportion as does the population. In fact, with careful management, it might be possible to experience great growth without increasing the volumetric capacity of the waste waterline." (Assembly Interim Committee on Water, San Bernardino Transcript, May 15, 1962, pp 71-74.)

A comprehensive approach to the ground water and waste disposal problems of the upper Santa Ana River area is not an immediate possibility. There is no political organization or public support for such an approach at the present time. In addition considerable detailed study would be required of such a scheme to assure its economic and technical feasibility as well as to resolve any water rights problems. In fact conditions may not justify such an approach for a number of years in the future. From the data gathered by the Assembly Interim Committee on Water, it does appear, however, that there is a potential here for early employment of conversion equipment because of all the offsetting cost factors involved.

5. A matter of increasing interest in the water supply picture is the reclamation of waste water. The Assembly Interim Committee on Water in its ground water work also gave particular attention to experimental projects in Southern California to reclaim waste water. The Whittier Narrows Project of Los Angeles County Sanitation District No. 2, is removing the wastes from sewer water by an experimental reclamation plant. The water is then spread so that it can percolate back into the ground water basin. The present plant is producing only 10,000 acre-feet of reclaimed water annually at a cost of \$12.75 per acre-foot, but if it is successful, up to 100,000 acre-feet of waste water may be reclaimed by additions to the plant. The 100,000 acre-feet is good quality waste water, but much larger quantities of poorer quality waste water are also available at Whittier Narrows and elsewhere which may be made usable by conversion equipment to reduce the salt content. At Hyperion, the Los Angeles Flood Control District has an experiment to use good quality treated waste water to operate an hydraulic barrier.

to sea water intrusion. More good quality water is available to be used for this purpose and up to 65,000 acre-feet will be used if feasible.

In Bulletin No. 80 entitled "Feasibility of Reclamation of Water From Wastes in the Los Angeles Metropolitan Area," the Department of Water Resources estimated that the 648,000 acre-feet of waste water discharged into the ocean during 1957-58 would increase to 1,636,000 in future years. Bulletin No. 80 identified those waste waters of better quality so that they might be reclaimed by processes such as the experimental plant at Whittier Narrows and by industrial water users. As regards the more mineralized waste waters the bulletin states on page 151:

"Since the cost of upgrading the mineral quality of water is excessive, the mineral quality problem was solved by locating points within the sewerage systems where flows of sufficient quantity and suitable mineral quality for reclamation were available. The mineral quality of flows which were suitable or marginal could be improved by eliminating certain highly mineralized contributions or bypassing the more highly mineralized flows."

It is the department's estimate that about 195,000 acre-feet per year of the present waste waters, or about one-third can presently be reclaimed. It would appear to the subcommittee that the remainder might be reclaimed if low-cost brackish conversion equipment suitable for use on waste waters were developed. At the present time, the department has found that reclamation of low-mineral-content waste waters is both economically and technically feasible. This is actually demonstrated by the two experimental projects at Whittier Narrows and Hyperion. However, the addition of equipment to demineralize waste water would, at present cost, make such reclamation economically infeasible.

At the hearing of the subcommittee on December 12, 1961, Mr. Frank M. Stead, Chief, Division of Environmental Sanitation, California State Department of Public Health stated:

"the limiting factors on the present processes of reclaiming water from sewage are mineral content of the sewage, certain dissolved organic compounds, and a lack of ability to assess the hazards of viruses. Research now planned should remove the last two limiting factors so that the reduction in mineral content of water reclaimed from sewage would be the last hurdle to cross."

Mr. Stead emphasized that whenever large quantities of water are imported into an area such as Southern California, it is also necessary to remove large quantities of waste water. In his testimony Mr. Stead stressed that:

"Rectification of the mineral content of all waste water before it reaches ground water, constitutes the only means available under the California Water Plan of preserving the quality of the total ground water resources of Central and Southern California. With these values at stake the financial feasibility of mineral conversion of waste water, whether it be sewage, industrial wastes, or irrigation drainage water, is seen in a new light."

" in my opinion, a pioneering venture in complete biological, organic and mineral reclamation of sewage or other waste water, as a preliminary to its use to augment ground water supplies, will occur only as a demonstration supported in large part by public funds

"The sooner the pioneering work is done, however, and the sooner the practice becomes established in appropriate areas, the better the quality of ground water in Southern California will be over the next 50 years "

The US Public Health Service has undertaken an Advanced Waste Treatment Research Program whose objective is to develop a treatment process which will completely renovate waste waters, thereby making them suitable for any and all beneficial uses. The undertaking is a 10-year program covering the current decade and it will include feasibility studies, pilot plant studies, field evaluations and demonstrations. The initial budget is approximately \$500,000 per year but it is envisioned that almost \$15,000,000 will be required over the entire 10-year period. Many of the processes now under intensive research and development in saline conversion work will be evaluated in this Public Health Service program, including electrodialysis, freezing, hydration and ion exchange. On page 20 of a report entitled "Preliminary Appraisal of Advanced Waste Treatment Processes" which is the second report under the Advanced Waste Treatment Research Program, the Public Health Service states

" as a step for salt removal in the treatment of waste waters, methods based on electrodialysis or ion exchange appear preferable. The latter methods are more economical for the treatment of a water that is relatively low in salt content, but become prohibitively expensive as the salinity increases "

The use of conversion equipment for sewage compared to its use on brackish water introduces new complexities such as the need for disposal of separated wastes and impurities which should be concentrated in a small volume, the nature of sewage contaminating materials other than salts, and the variation in sewage water quality. In addition, the presently available electrodialysis equipment is not suitable for conversion of certain sewage waste water because the membranes become fouled by detergents. These complexities mean that with the present state of technology and knowledge, the use of a sewage plant effluent as a source of water for a conversion plant is a second choice to other natural raw water supplies of equal salinity content.

Another problem in the disposal of waste waters is developing in the San Joaquin Valley. The Department of Water Resources has advised the subcommittee that

"The need for disposal of agricultural drainage water from major portions of the San Joaquin Valley through the San Joaquin Drainage Facilities (a part of the State Water Facilities) is under intensive study by the department. The economic potential of the partial removal of dissolved materials from the drainage water by electrodialysis, biological, or other processes is under study.

"The question regarding the effects in the estuary at the point of discharge of the master drain is of such significance that conversion processes are being evaluated to aid in effecting the most compatible decision for all users .

"Preliminary estimates of conversion utilizing the electrodialysis process based on current technology and on projected technological improvements by the time the drainage canal is in operation" (have yielded figures from \$45 to \$180 per acre-foot depending upon the assumptions involved)

The foregoing enumerates five of the most important factors which have been influential in the subcommittee's evaluation of the present status and the future role of saline conversion in California. Discussion of these factors has lead to some degree of understanding between the subcommittee and the Department of Water Resources on a future program. The department has stated its views that the reclamation of waste waters and the conversion of brackish water supplies should receive increased emphasis during the next few years. The quotation below is taken from a letter to the chairman dated December 19, 1962, which is reproduced in full as Appendix C.

"1 Give increased attention to application of conversion processes to the removal of dissolved materials from waste waters. It is important that the department concern itself increasingly with the improvement of the quality of waste waters concurrently with its larger responsibilities of developing original fresh water resources. It is anticipated that conversion techniques will play an important role in the renovation of waste waters.

"2 Give more consideration to improvement of quality of ground and surface water supplies in the many communities in the State whose present supplies are all, or in part, above the U S Public Health Service recommended limit of 500 parts per million TDS, particularly where salinity trends are upward and where some of the available sources are already in the brackish range."

In the conversion of brackish waters and reclamation of waste waters, there is presently no definite goal for the department. In other words, it is not clear just what costs certain areas can afford to pay for converted water when all the offsetting factors are considered. There are indications that people will not pay much for an improved water supply but will continue to use saline waters. However, the true costs of using mineralized waters in terms of corroded water pipes, costs of water softeners and excessive use of soaps is not always appreciated by the water users.

Professor Everett Howe and Dr. Warren Hall of the University of California have suggested two other cost considerations to the subcommittee in a communication dated September 1962.

"Economic consideration is making a decision for or against the use of desalination should include both the probable cost of desalinated water and the true cost of the normal supplies. These costs are difficult to determine because of the variable and uncertain (water supply costs paid from local tax revenues) . . .

The very large tax income, as compared with water revenues renders the price figures questionable as a basis for comparison. It would seem that some effort should be made to obtain figures for both desalinated water and normal supplies which are truly comparable.

"Certain savings may be accomplished by the use of desalination plants, one of which is the fact that the cost of financing can be minimized through the construction of additional plant capacity as the need increases. This is to be compared to normal water developments in which the entire dam or aqueduct must be constructed even though the total capacity may not be utilized for a number of years."

Much more needs to be known about the economies of using conversion equipment for public water supplies before a reasonable goal in cost reduction for brackish water processes can be determined which will establish a demand for such processes by making them economically attractive.

The subcommittee feels that a broadened view of conversion equipment in public water supply problems, giving particular attention to economic factors, may provide the department with the information to set specific goals for application of brackish water equipment in California. With these goals in mind, the department and the Legislature can establish a specific program for California.

NUCLEAR ENGINEERING PROGRAM OF THE DEPARTMENT OF WATER RESOURCES

The nuclear engineering work of the Department of Water Resources was undertaken at the request of the subcommittee in 1958. The purpose of this activity is to determine the applicability of nuclear reactors as a source of energy to pump water over the Tehachapi Mountains for delivery in Southern California. Expenditures by the department for nuclear engineering studies are shown below:

<i>Year</i>	<i>Study contract</i>	<i>Departmental expenditures</i>	<i>Total</i>
1958-59 -----	\$37,200	\$4,000	\$41,200
1959-60 -----	—	10,000	10,000
1960-61 -----	12,836	10,000	22,836
1961-62 -----	19,000	12,000	21,000
1962-63 -----	—*	21,000	21,000
			<hr/> \$116,036

* A major study of energy sources for pumping will be charged to construction funds.

Since 1958 until this year the department has only monitored developments in the field of nuclear energy. During 1962 the department has moved directly to evaluate the possibility of nuclear energy.

In 1957 the first hearing of the subcommittee received testimony from representatives of the Atomic Energy Commission who urged the State to evaluate the possibility of nuclear energy for the Tehachapi pump lifts. The subcommittee's first report concluded that:

"The present state of development of atomic reactors as a source of energy is such as to justify their immediate consideration for use in the Feather River Project (now the State Water Facilities) . . . Present estimates of the Atomic Energy Commission that atomic energy will become competitive with conventional sources by 1965 are predicated on private development. Consequently, with the historically lower cost of public financing and extended amortization, atomic power may not only be economically feasible but may also be the cheapest source by the time power is needed for pumping in the Feather River Project."

During the subcommittee's hearing on December 12, 1961, Mr. Donald Stewart, Assistant Director for Civilian Power of the Division of Reactor Development, who was one of the Atomic Energy Commission witnesses before the subcommittee in 1957, reappeared before the subcommittee and indicated that the earlier forecasts of lower costs for atomic energy are now becoming accomplished facts. Mr. Stewart stated:

"Nuclear power should be given careful consideration as an alternate to conventional power plants in any area where fossil fuel costs are high. This certainly is the case in California. As you know, the construction of two large nuclear plants has been proposed for California, one by Southern California Edison and one by Pacific Gas and Electric. These utilities believe that each of these plants will produce power competitive with fossil fuel plants. The construction and operation of these plants will play an important part in the nation's atomic energy program by demonstrating the economics of large nuclear reactors. The outlook for the future is bright—lower fuel costs are on the horizon and we believe that capital costs will continue their downward trend."

"Recent price quotations for large nuclear plants are much lower than estimates made two years ago. Nuclear plants in the range of 325–375 MWe have been priced around \$200/kw. Plants of 500 MWe have been quoted below \$180/kw. This is within \$20 to \$40/kw of conventional plant construction costs. As large plants are built, the differential cost between nuclear and conventional plants will decrease."

"As nuclear plants do require a larger investment than conventional plants, this dollar differential must be made up by lower fuel costs, and in the high fossil fuel cost areas we find this is indeed the case. Manufacturers have guaranteed complete fuel cycle costs as low as 2.2 mills/kw for periods as long as 10 years."

There is considerable potential for further reductions in these nuclear fuel costs. Total fuel cycle costs of 1 to 1.5 mills/kwh are not an unreasonable expectation within the next 10 to 15 years. The major portion of this reduction is expected to come about through the development of plutonium recycle, plutonium being far more valuable in thermal reactors than previously believed. Some further contributions to lowering fuel costs will result from lower fuel fabrication costs and longer fuel element lifetimes."

"There are several advantages in the construction of a nuclear plant. They are clean. There is no contamination of the atmosphere by soot, sulfur dioxide or other products of combustion. This, of course, is a major advantage to areas such as California where atmospheric contamination has become a major problem. Reactors also have the advantage of requiring little in the way of major transportation facilities. It is possible to load and store sufficient fuel in a nuclear plant so that it could operate up to 10 years with no fuel shipments. This has obvious implications for the application of reactors to supply power in the event of a nuclear war where one would expect rail and highway transportation systems to be seriously disrupted.

"In conclusion, I believe nuclear power should be studied carefully before determination is made for the source of power of your State Water Program. The question of the ultimate choice of a nuclear plant or a conventional plant is dependent upon many variables. It will often be found that the optimum size of a nuclear plant will be larger than the optimum for a conventional plant for integration into a power grid. Many utilities are now pooling their systems with adjacent utilities. This came about through the proved economies of high-voltage transmission and the many benefits from pooling such as the reduction in reserve requirements for each of the individual utilities. These factors as well as the relative capital costs and fuel costs should all be given adequate consideration before a choice is made. We at the commission will be very interested in the outcome of your studies and will be happy to supply any information we have available to assist you in making this analysis."

During September 1962 the Director of Water Resources conferred with Mr. Stewart of the Atomic Energy Commission and was given equally optimistic views including a statement that after 1966 atomic power could be generated for 3.2 mills per kilowatt. The director quoted Mr. Stewart as stating, "I would think that nuclear power would be by odds the cheapest now, and in the future even more so."

Because of these favorable indications, the department invited four firms to evaluate the possible use of nuclear energy on the pump lift. The favorable results of the evaluation are quoted below from a summary prepared by the Department of Water Resources:

"... in May of this year it was decided that the magnitude of the aqueduct power requirements, coupled with promising potential of nuclear power, made it necessary to obtain for planning use, the most authoritative and up-to-date information available on atomic power. (The department) therefore contracted with four outstanding nuclear power firms, each of which specializes in a different type of reactor, to furnish technical and economic data based upon the current and projected capabilities of their respective plants. The studies were confined to the power requirements of the four pumping plants at the Tehachapis—Buena Vista, Wheeler Ridge Nos. 1 and 2, and Tehachapi—these being within

about 40 miles of each other and hence constituting a reasonably compact load for a single power plant. The study was based on the 'Combination Continuous and Offpeak Plan' . . . in which pumping during the early years is entirely offpeak but gradually, with buildup in water demand, becomes continuous in 1991.

"The scope of work of the contracts, in addition to the furnishing of technical information, included preparation of the following.

"1 Preliminary design study and cost estimates of a nuclear electric generating facility based on the following assumptions:

- "a Study based on 'combination continuous and off-peak plan'
- "b Period covered by study. 50 years (1972-2022)
- "c Generating plant with minimum of two units of equal size
- "d State ownership, with fixed charges to be determined as follows:

Life of plant -----	30 years
Interest rate -----	4.00 percent
Sinking fund, 30 yrs @ 4% -----	1.75 "
Interim replacements -----	35 "
Insurance (conventional) -----	25 "
Total -----	6.38 percent

"e Estimates to be made on the basis of 1962 constant dollars

"f Plants to be integrated with utility network and to operate at 80 percent capacity factor. Surplus power to be sold at \$20/Kw-yr for capacity component and 3 mills/Kwh for energy.

"2 Cost data on a fossil fuel power plant of comparable size to the nuclear plant

"3 Cost data on both nuclear and fossil fuel plants appropriate for installation in a large private utility system

"The companies selected to make the studies, their respective reactor type and the amounts of the contracts are as follows

Company	Reactor type	Contract cost
Atomics International Division of North American Aviation Incorporated, Canoga Park, California	Sodium graphite	\$5,000
General Atomic Division, General Dynamics, San Diego, California	High temperature gas-cooled	9,003
Westinghouse Electric Corporation, Pittsburgh, Pennsylvania	Pressurized water	5,000
General Electric, San Jose, California	Boiling water	No cost

"General Electric, due to lack of available manpower, did not furnish the complete information called for in the specifications. Instead, it supplied cost information on various sizes of plants (280 Mw, 375 Mw, and 500 Mw), from which extrapolations and estimates could be made. However, the company requested that the information be kept confidential. The other three companies, the studies of which are summarized herein, based their studies on the

assumption that a 465 Mw unit would initially be built (1972), and followed not later than 1975 by a second 465 Mw unit

"The range of capital costs derived from data in the three reports is approximately \$160-\$215 per kilowatt, corresponding to a capital investment for the complete facility of about 150 to 200 million dollars. The average power costs over the 50-year period, based on 80-percent-capacity-factor operation, are in the range of 3-4 mills/Kwh

"It is noted that while these are representative of nuclear (or fossil fuel) plant costs, certain other costs must be added to make a complete operating facility. These include costs of a transmission line from a utility, a transmission line to interconnect the four pumping plants, and possible condenser cooling water facilities. Also, the limited scope of these study contracts did not permit foundation exploration or site investigation, though reasonable allowances were made for site preparation, excavating, and access. However, such secondary or incompletely analyzed features are likely to represent a very small fraction of the estimated power costs and, in any case, would differ little between the nuclear and fossil fuel plants.

"It must be recognized that the estimates, particularly the nuclear, while made by reputable companies, are necessarily based upon a number of assumptions. The assumptions, however, are believed to be reasonable and well supported."

**"SUMMARY
COST ESTIMATES OF NUCLEAR POWER PLANTS**

<i>Company</i>	<i>Total capital investment</i>	<i>Unit capital cost</i>	<i>Average power cost, 50 years</i>
Atomics International			
1972 -----	\$82,945,000	\$178/Kw	} 3.35 m/kwh
1975 -----	74,845,000	161	
General Atomics			
1972 -----	99,630,000	214	} 3.14
1973 -----	99,630,000	214	
Westinghouse			
1972 -----	90,200,000	194	} 3.71"
1975 -----	86,900,000	187	

From other information obtained in the above evaluation, it has been established that the date by which the State must make a decision on the source of energy for the Tehachapi Mountain pump lift is July 1966 if water is to be delivered in Southern California by the beginning of 1972. With this in mind the department is now undertaking an energy source study which is scheduled to be completed by June 30, 1964, and a companion pump design study. Upon completion of these studies the department hopes to be in a position to make decisions on the source of energy for the Tehachapi Mountain pump lifts, whether steam-electric, nuclear reactors, purchased electric energy or electric energy from a Pacific Northwest high-voltage interconnection.

CONCLUSIONS

The subcommittee, after reviewing developments in the field of saline conversion and nuclear energy as they pertain to the State's water problems, has drawn the following conclusions

- 1 The Department of Water Resources should intensify its efforts compared to past years, in view of the increasingly favorable data on nuclear energy, to analyze the use of reactors to provide nuclear energy for the Tehachapi Mountain pump lift

- 2 The Department of Water Resources and the University of California should continue active programs in saline conversion

- 3 The Subcommittee on Saline Conversion and Nuclear Energy should continue to review the programs of the Department of Water Resources and the University of California as well as general developments relating to the interest of the State in saline conversion and nuclear energy

- 4 The Department of Water Resources and the University of California are appropriately shifting emphasis in their programs from sea water conversion to brackish water conversion. This shift in emphasis should continue

- 5 The Department of Water Resources should concentrate on economic and other analyses of the application of conversion equipment to brackish waters in inland areas and the reclamation of waste waters. From such a study may develop the outlines of a program which will assist in meeting California's water supply problems, will represent a wise investment of the State's funds and will support and justify specific process development by the Department of Water Resources or research by the University of California

- 6 The University of California should continue co-ordination of its research with the Office of Saline Water and engage in such basic research as that office may wish to finance

APPENDIX A

DEMONSTRATION PLANT PROGRAM OFFICE OF SALINE WATER, DEPARTMENT OF INTERIOR

The most important objectives of the demonstration program are, first, to show the economic potentials of the most promising processes and, secondly, to demonstrate their reliability. To meet these objectives, each plant design not only incorporates experimental features for the purpose of establishing design data that can be applied directly to second generation plants, but also seeks to maintain water production at the minimum cost consistent with the size of the plant.

It is not possible, however, to design an *optimum* plant that demonstrates reliability and experimental flexibility, and that also produces the lowest cost water. The design requirements as set forth in the demonstration plants, therefore, are necessarily a compromise to satisfy the overall objectives.

- 1 To construct the most *economical* plants, on a straight construction basis (exclusive of experimental and demonstration costs), of their type and size in the world. In spite of many innovations and unknowns, these plants are being constructed and placed into operation in the shortest possible time and at a minimum cost. Engineering, construction, and operating costs are approximately those that were originally developed by the Demonstration Plants Division.
- 2 To construct the most efficient *large* salt water conversion plants.
- 3 To construct the first very large *experimental* saline water plants in the world. Provisions for materials testing is to be incorporated in each plant and it will be possible to operate each plant at more difficult operating conditions than normally would be warranted, through such design features as extra piping, valving, and instrumentation.

THE FREEPORT PLANT

The nation's first sea water conversion plant, which is located at Freeport, Texas, demonstrates the multiple-effect long-tube vertical process. Steam is admitted into the first evaporator or effect. The steam fills the space around and outside of the tube bundle causing part of the sea water to boil as it falls down the surface of the inside of the tubes. Emerging at the bottom of the evaporator is a mixture of vapor and hot brine. The hot brine is pumped to the top of the second evaporator where under slightly reduced pressure it again falls down the surface of the inside of the tubes.

The vapor produced in the first effect flows to the outside of the tubes of the bundle in the second effect. There the vapor is condensed to fresh water by giving up its latent heat of vaporization through the tubes to the sea water falling down the inside surface of the tubes, which again causes part of the water in the tubes to boil. The mechanism of condensation and evaporation through relatively thin films results in little temperature difference loss due to hydraulic head loss or pressure drop.

This same process is repeated through all 12 effects of the plant. The condensed vapor, which is fresh water, is pumped from each effect into a common line leading to the storage tank.

Up to the present time a scale prevention technique, termed "pH control," has been used successfully to prevent scaling of the plant's heat transfer surfaces.

THE SAN DIEGO PLANT

Demonstration Plant No. 2 was constructed during 1961 at San Diego, California. This plant embodies the multistage flash-distillation process. The plant is rated to produce 1 million gpd of potable water with a maximum of 50 ppm by weight, of dissolved solids. It has 36 flash chambers, or stages, and provides for recirculation of excess brine to supply the heat required for vaporizing the product water, thereby economizing on the steam heat required. The stages are contained in 10 large vessels. These vessels, which were factory-built and transported to the site as

assembled units, are connected together to form one continuous circuit of 36 stages, in series. Auxiliary equipment includes the boiler, pumps, piping (including the sea water intake pipe and pump pit), brine heater, product cooling tower, instruments, and an operations building. The entire plant occupies a working space of approximately 15 acres not including approach roads.

The contract for the construction of Demonstration Plant No. 2 was signed on November 3, 1960, after specifications were advertised for competitive bids, a standard practice with all plants. Engineering and procurement work began immediately. Work at the jobsite commenced the first week in May 1961 with the beginning of construction of a temporary pier, which was used in laying the sea water intake pipe. Work on the operations building was begun shortly thereafter. By the end of July, the foundations for the main evaporator vessels were ready, and the first of the vessels was delivered on August 3. It was followed quickly by the rest of the 10 vessels, the last one being delivered on August 23. Piping work was begun immediately. Meanwhile, the boiler and its associated equipment, the product cooling tower, the brine heater, the pumps, and other auxiliary equipment were delivered and set in place. Sections of piping were pressure tested as rapidly as they were completed, and this aspect of the work was completed by the last week in October.

By November 3, 1961, all equipment was physically in place. The plant was inspected and it was found that the construction contractor had complied with the requirement that construction work be completed within 365 days from the date of contract.

The process of "running in" the various pieces of machinery and equipment had begun by the third week in October. On November 9 the plant, operating at approximately 15 percent of rated load, produced its first fresh water. The load was increased by steps during the weeks that followed and by the end of December the plant was operating at full load. Operations during this time were intermittent, as various functional and operating problems arose and were met. For example, the sliding screens at the sea water intake gave particular difficulty and had to be modified. If the problem of seaweed getting by the screens persists, further modification will be necessary.

The cost of the construction contract was shared equally by the Office of Saline Water and the State of California, Department of Water Resources. The prime responsibility remained with the Office of Saline Water. The California Department of Water Resources performed valuable services by checking drawings and by making field inspections at several specific phases of the construction work.

The City of San Diego was responsible for installing a pumping plant and pipeline to transport the water from the conversion plant to a reservoir, 4.2 miles away, before its distribution to the Point Loma area. Initially, the city plans to mix the distilled water with water from their normal source in a ratio of 1 to 3, in order to minimize any effects on the distribution system from the change in the quality of water.

To test the reliability of the process, it is planned to operate the demonstration plant during 1962 primarily to produce water with a minimum of experimentation. Later experiments will test other methods for increasing the capacity and the thermal economy of the plant. A number of features of the plant design were included specifically to make such experimentation possible. One of these features is the duoflow system by means of which the recirculating brine is split into two parallel and independently controlled streams. One stream can be operated with a known and proven treatment for prevention of scale as a control, while concurrently the other stream is experimentally treated. Thus the efficacy of the two methods can be compared. This is important because if economical scale-control treatment that are effective at higher water temperatures than those now in use can be developed, the economy and capacity of the plant can be increased markedly.

Another experimental feature of the plant is the inclusion of a variety of metals and metal surface coatings in order to determine corrosion rates and the useful life under the particular exposure conditions of this type plant. This is important because both the cost of maintenance and the useful life over which the initial cost of the plant should be amortized are determined largely by the rate of corrosion and erosion of the metals.

The third experimental feature is the inclusion of a number of "bypass" and "jumper" pipes which will allow rerouting of the recirculating brine and sea water streams so that various combinations of stages can be tested for economy and effectiveness.

THE WEBSTER PLANT

The Webster, South Dakota, plant is the largest operating electro dialysis plant in the world. It is housed in a brick building, one-half of which contains pretreatment equipment to remove iron and manganese from the water; the other half containing the electro dialysis press and associated process equipment. Raw well water is introduced into the plant at a design flow rate of approximately 275 gallons per minute. Of this, 175 gpm (or 270,000 gpd) becomes product water after passing through the electro dialysis process while the other 100 gpm is discharged as concentrated waste water.

The plant is capable of operating either as a three-stage plant or as a four-stage plant. The addition of the fourth stage permits lower current densities to be achieved because of the increased membrane area. The dilution stream is fed in series throughout the process, discharging into open process tanks between stages. The concentrate stream is fed in parallel to all stages; the principle of counter-current flow is utilized in each stack to minimize solution concentration differentials between dilution and concentrate streams.

The plant was officially completed on September 9, 1961, and subsequently entered into a stringent 2,000-hour operational acceptance test period, to be completed by March 8, 1962, when it will be turned over to the government for long-term operation.

Webster donated the plant site. It supplies brackish water to the plant from five wells and will purchase the product water at 30 cents/1,000 gallons at the plant site. The city has also installed a lift station to dispose of the concentrated waste water effluent from the plant by diverting it to their sewage stabilization evaporation pond. When the correct water level of the pond is reached, the waste water is then led into an open drainage ditch which flows into a highly saline lake three miles north of Webster.

Specifications for the construction of the plant were prepared by the U.S. Bureau of Reclamation at Denver, Colorado. Close collaboration was maintained with OSW in development of these specifications, which were essentially of a performance type calling for single contractor responsibility for the construction of a complete and operational electro dialysis demonstration plant.

The successful bidder, Asahi Chemical Industry Company, Limited, of Osaka, Japan, was low with a bid of \$482,200. The plant was built by Asahi in co-operation with the Austin Company of Cleveland, Ohio. A groundbreaking ceremony, signalling the beginning of construction of the plant, was held in Webster on May 19, 1961, with Assistant Secretary of the Interior Kenneth E. Holm as the principal speaker. Construction proceeded rapidly and the plant was officially completed on September 19. Dedication ceremonies were held on October 20, with Secretary Stewart Udall and other federal and state officials in attendance.

THE ROSWELL PLANT

The largest brackish water distillation plant in the world will soon be built near Roswell, New Mexico. This plant, when completed, will produce 1 million gpd of pure water for the people of Roswell. The city is furnishing the land for the plant, the brackish feed water to be processed, and is also disposing of the concentrated brine at the end of the distillation process. The State of New Mexico has been very interested in this plant and is contributing \$100,000 toward its cost.

The 2- or 3-stage forced-circulation vapor-compression distillation plant will have provision for ion-exchange and slurry treatment scale-prevention equipment, either of which can be used independently. By use of forced circulation, the brine will be prevented from boiling in the tubes of the heat exchanger. The vapor compressor will take the steam from the last stage and raise its temperature by compression to heat the brine for the first stage, doing away with a continuous requirement for a steam supply, thus reducing operating costs.

The major energy cost will be for the electric power required to drive all the pumps and the compressor. There will also be a small cost for fuel oil for the package steam boiler used in the startup of the plant and the intermittent control of the heat balance of the plant as required.

The architectural and engineering work for this plant was done by The Catalytic Construction Company of Philadelphia, Pennsylvania, under an OSW contract let in October 1960. The specifications and plans were finished in September 1961. OSW released the specifications and plans for bid on October 10, 1961, with a bid-closing date of December 12, 1961.

THE WRIGHTSVILLE BEACH PLANT

The freezing process will be demonstrated in the 250,000 gpd East Coast Demonstration Plant to be built at Wrightsville Beach, North Carolina. This location was selected, after careful evaluation of a large number of interested East Coast communities.

The freezing process is currently under development by several organizations. During 1961, two OSW sponsored pilot plants have been in operation and much useful data has been obtained. One pilot plant (15,000 gpd—Carrier Corporation) is located at Wrightsville Beach and the other (35,000 gpd—Blaw Knox Company) is located at St. Petersburg, Florida. The Carrier plant utilizes a direct-freeze evaporation process, and the Blaw-Knox plant utilizes a butane, direct-contact freezing process. Both systems use a countercurrent washing technique, with different equipment designs, for brine-ice separation. Another pilot plant, constructed without OSW sponsorship, is an 18,000 gpd plant erected by the Rocketdyne Division of North American Aviation at Oxnard, California, and crystallization work has been sponsored by OSW with the Struthers Wells Company of Pennsylvania.

The Fairbanks-Morse Company (which has built a pilot plant at Beloit, Wisconsin, in co-operation with the government of Israel), and others, are also developing freeze-demineralizing equipment which essentially follows the above flowsheets but which vary in engineering details and equipment.

The site for the Wrightsville Beach Demonstration Plant was donated by the State of North Carolina to OSW, and consists of 10 acres of filled land located approximately 3,000 feet from the Banks Channel, where the sea water intake will be located. The waterlines and pumping facilities required to transport the product water to Wrightsville Beach will be provided by the city, at no cost to the government. Also, the Town of Wrightsville Beach has agreed to purchase the product water and provide pumping facilities from the system.

The architect-engineer contract for design of this plant was awarded to the Lummus Company, New York City, on May 2, 1961. It is anticipated that final plans and specifications will be available for issue about March or April 1962. A construction contract is expected to be awarded about July 1962.

Source: Extracted from 1961 Saline Water Conversion Report, Office of Saline Water, United States Department of the Interior, January 1962.

APPENDIX B

UNIVERSITY OF CALIFORNIA SEA WATER CONVERSION
RESEARCH PROGRAM

SUMMARY STATEMENT FOR THE YEAR 1961-62

Objective:

To conduct research to determine one or more ways to produce fresh water from sea or saline water in large quantities at low cost

Goals:

Costs competitive with present maximum prices for normal supplies:

Municipal \$125 per acre-foot, \$0.38 per kgal

Irrigation . \$40 per acre-foot, \$0.12 per kgal

Present State of Industrial Development (Commercial Processes):

Thermal distillation \$1.00-1.25 per kgal

Vapor compression distillation 2.00 per kgal

Electrodialysis 0.50 per kgal
(brackish water only)

University of California Research Program 1961-62:

Berkeley campus 10 investigations

Los Angeles campus 7 investigations

San Diego campus New sea water test facility completed

List of Investigations:

I Distillation

A Use of thin water films for improved heat and mass transfer

1 Multiple effect rotating evaporator L. A. Bromley (UCB) *

2 Capillary control of vapor transfer gaps J. W. McCutchan (UCLA) †

3 Experimental heat transfer studies R. L. Perrier (UCLA) ‡

B. Heating of impure water by direct contact with hot fluids

1 Problems in the development of saline water conversion plants J. W. McCutchan (UCLA) ‡

2. Sea water evaporation by immiscible fluid heat transfer C. R. Wilke (UCB) **

C Use of high temperatures in thermal distillation

1 Ion exchange for the removal of scale-forming constituents T. Vermeulen (UCB) †

2 Scale component equilibrium studies E. D. Howe (UCB) ‡

3. Optimum operating temperature for a multistage distiller E. D. Howe (UCB) *

D. Vacuum flash distillation utilizing low temperature differences

1 Condensing heat transfer in the presence of noncondensable gases P. B. Stewart (UCB) *

2 Fog formation and carryover tests H. W. Iversen (UCB) †

E. Solar distillation E. D. Howe (UCB) * ‡

II Electrodialysis E. D. Howe (UCB) *

III. Saline water demineralization by means of a

Semipermeable membrane S. Loeb (UCLA) *

IV. Freeze separation—solubility of carbon dioxide in

sea water and its concentrates P. B. Stewart (UCB) ‡

V. Biological studies A. F. Bush (UCLA) †

VI Techniques of optimization M. Tribus (UCLA) *

VII. Corrosion studies K. Nobe (UCLA) †

* Experimental results of definite nature and useful to engineering designers

† Experimental results of preliminary nature and useful primarily for application to other investigations

‡ New equipment constructed—no experimental results as yet

Accomplishments:

Definite progress in the accumulation and analysis of data was reported on many of the tests, although on five of the investigations the time was spent in the assembly and initial testing of new apparatus. During the year eight detailed reports containing technical data were issued.

The investigations relating to distillation are incomplete but results so far are encouraging. A seven-day continuous run of the multiple-effect rotating evaporator using San Francisco Bay water demonstrated that very high fuel economy can be realized—roughly twice that of the new demonstration plant at San Diego. Deficiencies of operation observed during this run were corrected in preparation for further testing at the Sea Water Test Facility at La Jolla. Accurate determination of the capital costs of this equipment awaits completion of the latter tests. The analytical study of optimum operating temperatures shows the magnitudes of further gains in economy to be realized through increases in brine temperatures—the chief obstacle being the formation of scale on the heat transfer surfaces. The study of ion exchange shows that such scale can be prevented by removal of the scale-forming ions before the sea water is delivered to the distiller. These investigations, as well as others listed, indicate that substantial savings in the costs of distilled water can be achieved in the future design of large distillation plants.

Distillation using heat from nonfuel sources continued to receive attention since, even with the improvements noted above, the cost and quantity of fuel required are relatively great. Final reports were issued on tests of certain solar units over a 10-year period and on the design parameters most important in solar distillers. The inclined tray-type solar still developed in this investigation has proven to be more efficient than other designs in the use of solar energy. Steps were taken to design machinery for the fabrication of this type of unit at minimum cost. Equipment for using waste heat was considered both at Berkeley and at Los Angeles, the investigation at the latter being in its beginning stages. At Berkeley the tests on the effect of air in the condenser were completed with the result that it is now possible to predict accurately the magnitude of the heat transfer factor in the presence of air. The tests on fog formation were incomplete but at least one promising device has been found which would lead to an increase in the capacity of the vacuum flash distiller unit. These results are also pertinent to the design of other flash distillers.

Electrodialysis has been limited to the desalinating of water of low initial salinity. The University of California at Berkeley experiments have been directed to the use of this process with sea water. By modifying the commercial equipment and using new membranes, it has been demonstrated that sea water can be demineralized with as little as 40 kw-hrs per kgal, or only about 10 times the thermodynamic minimum. When realized commercially, this figure could make electrodialysis competitive with distillation.

The 500-gpd reverse osmosis unit was tested on sea water at Port Hueneme on two occasions. The second test—of nearly 30 days' duration—revealed several unsolved operational problems but also indicated a probable energy requirement of about 40 kw-hrs per kgal for this process. Modifications of this unit are being made preparatory to further tests at La Jolla.

Biological techniques for desalination continued under study at the algae pond constructed at the Hyperion Treatment Plant. The results have differed from those achieved in the small ponds at the University of California at Los Angeles campus so that adjustments are still being made in the operation of the large pond.

Relation to Graduate Study:

This research program contributes to graduate study in two ways: (1) It furnishes research investigations for a number of graduate theses each year, and (2) it gives employment and income to several graduate students, without which their enrollment as graduate students would be impossible.

APPENDIX C

HONORABLE JACK A. BEAVER, *Chairman*
Subcommittee on Saline Conversion and Nuclear Energy
204 East State Street, Redlands, California

DEAR MR BEAVER: In response to your request made at the meeting with department representatives on November 27, 1962, we are transmitting herein a statement of near-term department goals and objectives in the saline water conversion and nuclear fields

Saline Water Conversion

1 Give increased attention to application of conversion processes to the removal of dissolved materials from waste waters. It is important that the department concern itself increasingly with the improvement of the quality of waste waters concurrently with its larger responsibilities of developing original fresh water resources. It is anticipated that conversion techniques will play an important role in the renovation of waste waters.

2 Give more consideration to improvement of quality of ground and surface water supplies in the many communities in the State whose present supplies are all, or in part, above the U.S. Public Health Service recommended limit of 500 parts per million TDS, particularly where salinity trends are upward and where some of the available sources are already in the brackish range.

3 Begin to give attention to the potential of conversion in the long-range planning of the department. The necessity for planning for development of water supplies many years in the future would seem to indicate the prudence of giving more serious consideration to conversion, for which encouraging future cost projections of large plants have been made.

4 Study specific applications of conversion such as the possible alleviation of some of the problems of San Joaquin Valley drainage.

5 Pursue other activities as described in our detailed program attached to my letter to you of November 23, 1962.

Nuclear Energy

1 Continue and update appraisal of nuclear energy as a power source for aqueduct pumping. The technical and economic data obtained in nuclear power studies completed to date will be made available to the contractor selected to make the general energy sources study. The department will closely follow and evaluate the nuclear as well as alternative energy sources' studies and recommendations resulting from this contract.

2 Study and evaluate the capabilities of large nuclear reactors as energy sources for saline water conversion. Authoritative engineering studies show an encouraging potential of low-cost energy from large-capacity nuclear systems.

3 Continue to study the economics and technical feasibility of nuclear explosives for large-volume excavations in water development projects, in collaboration with the Atomic Energy Commission through its Lawrence Radiation Laboratory, Livermore.

4 Utilize the most advanced technological developments available for additional applications of isotopes to water resources activities. Several projects have been planned for further study in the near future. These include:

(a) Use of measuring instruments containing radioactive sources in controlling compaction of earthfills.

(b) Application of radioactive tracers to calibrate aqueduct pumps, with a view toward evaluation of this method for use in future water development projects.

(c) Participation in a study to optimize radiometric determinations of waterflow, for both streams and aqueducts.

(d) Utilization of activation analyses in microchemical analysis, connected with saline water intrusion studies.

(e) Study of methods for using radioactive tracers in measurement of subsurface flow, as applied to seepage investigations, sewage-spreading operations, and other connected activities.

(f) Further development and improvement of instrumentation utilizing radioactive sources in studies of vegetative water use, particularly as applied to conditions in the Delta.

Also requested at the meeting (by Mr. Porter) was information on the activities of other states in the conversion field. We do not have means, short of making individual inquiries of each of the states, to determine the extent of their involvement in conversion matters. However, it is safe to say that California leads all the states by a wide margin in expenditures on conversion studies, research, and development, and also in its contribution to the building of a demonstration conversion plant. In addition to the State's contribution of approximately \$825,000 to this plant, we have also joined with the Office of Saline Water in other projects, the most recent being a current study by Natmco Research and Development of a vapor-gap osmotic distillation process. Our participation in this project led C. F. MacGowan, Director of the Office of Saline Water, to express the hope that the continued participation of this State in the saline water conversion program will inspire other states to join with the Department of the Interior and actively support the development of low-cost saline water conversion processes."

California was the first state to enter into a co-operative agreement with the Office of Saline Water for mutual assistance in conversion matters. There are now at least four other states with co-operative agreements—Texas, New Mexico, South Dakota, and North Carolina, some of which were executed primarily to cover the demonstration plants.

Specific contributions for the demonstration plants were made by New Mexico, in the amount of \$100,000, and by North Carolina, which spent \$200,000 in site preparation and, in addition, deeded 25 acres of seashore property to the Office of Saline Water for the demonstration plant and for a sea water test facility at the same location. Four of the cities receiving demonstration plants (San Diego, Webster, South Dakota, Roswell, New Mexico, and Wrightsville Beach, North Carolina) also made contributions of various amounts.

The State of New York has undertaken a notable project involving both conversion and nuclear energy. This is a proposed \$5-million nuclear-powered sea water conversion plant to be located on Long Island, an area which is expected to suffer a water shortage within 5 to 10 years. Action taken to date is the awarding of a \$50,000 contract to Burns & Roe, Incorporated, a New York engineering firm, to study the feasibility of the plant. The state agency handling the work is the New York State Atomic Research and Development Authority, recently created by the Legislature.

In summary, with the exception of New York and the above-named states involved with conversion plants, the conversion activities of other states are minor and probably confined to research and development work in the universities.

If any further information is desired, please let us know.

Sincerely yours,

WILLIAM T. WARNE
Director
DEPARTMENT OF WATER RESOURCES

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REPORT OF THE
**ASSEMBLY INTERIM COMMITTEE ON
CONSTITUTIONAL AMENDMENTS**
TO THE CALIFORNIA LEGISLATURE
(House Resolution 361, 1961)

PART I

MEMBERS OF THE COMMITTEE

MILTON MARKS, *Chairman*

DON A. ALLEN, SR., *Vice Chairman*

TOM BANE

JOHN A. BUSTERUD

WALTER I. DAHL *

* Retired September 1, 1962

HOUSTON I. FLOURNOY

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January 7, 1963

Published by the
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OF THE STATE OF CALIFORNIA

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4

LETTER OF TRANSMITTAL

Sacramento, January 7, 1963

HON. JESSE M. UNRUH
Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber, Sacramento

GENTLEMEN: Pursuant to House Resolution No 361, adopted June 9, 1961, the Assembly Interim Committee on Constitutional Amendments herewith submits Part I of its final report on subjects studied during the 1961-1963 interim period.

Respectfully submitted,

MILTON MARKS, *Chairman*

DON A. ALLEN, SR., *Vice Chairman*

TOM BANE

JOHN A. BUSTERUD

WALTER I DAHL

HOUSTON I. FLOURNOY

BRUCE SUMNER

VINCENT THOMAS

JOHN C. WILLIAMSON

CHARLES H WILSON

RECOMMENDATIONS

1 The School Land Fund should be abolished. The assets contained therein should be transferred to the General Fund. The Legislature should continue to carefully study all existing special funds. Whenever such a fund may be abolished without detriment to an existing special State function we recommend that such funds be abolished and the proceeds placed in the General Fund.

2. The legalization of bingo presents a number of problems among which is a means of classifying those organizations which should be permitted to use it as a fund-raising device. If a satisfactory criterion of classification could be established then the legalization of bingo would fulfill its charitable function. In addition serious questions exist as to which charitable activities money raised in this manner might be distributed and whether restrictions should be imposed. Pending further study of these several problems the status quo should be retained.

3. The Assembly session structure, length of sessions, and elapse time between a bill's introduction and first hearing should be changed. To the extent possible, changes in the organization and operation of the Legislature should be incorporated by statutory rather than constitutional enactment. Due to the extensive legislative workload these changes should receive immediate legislative implementation.

4. The measure heard by this committee dealing with subversives and members of the Communist Party was sufficiently similar to Proposition 24 which was defeated in the November 1962 election that it was concluded no action should be taken at this time on the subject. The Legislature should continue to study the effectiveness of existing anti-communist and subversive legislation to determine if additional statutes in this field are needed.

5. Due to the passage of Proposition 7 in the November 1962 election it is now possible by a two-thirds vote of each house to propose a total revision of the State Constitution. A complete revision of the Constitution should be promptly undertaken. The Legislature should consider the formation of a "Citizens Advisory Committee" made up of interested and qualified persons to work in conjunction with the Legislature on such a revision.

6. As a result of the large number of measures presented upon the November 1962 ballot there have been a number of suggestions made concerning efforts to limit the number of proposals which are submitted to the electorate. Although there has as yet been no study made of such suggestions an effort should be made to determine what steps can be taken to carry out this purpose.

I. INTRODUCTION

The Assembly Standing Committee on Constitutional Amendments was constituted as an interim committee, in accordance with the provisions of House Resolution No 361 on June 9, 1961.

On March 6, 1962, in Sacramento, the committee held a joint hearing with the Assembly Interim Committee on Ways and Means to consider abolition of the School Land Fund. This measure was assigned to both committees for study. It was considered that such a joint hearing was expeditious as abolition of the fund requires a constitutional amendment.

On January 15 and 16, 1962, in San Francisco, the committee held hearings on A C A. 38, which dealt with the regulation of "foreign controlled," subversive, and communist organizations. An initiative proposal substantially identical to this proposed amendment was subsequently put on the November 1962 ballot. During that election it was defeated by the electorate.

On May 10, 1962, in San Francisco, two half-day hearings were held. One hearing considered A C A. 38 and A B. 3065 which dealt with the legalization of bingo. The witnesses at that hearing were primarily organizations which desired to legalize bingo for charitable fund-raising purposes. The second hearing consisted of testimony concerning legislative sessions and related procedural matters encompassed in A.C.A. 17 and A.C.A. 78.

One hearing on A C A. 26 was held on September 18 and 19, 1962, in Beverly Hills and another hearing was held on November 29, 1962. Split hearings on this amendment were required since A C A. 26 is a significant revision of Article VI (Judiciary) of the Constitution. Since hearings on this measure were not completed at the time of printing of the report on other proposed constitutional amendments, the subject matter of A C A. 26 will be presented in a separate report.

The committee was also assigned the following constitutional amendments for study:

- 1 A C A. 7 (School District Indebtedness)
- 2 A C A. 65 (Property Tax)
- 3 A C A. 71 (Public Officers' Salaries)
- 4 A C A. 73 (Television Programing)
- 5 A C A. 75 and 77 (Senatorial Districts and Reapportionment)
- 6 A C A. 87 (Farm and Home Authority)

As to these measures upon which no committee action has been taken, failure to act is not indicative of their importance. All measures upon which requests were made to hold hearings or which were not similar to proposals on the November 1962 ballot (i.e., A C A. 75 and 77 relating to senatorial districts and reapportionment) were considered by the committee.

II. SCHOOL LAND FUND

Article IX, Section 4, of the State Constitution provides that the proceeds of all lands that have been granted by the United States to the State of California for the support of common schools, and the 500,000 acres of land granted to the new states by an act of Congress which have been sold, and all estates of persons who die without leaving a will or heir, and also amounts granted by Congress on the sale of lands in the State, shall remain a perpetual fund, the interest which, together with all the rents of the unsold lands, shall be inviolably appropriated to the support of common schools throughout the State.

To comply with this provision of the State Constitution, the State has accumulated the proceeds from the various sources referred to in a fund known as the School Land Fund. Various statutes have also been enacted whereby all unclaimed property that has permanently escheated to the State of California has also been deposited in the School Land Fund. The 1959 Legislature, however, amended the law so that thereafter all permanently escheated unclaimed property is to be deposited in the General Fund, except for the estates of deceased persons, which deposits are governed by the Constitution.

As of February 28, 1962, the School Land Fund consisted of the following.

Deposit in Surplus Money Investment Fund	\$7,300,000
Investment in securities	11,878,300
Loans on buildings	5,107,051
Loans on Richmond-San Rafael Bridge	4,689,812
	<u>\$28,975,253</u>

Amount of moneys from the fund invested, the amount of interest received and the rate of return for 1957 through 1961 are:

<i>Year</i>	<i>Average investment</i>	<i>Interest received</i>	<i>Rate of return</i>
1957	\$11,705,595	\$276,519	2.362%
1958	11,616,002	241,312	2.077
1959	13,209,270	348,558	2.621
1960	15,490,047	500,500	3.218
1961	17,816,827	597,694	3.355

These figures do not include either interest from building loans to other state agencies or royalties and rentals from land use.

The basic problem is whether the special fund approach to financing should be encouraged or whether all state revenue, regardless of the source, should where possible be pooled. This latter method is usually referred to as the budget system.

Upon the request of the Joint Legislative Audit Committee the Auditor General made a study of the School Land Fund and on October 13, 1960, submitted a report relating to this subject. In the interest of space, that report is not incorporated herein. The basic recommendation of the report was that the School Land Fund should be abolished and

that an appropriate constitutional amendment and enabling legislation should be introduced to accomplish that purpose

Thereafter, the Assembly Rules Committee assigned the subject of the School Land Fund to the Committee on Constitutional Amendments and to the Committee on Ways and Means for joint study. A joint hearing on this subject was held on March 6, 1962.

The subject of special funds has been studied by other legislative committees in years past. Notable is the 1961 report of the Assembly Interim Committee on Ways and Means dated February 15, 1961, and which pointed out at page 12,

"Special funds represent a clumsy and archaic method of making allocations of public moneys to particular purposes. They serve no purpose that could not be accomplished far more conveniently, efficiently and economically through the budget system. Public moneys should be allocated on the basis of demonstrated needs with due regard to the importance and urgency of each need in relation to all other needs. The special fund system takes no account of actual or relative needs for moneys, but arbitrarily applies revenues from particular sources to particular purposes.

"Special funds unnecessarily tie up cash in idle bank accounts. Huge working capital reserves are inevitable under the system since each fund is operated so as always to have some cash surplus . . .

"The theory of benefit in taxation is in some measure responsible for this situation. Under this theory those who benefit from a government service are taxed for its support and their contributions are used to support the service. The benefit theory is sound, but it is not necessary to establish special funds and to maintain idle cash balances to give effect to the principles involved in the case of any service. Budgeting and accounting can insure any allocation of funds decreed by the people or the Legislature. . . .

"Tradition and the apparent simplicity of a special fund are largely responsible for the continued existence of the special fund system. The special fund system antedated the budget. It is a primitive way of allocating moneys. It is analogous to the stocking or tin box method of budgeting under which the housewife places the money for each of the principal items of household expense in a separate stocking or box, except there are few housewives who would go hungry if the cash in the "food" stocking were exhausted and there were a surplus of money in all of the other stockings. When any group of taxpayers wants a new service, particularly a regulatory service in their own interests, the plan for the service always include the means of financing it, and what looks more simple to the average taxpayer or member of the Legislature than a provision in a bill to the effect that all revenues collected under its provisions shall constitute a special fund from which the expenses of administering the act shall be defrayed? The fallacy of this is that neither the cost of administration nor the amount or rate of the fee or tax is scientifically determined. In connection with almost every special fund a substantial part of the overhead cost of administration is borne by the General Fund supported by general taxation and in addition the people pay the

fees or taxes in increased prices of the services and commodities they buy from the regulated industry, trade, or profession

"In establishing special funds, the resulting complexity of governmental finances, the added difficulties of accounting, the unavoidable volume and intricacies of financial reports, and the inevitable bewilderment of the average taxpayer about the finances of government, are not recognized

"Special funds are incompatible with the budget. The budget should be a definite financial plan for a definite future period. It should embrace all the resources available and to become or to be made available, and a complete allocation of such resources on the basis of demonstrated needs. Special funds are continuing appropriations of specific revenues, without regard to actual needs. They tie the hands of the Executive and the Legislature since they can be used only for specific purposes, and thus, one Legislature succeeds in binding its successors."

CONCLUSION

The Legislature, during the 1961 Regular Session abolished nine special funds although creating seven new special funds. The School Land Fund, an existing special fund, provided less than one-tenth of one percent of the total disbursements made by the State to support public education during the fiscal year ending June 30, 1959. The Auditor General, State Controller, Director of Finance and Legislative Analyst all agree that this fund is no longer necessary for the support of public education nor sound financial administration and should therefore be abolished. For these reasons it is the conclusion of this committee that the following constitutional amendment abolishing the School Land Fund, Article IX, Section 4 of the Constitution should be introduced and approved at the 1963 General Legislative Session

Assembly Constitutional Amendment No. ---—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing Section 4 of Article IX, relating to the State School Fund to abolish said fund.

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1963 Regular Session, commencing on the seventh day of January 1963, 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

Section 4 of Article IX is hereby repealed

Sec. 4- The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools which may be, or may have been, sold or disposed of; and the 600,000 acres of land granted to the new states under an act of Congress distributing the proceeds of the public lands among the several states of the Union, approved A.D. 1841; and all estates of deceased persons who may have died without leaving a will or heir; and also such percent as may be granted, or may have been granted, by Congress on the sale of lands in this State; shall be and remain a perpetual fund; the interest

~~of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.~~

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, March 12, 1962

HON. MILTON MARKS
Assembly Chamber

RESTRICTED FUNDS—No. 2299

DEAR MR. MARKS. You request us to indicate funds which are restricted as to use by the Constitution, other than those funds contained in the School Land Fund.

In addition to restricting the use of funds derived from the sale of certain school lands and from the escheat of property to the State (Const Art IX, Sec 4), which funds are deposited in the School Land Fund, the Constitution restricts the use of specified funds in three instances

Section 25½ of Article IV provides that all money collected under the provision of any law relating to the protection, conservation, propagation, or preservation of fish, game, mollusks, or crustaceans and all fines and forfeitures imposed by any court for the violation of any such law "shall be *used and expended* for the protection, conservation, propagation, and preservation of fish, game, mollusks, or crustaceans and for the administration and enforcement of laws relating thereto."

Section 25¼ of Article IV requires that "all moneys, except such sum as the Legislature shall appropriate annually to defray the expenses of the State Athletic Commission of California and to pay the salaries of officers and employees as provided by law, received by the State from license fees, taxes or other means, on or in relation to boxing, sparring and wrestling matches or exhibitions, shall be and are hereby appropriated for the purpose of maintaining such homes for the care of veterans of any war of the United States . . ." The section further provides that such moneys shall be appropriated as the Legislature may direct

The third provision is Article XXVI, which provides in substance that "all moneys collected from any tax now or hereafter imposed by the State" upon the use of motor vehicle fuel and certain other highway revenues "shall be used exclusively and directly for highway purposes."

Very truly yours,

A. C. MORRISON
Legislative Counsel
By EDWARD K. PURCELL
Deputy Legislative Counsel

III. LOTTERIES—BINGO

Under Article IV, Section 26, of the Constitution, lotteries are prohibited. This section has been interpreted to classify bingo as a lottery, and thus prohibited. Many worthwhile organizations have historically used bingo as a means of raising revenue for legitimate functions. The problem that California has faced on this subject is that legalization of bingo would not only permit legitimate organizations to participate, but would also allow introduction of persons and groups whose purposes are not as worthwhile.

Unless adequate standards were established, the repeal of Article IV, Section 26 of the Constitution as it relates to bingo could lead to encouragement of professional gambling. For this reason there appears universal support for the position that if bingo were legalized only members of an organization in good standing would be allowed to operate the game for the organization in question.

Another problem involved is the proper classification of organizations so as to prevent the formation of groups which had an alleged proper purpose, but whose main function was to encourage gambling under the cloak of legality.

A number of the witnesses who appeared before the committee recommended that only congressionally chartered organizations be permitted to play bingo. Such a limitation would have excluded many legitimate civic clubs and organizations. The Legislative Counsel's opinion following this analysis sets out an exhaustive list of 51 congressionally chartered organizations. In addition, 13 states, the Legislative Counsel points out, presently permit bingo games for the benefit of nonprofit organizations chartered by Congress.

During the course of the committee's hearing on this matter eight issues were raised.

1. Permit the unrestricted playing of bingo
2. Permit bingo playing only by congressionally chartered organizations
3. Permit bingo playing by any state-approved organization of a charitable character.
4. Permit only the members of the organization to play
5. Permit only the members to operate the game, but allow the public to play
6. Limit the purposes for which bingo raised funds can be used
7. After having limited the organizations allowed to use bingo as a fund-raising device, leave the use of the funds unrestricted
8. Should a tax be imposed and, if so, by whom, city, county or state?

The organizations which appeared in support of the measure before the committee were of the highest caliber and indicated that the pur-

poses for which they would operate bingo games, if legalized, were most worthy. The committee also received recommendations that the committee consider broadening the scope of organizations which would be permitted to engage in such games beyond those specifically mentioned in the legislation presented to the committee. Such a recommendation raised the question of setting appropriate standards which would be equitable and which would protect the State of California from infiltration of undesirable elements into the State who might take advantage of legislation designed to benefit worthwhile groups and organizations.

CONCLUSION

In light of the law enforcement problem inevitable in the legalization of bingo, plus the manifestly difficult problem of classifying organizations which should be allowed to use bingo for fund-raising purposes, the committee concluded further study of this matter is needed. Since the purposes for which funds would be raised are obviously beneficial to the people of the State, after solving the procedural problems involved, this matter should be reconsidered.

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, May 8, 1962

HON. CHARLES W. MEYERS
State Building, San Francisco 2, California

BINGO STATUTES AND NONPROFIT ORGANIZATIONS CHARTERED BY CONGRESS—No. 3983

DEAR MR. MEYERS: You have asked several questions which we will deal with separately.

Question No. 1

How many states have laws at present or under consideration with reference to bingo games conducted for the benefit of a nonprofit organization chartered by Congress?

Opinion and Analysis No. 1

At the present time 13 states permit the conduct of bingo games for the benefit of nonprofit organizations chartered by Congress. These states are as follows:

Alaska, Colorado, Connecticut, Delaware, Maine, Maryland, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, and Rhode Island.

We have no means of ascertaining what states have similar laws under consideration.

Question No. 2

How many nonprofit organizations are chartered by Congress?

Opinion and Analysis No. 2

Congress has chartered at the present time 51 nonprofit organizations. The organizations are as follows:

American National Red Cross, Daughters of the American Revolution, American Historical Association, Sons of the American Revolution, Boy Scouts of America, Girl Scouts of America, The American Legion, United Spanish War Veterans, Marine Corps League, Belleau Wood Memorial Association, AMVETS (American Veterans of World War II), Grand Army of the Republic, United States Blind Veterans of World War I, Disabled American Veterans, American War Mothers, Veterans of Foreign Wars of the United States, American Battle Monuments Commission, The National Yeomen F. Service Clubs, National Observances, Patriotic Customs, Civil Air Patrol, Reserve Officers Association, National Academy of Sciences, Future Farmers of America, Military Chaplains Association of the United States of America, American Society of International Law, United States Olympic Association, Conference of State Societies, Washington, District of Columbia, Corregidor Bataan Memorial Commission, National Conference on Citizenship, National Safety Council, Pershing Hall Memorial Fund, Board for Fundamental Education, Sons of Union Veterans of the Civil War, The Foundation of the Federal Bar Association, The National Fund for Medical Education, The Army and Navy Legion of Valor of the United States of America, National Music Council, Boys' Clubs of America, Presidential Inaugural Ceremonies, Civil War Centennial Commission, Veterans of World War I of the United States of America, The Congressional Medal of Honor Society of the United States of America, Military Order of the Purple Heart of the United States of America, Blinded Veterans Association, Big Brothers of America, Jewish War Veterans, U S A , National Memorial, Inc., Ladies of the Grand Army of the Republic, Blue Star Mothers of America, Agricultural Hall of Fame (Title 36, United States Code)

Very truly yours,

A C MORRISON
Legislative Counsel
By TAKETSUGU TAKEI
Deputy Legislative Counsel

IV. LEGISLATIVE SESSIONS

The Legislative Counsel's office in response to an inquiry from the chairman of the committee set forth the following history:

"California, in its history as a state, has had two constitutions, the Constitutions of 1849 and 1879. In discussing the history of California constitutional provisions relating to the frequency and duration of legislative sessions, it is necessary to start with the Constitution of 1849.

"In the constitutional convention of 1849 considerable discussion arose over the question of annual versus biennial legislative sessions. Proponents of the annual session won out with the argument that the first years of the State would require much new legislation (Cal Const 1849, Art IV, Sec 2). Amendments adopted on September 3, 1862, changed the meetings of the Legislature to biennial sessions. The biennial session was incorporated into the California Constitution adopted in 1879. Sentiment for annual sessions was revived, however, when the necessity for annual sessions grew out of the great increase in the amount of legislative business. In 1939 (S C A. 29, Ch 115, 1939 Reg. Sess.), 1941 (S C A 7, Ch 145, 1941 Reg. Sess.), 1943 (S C A 25, Ch 139, 1943 Reg. Sess.) and 1945 (A C A 10, Ch 87, 1945 Reg. Sess.) the Legislature submitted constitutional amendments providing for regular sessions each year. The voters rejected the first three of these proposals, in 1940, 1942 and 1944. In 1946 the annual proposition carried by a two to one vote. Although this constitutional amendment provided for regular annual sessions by the Legislature, the scope of the sessions differed.

"All regular sessions in odd-numbered years were entitled 'general sessions' and there were no limitations on the type of legislation which the legislators could consider. All regular sessions in even-numbered years were labeled 'budget sessions'. The Legislature in a budget session could consider only the Budget Bill for the succeeding fiscal year, revenue acts necessary therefor, urgency measures requiring a two-thirds vote, acts calling elections, proposed constitutional amendments, 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 present scope of the budget session was established by constitutional amendment in 1950 (A C A 84, Ch. 187, 1949 Regular Session). The budget session is now limited to 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.

"Limitations on the length of legislative sessions in California have been imposed and removed periodically throughout the years down to the present. Under the original California Constitution of

1849 there was no limitation on the length of the legislative session. In 1862 amendments were adopted to the Constitution which provided that no session could continue for longer than 120 days (1849 Const., Art IV, Sec 2) The 1879 Constitution contained no limitation on the length of sessions

"In 1949 the constitutional amendment limiting the length of the general and budget session was adopted. A C A 84, Chapter 187, 1949 Regular Session provided that "All regular sessions in odd-numbered years shall be known as general sessions and no general session shall exceed 120 calendar days, exclusive of the recess required to be taken in pursuance of this section, in duration." The constitutional amendment further provided that all budget sessions were limited to 30 calendar days There have been no changes in the length of the general or budget session since the constitutional amendment of 1949

"The special or extraordinary session of the California Legislature is convened upon the issuance by the Governor of a proclamation wherein he states the purposes for which the Legislature was convened The Legislature when so convened has no power to legislate on any subjects other than those specified in the proclamation, but it may provide for the expenses of the session and other matters incidental thereto (Cal Const., Art V, Sec. 9). There is no limitation upon the length of a special or extraordinary session

"One of the features of the California legislative session history has been the bifurcated system Although it has no direct bearing upon the length of the session other than to require a mandatory 30-day recess, no history would be complete without some mention of the bifurcated system

"Under the bifurcated, or split session, which was adopted by constitutional amendment in October 1911, the California Legislature convenes for a period not to extend over 30 days, after which it recesses for at least 30 days, then reconvenes to transact legislative business When the Legislature reassembles after the recess, no bills may be introduced without the consent of three-fourths of the members of the house, and each legislator is limited to the introduction of two bills. The bifurcated system was terminated in 1958 by constitutional amendment (A C A. 36, Ch 320, 1957 Reg. Sess.)."

TYPES OF SESSIONS

Some of the alternative proposals for changes in legislative sessions were as follows.

(A) Continue the present system.

1. General sessions
2. Budget sessions
3. Special sessions

(B) General sessions each and every year Each general session would be a complete entity

(C) Congressional plan

General sessions continuing over a two-year period with the first session recessing, rather than adjourning.

(D) Provide in conjunction with alternatives B or C that the Legislature have the power to call itself back into session without action by the Governor.

Arguments of Proponents

The proponents of a change in the present three-session structure of the Legislature all agree that such change is necessitated by the State's growth and the resulting increase in the legislative work load. Those who support a congressional plan contend that to simply adopt annual general sessions will continue all the weaknesses of the present system. Only the congressional system whereby there is a recess, rather than adjournment between sessions, offers substantive reform. During the intersession recess, it is proposed that bills introduced at the first session remain alive. This would avoid the necessity of reintroducing legislation in the second general session, as would be the case if annual general sessions were adopted.

The proponents of a change also contend that the present system gives the Governor excessive power over the Legislature. They contend that through the use of special sessions the Governor can bargain with individual legislators and that in return for putting their subject on the Special Call, he is able to obtain their votes in favor of measures they would ordinarily oppose. In addition, the very concept of a special session envisions the Governor, rather than the Legislature, setting the legislative program for a particular session. This system renders unnecessary power in the executive branch.

The provision for a system whereby the Legislature may call itself back in session in conjunction with a general reform in the session structure of the Legislature is essential. Here, too, proponents contend that this power is necessary so that the Legislature is its own master. If the Governor should veto a measure after adjournment or recess, or if the judiciary rules a law unconstitutional, the Legislature should be able to reconvene itself to deal with the problem. Such a step could be taken by either the petition of the members of each house or by action taken by the leaders of both houses. In either event, another executive control of the Legislature would be removed.

Presently with Assemblymen serving only two-year terms, the first session a new Assemblyman attends is a general session. Before he has fully learned his job the session is over and he will not attend another general session until after he stands for re-election. Furthermore, all the measures introduced at this first general session have been studied prior to the new Assemblyman's election, thereby leaving him unequipped to deal effectively with a general session. Any of the alternatives would eliminate this problem. In addition, much of the benefit of studies conducted after a general session is lost due to Assemblymen either not standing for re-election or being defeated prior to the next general session where their study would be put to use. Any of the alternative proposals would remedy these defects in the present system and offer benefit to the public.

Much criticism is directed toward the limited budget session concept. It was originally introduced with the concept of permitting closer scrutiny of the budget by making it the only subject before the Legislature at the time of consideration. Budget sessions have not created smaller budgets. On the contrary, since they are held only every other year, they result in large appropriations, arising as the result of difficulties in projecting two-year expenditures. Furthermore, the limited period of a budget session results in less rather than greater study of the budget bill. In fact, due to the frequency with which the Governor calls a special session to run concurrently with the budget session, the Legislature has many more subjects to study and less time than if the budget were considered during a general session.

Therefore, it is contended that some change in the present system is necessary.

Arguments of Opponents

The opponents of change contend the status quo is a proven system **and has not shown** itself to be so unwieldy as to necessitate radical change. Certainly, criticism may be made of the multiple session system, but to reject it in total for an untried system is not justified. In addition, any of the alternatives will obviously require an increased salary for legislators. Recent experience has shown that it is not at all certain that the voters would support such an increase. If a change were effected without increased compensation, most legislators would have to make extreme economic sacrifices. Therefore, any change would have to be coupled with a legislative pay raise.

As for the difficulties under the present system to new Assemblymen, the problem may be solved by retaining the status quo and simply lengthening their terms to four years rather than two years, or by reversing the present arrangements of sessions so that the first session the new Assemblyman attends is a budget session rather than a general session.

Finally, any change in the present system will inevitably mean the end of the California concept of the citizen legislator.

LENGTH OF SESSIONS

As to the length of sessions the following suggestions were made.

- (A) Maintain the present system which provides 120-day limit on general sessions, Saturdays and Sundays excepted, and 150-day limit on legislative meetings in each two-year period, Saturdays, Sundays and constitutional recesses excepted, unless Governor calls special session.
- (B) No limit on the length of sessions. Adjournment or recess of annual general sessions or congressional type general sessions should be by joint resolution of Assembly and Senate.
- (C) Lengthen the existing or newly adopted session by a set number of days, such as 30 or 60 days.

Arguments of Proponents

Proponents of change contended that every general session between 1939-1949, except one, exceeded the 120-day limitation on such sessions.

Since 1949 the volume of legislation has risen steadily and there is every likelihood, given the rapid population and economic growth of California, that the increase will continue.

The restrictions upon the length of sessions are producing a number of undesirable consequences (a) too much legislation is introduced in haste at the commencement of the session; (b) considerable legislation is being passed without sufficient time for deliberation; (c) the short sessions are producing last minute log jams of bills; and (d) not enough consideration is being given to overall issues of state policy and economic growth.

The number of special sessions has increased greatly in recent years. Between 1940 and 1956, for example, there were a total of 22 special sessions. This means an average of more than one a year. The limitations upon both general and budget sessions is, with the working volume of legislative business, tending to produce more special sessions. The purpose of constitutional restrictions upon the length of sessions is thus being defeated.

During general sessions the 120-day limit allows a legislator to know how long he is going to be in session, thereby encouraging procrastination. In addition, it encourages the legislator to restrain his bills and then introduce them near the end of the session in the hope they will be passed in the last minute rush.

A final objectionable side effect of the 120-day limit on general sessions results in the Governor's office receiving many bills after adjournment or just prior to adjournment. By simply not acting until the Legislature has adjourned, the executive veto becomes almost absolute, since the Legislature has adjourned and cannot be called into session, except by executive action.

Arguments of Opponents

Those who supported the status quo pointed out that the premise for opposition to the unlimited session appears to be a basic distrust of the Legislature. If the people by way of the Constitution were not to limit the term of each session, it is contended that the Legislature would never adjourn.

If sessions were not limited, the result would be increasingly more legislation, unnecessarily extending government's activities into every area of our free economy. The advocate of the status quo is the supporter of the doctrine, "That, that government which governs least, governs best."

ELAPSE TIME BETWEEN A BILL'S INTRODUCTION AND FIRST HEARING

The following are the several proposals made in reference to the elapse time between a bill's introduction and first hearing.

- (A) Present system provides for a 30-day period between the introduction of a bill at a general session and the time it can first be heard in committee. This provision may be dispensed with by the consent of three-fourths of the members of the house concerned.

- (B) Proposition 8, on the November 6, 1962, ballot proposed a 20- rather than a 30-day delay between the introduction and first committee hearing of a bill at a general session. This measure was defeated.
- (C) Provide for an even lesser period of time between a bill's introduction and first committee hearing depending on the nature of the bill.
- (D) Leave the entire question of delay between introduction and hearing up to the Legislature and make no mention of it in the Constitution.

Arguments of Proponents

Those desiring change contend that a strong argument can be made that the present 30-day waiting period between introduction and committee hearings on most bills is a waste of time. Some advocates contend that even if a waiting period is a good procedure, it should not be embodied in the Constitution. Procedural questions of this nature should be left to the Legislature to determine for itself.

Under the present system although the 30-day rule can be waived by three-fourths vote of the interested house this is a cumbersome system. Measures such as Proposition 8 do not really meet the basic problem but are beneficial insofar as they decrease the waiting period.

Underlying any constitutional waiting period is the proposition that this is a safeguard to the people against bad legislation. During the 30-day waiting period, interested persons can inform themselves about proposed legislation and then appear to resist such measures at committee hearings.

This is not necessarily true since under the current system a bill may be introduced, pass through the 30-day period and then be amended just prior to hearing. Thus, the informative function of the system is easily frustrated. Nevertheless the delay function of the constitutional procedure is not so easily denied resulting in many trivial or routine matters being delayed 30 days between introduction and hearing. This is a waste of the Legislature's time especially when the session is of a limited duration.

Arguments of Opponents

Those indicating support of the status quo contend the 30-day waiting period or some similar period is necessary for several reasons. It gives the legislator time to determine his constituents' attitudes on a proposed measure. It gives the electorate time to form either opposition or support for a measure and prepare to express that position at the hearings. For the lobbyist this delay is necessary so he can keep track of the many proposals affecting his group's interests. For the legislator and his staff such a delay is necessary if they are to have sufficient time to study new bills and determine their complex effect or what position should be taken.

An administrative consideration is that without some delay period the State Printing Office would never be able to have prepared printed copies of each bill at the time of hearing. Although it is not proposed

that the Legislature should determine their rules of procedure based solely on considerations of the State Printing Office, this factual problem should be weighed

CONCLUSION

There is no doubt that there are many alternatives to the present system of conducting legislative business. Without exception, members of the committee and witnesses favored change in one or more areas. The problem arises in obtaining agreement on which of the several alternative proposals is best suited for solving present legislative problems.

Inasmuch as there were a number of methods to solve this question, the committee does not specifically recommend any particular proposal in preference to another, but does recommend that the Legislature consider the alternative suggestions set forth in this report and that it adopt those measures which are best suited to the present needs of the State of California. With our State now, or soon to be, the most populous in the nation, prompt steps must be taken to revise a legislative system which was designed for a state with less complex problems.

V. SUBVERSIVES AND MEMBERS OF THE COMMUNIST PARTY

A.C.A. 38 would amend Section 19 of Article XX of the California Constitution

Section 19 of Article XX provides as follows

"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:

"(a) Hold any office or employment under this State, including but not limited to the University of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State; or

"(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."

A.C.A. 38 would revise this prohibition in two respects. First, it would extend the prohibition against tax exemptions or public office or employment to any person who is a member of a subversive organization. Secondly, it extends this prohibition to a person who is a member of the Communist Party.

A.C.A. 38 defines a subversive organization as either.

"(1) An organization which advocates, advises, teaches, or practices the duty, necessity or propriety of controlling, conducting, seizing or overthrowing the government of the United States or of the State, by force or violence, or

"(2) An organization which is subject to foreign control in the sense that its objectives and aims contemplate the overthrow of the United States by force or violence and it either solicits or accepts financial support or is affiliated with, or its policies are determined by or at the suggestion of a foreign government, foreign political party or international political organization" *.

Subsequent to hearings on this matter Proposition 24 was placed upon the November 1962 ballot by initiative. Both Proposition 24 and the measure heard by this committee broadened the definition of what was a subversive organization or an organization subject to foreign control. To that extent both constituted significant changes in the present section. Proposition 24 went on to expressly set out methods

* Office of Legislative Counsel

of implementing the sanctions imposed without further legislative action. To that extent, it differed from the measure heard by the committee

The field of anticommunist legislation is ripe with past statutory enactments. A partial list of state legislation in this area would include:

(1) Article XX, Section 3, California Constitution, Government Code Sections 1360-1369, 18150-18158, 3100-3109, Elections Code Sections 6491, 6509 and 8410 (Loyalty Oaths).

(2) Government Code Sections 18200, 1028 and 1028.1, Education Code Sections 12951-12958, 13403, 13408, 13741 and 24307, Military and Veterans Code Section 1518.4 (Public Employment)

(3) Article XX, Section 19 (Public Employment and Tax Exemptions).

Arguments of Proponents

Proponents of A.C.A. 38 contend that existing statutes, federal and state, are inadequate. Primarily they are not broad enough in defining subversive and front organizations. Loyalty oath legislation is also unsatisfactory due to the difficulty of obtaining prosecutions for false swearing. Usually such prosecutions require that the district attorney prove the defendant knew the nature of the organization to which he belongs and its objectives. In addition the tax exemption aspects of A.C.A. 38 cover a field which now is for practical purposes without prohibitions of this nature. As such they contend the amendment would fulfill a great need. Finally, the aspects of the proposal which increase the definition of prohibited organizations give greater flexibility which is needed in this area for effective enforcement.

All proponents emphasized the great and present threat in all aspects of state government of communists and subversives and that as such this proposal is of highest priority.

Arguments of Opponents

Opponents of A.C.A. 38 contend that since in the November 1962 election Proposition 24 which was substantively identical to this amendment was defeated, the Legislature should take the rejection of Proposition 24 as an expression by the electorate that the present legislative enactments are sufficient to meet the problem.

As to substantive criticism of the measure, opponents of the amendment state that the threat of subversion and infiltration is greatly exaggerated by supporters of the measure and that existing statutes were adequate. Furthermore, serious questions were raised as to the language of A.C.A. 38 and the Legislative Counsel's opinion, appended hereto, indicated that portions of the measure would likely be held to be unconstitutional.

CONCLUSION

The Legislative Counsel's opinion which follows contains an extensive analysis of federal and state statutes and case law relevant to A.C.A. 38. There appears to be little reason for immediate legislative action in view of the defeat of Proposition 24 on the November 1962 ballot. But, there can be no doubt that close scrutiny of the effectiveness of existing

anticommunist legislation should be continued to assure continued effective restraint of persons who are members of disloyal organizations and that in those instances where it is demonstrated that present statutes are inadequate the Legislature should take remedial action

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA January 9, 1962

HON MILTON MARKS

Russ Building, San Francisco 4, California

SUBVERSIVES AND MEMBERS OF COMMUNIST PARTY—No. 1358

DEAR MR MARKS You have referred us to Assembly Constitutional Amendment No 38 of the 1961 Regular Session, as introduced, and have asked us various questions with respect to this measure We have combined some of the questions asked and will answer them in series

Analysis of A.C.A. 38, 1961 Sess., As Introduced

Before proceeding to the specific questions asked it is necessary to analyze A.C.A. 38

This measure would have amended Section 19 of Article XX of the California Constitution Section 19 presently denies tax exemptions under state or local law and public office or employment by the state or local governments to persons or organizations advocating the overthrow of the government of the United States or of the State by force or violence or who advocate the support of a foreign government against the United States in the event of hostilities

A.C.A. 38 would revise this prohibition in two respects First, it extends the prohibition against tax exemptions or public office or employment to any person who is a member of a subversive organization. Secondly, it extends this prohibition to a person who is a member of the Communist Party.

With respect to the first change in Section 19, the measure defines a subversive organization as meaning either .

(1) An organization which advocates, advises, teaches, or practices the duty, necessity, or propriety of controlling, conducting, seizing, or overthrowing the government of the United States or of this State, by force or violence, or

(2) An organization which is subject to foreign control in the sense that its objectives and aims contemplate the overthrow of the United States by force or violence and it either solicits or accepts financial support or is affiliated with, or its policies are determined by or at the suggestion of, a foreign government, foreign political party, or international political organization

Question No. 1

What existing California legislation is there on this same subject, and what effect would the enactment of A.C.A. 38 have upon such legislation?

Opinion and Analysis No. 1

The board subject covered by A C A 38 is subversives and subversive organizations. The measure deals specifically with two aspects of this broad subject (1) prohibition of public employment of subversives and members of subversive organizations, and (2) prohibition of tax exemptions for subversives, subversive organizations, and members of subversive organizations. We will limit our discussion of existing legislation to constitutional provisions or statutes which deal with or cover these two aspects of the general field of subversion. We have previously summarized Section 19 of Article XX of the State Constitution, which A C A. 38 would have amended.

(a) *Public Employment*

(1) *Article XX, Section 3, California Constitution*

This section requires Members of the Legislature and public officers and employees, except such inferior officers and employees as are exempted by law, to take an oath, before entering upon the duties of their offices, that they do not advocate violent overthrow of the government, that they will not advocate such action or become a member of an organization which advocates it, and that they have not, within the preceding five years been a member of an organization so advocating, except as expressly stated.

(2) *Government Code Sections 1360-1369*

These provisions require all public officers to take the constitutional oath described above (1).

(3) *Government Code Sections 18150-18158*

These provisions require every person in the state service but not in the civil service, and every person employed in the civil service, to take the constitutional oath described by (1) above, within first 30 days of employment.

(4) *Government Code Sections 3100-3109*

These provisions require all "civil defense workers," i.e., all public employees as well as volunteers in accredited civilian defense organizations, to take the constitutional oath described in (1), above, before entering on their duties. They prohibit payment of compensation to any such "civil defense worker" unless he has taken the oath. They provide that if a person takes the oath and, while in public service, advocates or becomes a member of any organization that advocates violent or otherwise unlawful overthrow of the government, he is guilty of a felony.

(5) *Elections Code Sections 6491, 6509*

These sections, in part, require a declaration of candidacy and acceptance of nomination to contain sworn statements that the affiant is not engaged in any attempt to overthrow the government by force or violence and is not knowingly a member of any organization engaged in such attempt.

(6) *Elections Code Section 8410*

This section requires every member of a county central committee, before entering upon his duties, to take the constitutional oath described in (1) above.

(7) *Government Code Section 18200*

This section prohibits knowing employment by any state agency or court of anyone who advocates, teaches, justifies, aids, or abets a program of sabotage, force and violence, sedition, or treason against the government

(8) *Government Code Section 1028*

This section provides that it shall be sufficient cause for the dismissal of any public employee that he advocates or is knowingly a member of the Communist Party or of an organization which, during the time of his membership he knows advocates overthrow of the government of the United States or of any state by force or violence

(9) *Education Code Sections 13403, 13408*

These sections make commission, aiding, or advocacy of criminal syndicalism or knowing membership in the Communist Party or violation of Government Code Section 1028, supra, grounds for dismissal of a permanent certificated school district employee

(10) *Education Code Sections 12951-12958*

These sections prohibit employment by a school district of a member of the Communist Party. They require an employee of a school district to answer questions of a federal or state legislative investigating committee or school district governing board relating to past knowing membership in the Communist Party since October 3, 1945, present membership in the Communist Party and related matters, or suffer dismissal

(11) *Education Code Section 13741*

This section provides that knowing membership in the Communist Party and any violation of the provisions of (10), above, is a ground for suspension or dismissal of a noncertificated employee of a school district

(12) *Education Code Section 24307*

This section provides that state college personnel can be dismissed or otherwise disciplined for membership in, or active support of, a "communist front" or "communist action" organization or persistent active participation in public meetings conducted or sponsored by such an organization or willful advocacy of violent or other unlawful overthrow of the government or willful advocacy of communism

(13) *Military and Veterans Code Section 1518 4*

This section requires the Director of the Disaster Office to screen volunteer civil defense and disaster service workers to determine their loyalty.

(14) *Government Code Section 1028 1*

This section requires a public employee other than a school district employee (see Gov. C Sec 1028 2) to answer questions asked by a federal or state investigating committee about his advocacy of violent

overthrow of the government, his membership in the Communist Party since October 3, 1945, and similar matters. The section makes failure or refusal to comply a ground for mandatory dismissal

(b) Tax Exemptions

(1) The only operative provision now in California law, relating to tax exemptions with respect to subversive organizations and members of subversive organizations, is Section 19 of Article XX of the California Constitution. As previously discussed, this section would be amended by A.C.A. 38.

Sections 32 and 23705 of the Revenue and Taxation Code required every property tax exemption claimant to sign a statement on his tax return declaring that he does not advocate the unlawful overthrow of the government of the United States or of this State or advocate the support of a foreign government engaged in hostilities with the United States. Section 32 was declared unconstitutional in *Speiser v. Randall* (1958), 357 U.S. 513, 2 L. ed. 2d 1460, and *First Unitarian Church v. Los Angeles* (1958), 357 U.S. 545, 2 L. ed. 2d 1484. The comparable provision in Section 23705 in the Bank and Corporation Tax Law would also appear to be unconstitutional.

We turn now to a discussion of the effect the enactment of A.C.A. 38 would have on the legislation summarized under (a) above:

It seems clear that the enactment of A.C.A. 38 would not affect the legislation discussed in (1) to (6), inclusive, above. That legislation requires various public officers and employees to take loyalty oaths. A.C.A. 38 neither requires nor prohibits such loyalty oaths. It is also clear that A.C.A. 38 would not affect the legislation summarized under (10) and (14) requiring public employees to answer questions asked by a federal or state investigating committee about his advocacy of violent overthrow of the government, his membership in the Communist Party, and similar matters.

However, A.C.A. 38 would appear to overlap or include many of the statutes summarized under (7) to (12), inclusive, prohibiting public agencies from employing persons engaged in subversive activities. A.C.A. 38 denies public employment to members of subversive organizations and to members of the Communist Party, as well as prohibits such employment to persons who advocate the overthrow of the government of the United States by force and violence.

Section 18200 of the Government Code (see (7) supra) prohibits employment by a state agency of a person who advocates, justifies, aids, or abets a program of sabotage, force and violence, sedition, or treason against the government. A.C.A. 38 is broader in that its prohibition extends to members of subversive organizations and specifically to members of the Communist Party.

Section 1028 of the Government Code (see (8) supra) makes it a sufficient cause for dismissal of a public employee that he advocates or is knowingly a member of the Communist Party or of an organization which during the time of his membership he knows advocates overthrow of the federal or state government by force or violence. All of the provisions of this section appear to be included in A.C.A. 38. A.C.A. 38 appears to be broader in its definition of a subversive organization, particularly as including an organization subject to foreign control.

Education Code Sections 13403 and 13408 (see (9) *supra*) are included in A C A 38 except for the provision making the commission, aiding, or advocacy of criminal syndicalism a grounds for dismissal of a certificated school district employee. Criminal syndicalism includes advocating unlawful acts or methods of terrorism to effect a change in industrial ownership or control, or effecting any political change (See 11400, Penal Code). A C A 38 does not cover this.

Education Code Sections 12952, 12954, 12957, and 13741 (see (10) and (11) *supra*), prohibiting employment by school districts of members of the Communist Party and making such membership cause for dismissal, are included within A C A 38.

Education Code Section 24307 (see (12) *supra*) authorizes the dismissal of state college personnel for membership in, or active support of, a "communist front" or "communist action" organization, persistent active participation in public meetings conducted or sponsored by such an organization or willful advocacy of violent or other unlawful overthrow of the government or willful advocacy of communism. This provision appears to be broader than A C A 38 in that it covers persistent active participation in public meetings conducted or sponsored by the described organizations. Its remaining provisions appear to be contained in A C A 38.

In summary, some of the existing provisions of California law governing dismissal of public employees for subversive activities or membership in subversive organizations would be covered by A C A 38 either in whole or in part. In some cases the existing provisions contain features not in A C A 38. However, we do not believe the enactment of A C A 38 would invalidate these provisions. Even if A C A 38 were to be adopted, Section 19 of Article XX of the Constitution would continue to direct the Legislature to enact laws necessary to enforce the section. Also, the measure does not purport to deny to the Legislature the power to enact laws on matters not covered by A C A 38.

Question No. 2

What existing federal legislation is there on this same subject, and what effect would the enactment of A C A 38 have upon such legislation?

Opinion and Analysis No. 2

We will discuss only those federal laws which might be held by the courts to have an effect on the provisions of A C A 38.

(1) *Smith Act* (18 U.S.C., Sec. 2385)

This act makes the following conduct a felony:

(a) Knowingly or willfully advocating or teaching the duty, necessity, or propriety of overthrowing the government of the United States, any state, or political subdivision thereof, by force or violence.

(b) Printing, publishing, distributing, or displaying publicly any written matter advocating, advising, or teaching the duty, necessity, or propriety of overthrowing or destroying any government in the United States by force or violence, with intent to cause the overthrow of such government,

(c) Organizing, or helping or attempting to organize, any group of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence, or membership or affiliation with any such group, knowing its purposes.

In *Scales v. United States* (1961), 6 L. ed. 2d 782, the Supreme Court of the United States construed the membership provision of this act as requiring proof that the individual was a member of an organization described in the act with specific intent to bring about violent overthrow of the government, and also that the individual was an "active" member of the organization. As so construed, the court upheld the validity of this provision of the act.

(2) *Subversive Activities Control Act of 1950* (50 U.S.C., Sec. 781 et seq.)

This act recites the nature and scope of the menace of a worldwide communist movement, controlled by the government of a foreign country which the act leaves nameless. The communist organization in the United States is declared to constitute a clear and present danger to the security of the United States and its institutions (50 U.S.C. 781).

The major part of the act created a Subversive Activities Control Board before which proceedings are instituted by the Attorney General to determine organizations that are communist-action organizations, communist-front organizations, and communist-infiltrated, as defined in the act (50 U.S.C. 791, 792). The board's order does not become final until judicial review, including discretionary review on certiorari by the Supreme Court, has been either completed or foreclosed by lapse of time (50 U.S.C. 793).

The board has found the Communist Party of the United States to be a communist-action organization as defined in the act, and this finding has recently been upheld by the United States Supreme Court after a long history of litigation (*Communist Party of the United States v. Subversive Activities Control Board*, 6 L. ed. 2d 625). A communist-action organization is defined as any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (1) is substantially directed, dominated, or controlled by the foreign government or foreign organizations controlling the world communist movement, and (2) operates primarily to advance the objectives of the world communist movement.

Organizations determined by the board to come within the definitions of communist organization (communist-action or communist-front) are required to register with the Attorney General and file statements about their financial affairs, names and addresses of their officers, and, in the case of communist-action organizations, the names and addresses of members, and annual reports (50 U.S.C. 786) *

Members of such organizations required to register cannot hold non-elective employment under the United States, and must disclose membership when applying for such employment (50 U.S.C. 784). They must disclose membership in applying for employment at defense facilities

* Communist-infiltrated organizations are not required to register with the Attorney General, but are required to label their publications mailed or transmitted through instrumentalities of interstate and foreign commerce, and their communications broadcasts, and are deprived of federal income tax exemptions, and of certain benefits under the National Labor Relations Act.

designated as such by the Secretary of Defense, and members of communist-action organizations are forbidden to hold such employment (50 U.S.C. 784). They may not receive or use a passport (50 U.S.C. 785). They are forbidden to hold union offices or employment, and a labor union which is determined to be a communist organization is ineligible to act as an employees' bargaining representative under the National Labor Relations Act (50 U.S.C. 784, 792a (h)).

Government and defense facility employees are forbidden to contribute money or services to communist organizations required to register under the act (50 U.S.C. 784). Literature distributed through the mails or any instrumentality of interstate or foreign commerce and radio and television broadcasts by such organizations must indicate that they are disseminated or sponsored by communist organizations (50 U.S.C. 789). Contributions to communist organizations are not deductible for income tax purposes and such organizations are denied income tax exemptions to which they might otherwise be entitled under I.R.C. 101, which applies to charitable, scientific, and educational organizations and the like (50 U.S.C. 790).

The duty to register devolves upon members of communist-action organizations when the organizations to which they belong fail to register or list them as members (50 U.S.C. 787).

(3) *Communist Control Act of 1954 (50 U.S.C., Sec. 841, et seq.)*

This act finds that the Communist Party of the United States is an instrumentality of a conspiracy to overthrow the government of the United States. Its policies are prescribed by the foreign leaders of the world communist movement. It is dedicated to the proposition that the present constitutional government of the United States must be brought to ruin by any available means, including force and violence. Its existence constitutes a clear and present danger to the security of the United States. The act recites that, therefore, the Communist Party should be outlawed.

The act provides that the Communist Party of the United States is not entitled to any of the rights, privileges and immunities heretofore granted to the party by reason of the laws of the United States or any political subdivision thereof, and such rights are terminated (50 U.S.C., Sec. 842).

The act further provides that whoever knowingly and willfully becomes or remains a member of (1) the Communist Party, or (2) any other organization having for one of its purposes or objectives the establishment, control, conduct, seizure, or overthrow of the government of the United States or the government of any state or political subdivision thereof, with knowledge of the purpose or objective of such organization, shall be subject to the provisions of the Internal Security Act of 1950 as a member of a communist-action organization (50 U.S.C., Sec. 843). One such effect is to prohibit a member of such an organization from holding a nonelective employment under the United States (50 U.S.C., Sec. 784).

This act has been considered only once by the Supreme Court of the United States. In the recent case of *Communist Party v. Catherwood* (1961), 367 U.S. 389, 6 L. ed. 2d 919, the court held that the act did

not require the exclusion of the Communist Party from New York's unemployment compensation system. The court did not consider the constitutionality of the act nor attempt to describe the privileges, rights, and immunities forbidden to the Communist Party by the act. The court merely stated that it did not believe that barring the party as employers under state and federal unemployment insurance systems was within the contemplation of the act.

The court did reject a contention that the act be construed as withholding to the Communist Party any advantage occurring by reference to the statutory or common law of a state.

(4) *Loyalty of Governmental Employees*

There are various other provisions of the federal law dealing with the loyalty of employees of the United States government.

(a) *Hatch Act* (5 U.S.C., Sec. 118p)

This act prohibits any person from holding office or employment in the government of the United States who (1) advocates the overthrow of our constitutional form of government, or (2) who is a member of an organization that advocates the overthrow of our constitutional form of government in the United States, knowing that such organization so advocates (5 U.S.C., Sec. 118p).

Persons accepting such office or employment must submit an affidavit that their employment is not in violation of this prohibition (5 U.S.C., Sec. 118q).

(b) *Other provisions*

Each department head in the federal government has power to suspend summarily any employee in his department in the interest of the national security (5 U.S.C., Secs. 22-1 and 22-3).

In addition various executive orders have been issued by the President setting forth security requirements for employees of the United States government (see Executive Order No. 10450, April 27, 1953, as amended, and contained in note to 5 U.S.C.A., Sec. 631).

We turn now to a consideration of whether the existence of any of the federal statutes discussed above would preclude a state from enacting and enforcing a law such as A.C.A. 38 on the grounds either that the state law would conflict with the federal law or that the federal government has occupied this field to the exclusion of all state legislation on the subject.

The Supreme Court of the United States considered this question with respect to the Smith Act in *Pennsylvania v. Nelson* (1955), 350 U.S. 497, 100 L. ed. 640. In this case the defendant was prosecuted by the state under a sedition law (covering sedition against both the United States and the State of Pennsylvania) for sedition against the United States only. The United States Supreme Court sustained the State Supreme Court's reversal of the conviction and held that, considering all of the federal legislation on sedition, including the Smith Act which proscribed sedition against the United States and state and local governments, it was "clear that Congress has intended to occupy the field of sedition," and that parallel state legislation proscribing the same conduct was superseded by the federal law. Dicta in the *Nelson* case was broad enough to indicate that the court might in future cases

hold that even state law proscribing sedition against the state was superseded by federal law.

However, in *Uphaus v Wyman* (1959), 360 U.S. 72, 3 L. ed. 1090, 1096 (5 to 4 decision), the Supreme Court stated that the *Nelson* case was restricted to a holding that federal law supersedes state law which proscribes the same conduct. The court said that the *Nelson* case "made clear that a state could proceed with prosecutions for sedition against the state itself; that it can legally investigate in this area follows a fortiori."

While the extent to which a state may legislate to protect itself against sedition and subversive activities without invading the area occupied by federal law has not been made entirely clear, it seems apparent from the *Uphaus* case, supra, that the *Nelson* case does not mean that all state law punishing or controlling sedition, including subversion, against the state and its local entities, is superseded by the federal law.

A.C.A. 38 does not undertake to make membership in the Communist Party, or in a subversive organization, as described therein, a crime. The measure only prohibits such persons from holding public office or employment in this State or from receiving any exemption from a tax imposed by this State or political subdivision thereof. Thus, it is not like the state sedition law considered in the *Nelson* case.

There are no federal statutes which purport to prohibit or control the employment by a state or a political subdivision thereof, of members of the Communist Party or members of subversive organizations. Therefore, we do not believe the Supreme Court of the United States would hold that the public employment feature of A.C.A. 38 would be superseded by a federal occupation of the field or by any existing federal legislation.

We turn now to the tax exemption feature of A.C.A. 38. The measure does not purport to bar the Communist Party by name from exemption from state or local taxes. It applies to persons who are members of the Communist Party or of a subversive organization and to persons and organizations which advocate the overthrow of the government of the United States.

The federal Subversive Activities Control Act of 1950 does contain provisions relating to certain tax deductions. No deduction may be made for federal income tax purposes for a contribution to a communist organization registered under the act or as to which there is in effect a final order requiring the organization to register or determining that it is a communist-infiltrated organization. In addition such an organization may not itself receive an income tax exemption under Section 101 of the Internal Revenue Code, which applies to charitable, scientific, and educational organizations and the like (50 U.S.C., Sec. 790).

However, the tax exemption provision of the Subversive Activities Control Act of 1950 deals only with federal taxes. It has no effect upon state taxes. Thus, the tax exemption provision of A.C.A. 38 would not conflict with the federal act.

As previously pointed out the Communist Control Act of 1954 (50 U.S.C., Sec. 841 et seq.) provides that the Communist Party of the

United States is not entitled to any of the rights, privileges, and immunities heretofore granted to the party by reason of the laws of the United States or any political subdivision thereof (50 U.S.C., Sec. 842).

It might well be contended that the federal act denies to the Communist Party tax exemptions under state laws. It was held by the Court of Appeals of New York in the case of *In re Albertson's Claim* (1960), 168 N.E. 2d 242, that the act did apply to deny classification of the Communist Party as an employer under the state's unemployment insurance law. As previously discussed, this case was reversed by the Supreme Court of the United States in *Communist Party v. Catherwood* (1961), 367 U.S. 389, 6 L. ed. 2d 919, on the grounds that the federal act did not require this result. The Supreme Court did not pass on the validity of the federal act or even whether the act applied to privileges or exemptions granted by state laws. As previously discussed, the validity of this act and the extent to which it applies to deny privileges to the Communist Party granted under state laws has not been determined by the Supreme Court of the United States. In any event, A.C.A. 38 would not appear to conflict with the federal Communist Control Act of 1954 since that act, in general, deals only with the Communist Party as an entity and not with members of the party, whereas A.C.A. 38 does not purport to deny tax exemptions to the Communist Party by name but only to deny such exemptions to members of the party or of subversive organizations and to organizations which advocate the overthrow of the government of the United States or of the State by unlawful means.

A provision of the Communist Control Act of 1954 does provide that a person who knowingly and willfully becomes or remains a member of the Communist Party with knowledge of the purpose or objective of such organization is subject to the provisions and penalties of the Internal Security Act of 1950 as a member of a "communist-action" organization. Thus, such a member of the Communist Party would be disqualified from nonelective federal employment (50 U.S.C., Sec. 843). However, the provision does not purport to bar employment by state or local governments.

Question No. 3

Is there presently a bar on the right of a member of the Communist Party or subversive organization to secure a tax exemption or to hold public office or employment?

Opinion No. 3

The California law does contain prohibitions of this nature as discussed below. The federal law on this subject is discussed under Question No. 2.

Analysis No. 3

Section 19 of Article XX of the California Constitution presently denies exemption from any taxes imposed by the state or local government, to any person or organization which advocates the overthrow of the government of the United States or the State by unlawful means or who advocates the support of a foreign government in the event of hostilities against the United States. However, the provision does not purport to base such prohibition on membership in such an or-

ganization. Furthermore, the Communist Party, by name, is not denied such a tax exemption.

With respect to public employment, Section 19 of Article XX of the California Constitution also presently prohibits persons who advocate the overthrow of the government of the United States by unlawful means from holding any office or employment under this State.

Various statutes supplement this constitutional prohibition. These were discussed more fully under Question No. 1. Section 1028 of the Government Code makes it a cause for dismissal of any public employee that he advocates or is knowingly a member of the Communist Party or of an organization which, during the time of his membership, he knows advocates the overthrow of the government of the United States or of any state by force or violence.

Similar provisions deal specifically with employment of persons by the public schools (Ed C, Secs 12951-12958, 13403, 13408, 24307).

The federal law contains provisions with respect to federal employment of members of subversive organizations and the Communist Party. These provisions were discussed under Question No. 2.

Question No. 4

What is the present status of members of the Communist Party in view of the recent United States Supreme Court decisions respecting registration of such members? Specifically, would a person who was a member of the Communist Party and who failed to register under that act, automatically be barred from either a tax exemption or from holding public office or employment?

Opinion No. 4

The Communist Party of the United States of America is now subject to a final order of the Subversive Activities Control Board requiring the organization to register under the Federal Subversive Activities Control Act of 1950. Under the act the organization itself and the members thereof having knowledge or notice of the order are automatically subject to certain disabilities discussed below.

Analysis No. 4

The Federal Subversive Activities Control Act of 1950 (50 U.S.C., Sec. 781 et seq.) requires organizations determined by the Subversive Activities Control Board to be "communist-action" or "communist-front" organizations to register. The board has found the Communist Party to be a "communist-action" organization, and, thus, required to register. The Supreme Court of the United States has upheld this determination (*Communist Party of the United States v. Subversive Activities Control Board*, *supra*).

The act imposes certain disabilities on members of a "communist-action" organization as to which there is in effect a final order of the board requiring the organization to register. If a member of the organization has notice or knowledge that the order has become final, he may not hold any nonelective office or employment under the United States (50 U.S.C., Sec. 784). Thus, members of the Communist Party, having knowledge or notice of the order of the Subversive Activities

Control Board, are now disqualified from federal nonelective office or employment

The act also provides that an organization is not entitled to an exemption from the federal income tax if there is in effect a final order of the Subversive Activities Control Board (50 U S C , Sec 790). Thus, the Communist Party of the United States is now disqualified from this tax exemption

However, it should be noted that the above disabilities apply only with respect to federal employment and the federal income tax.

Question No. 5

Does the naming of the Communist Party in A C A 38 constitute special legislation which is valid?

Opinion No. 5

In our opinion the Supreme Court of the United States would probably uphold the provisions of A C A 38 barring a member of the Communist Party from public employment in the State. However, the validity of the tax exemption provisions of the measure is more doubtful

Analysis No. 5

A C A 38 would, in part, prohibit any person who is a member of the Communist Party from holding any public office or employment under this State or from receiving an exemption from any tax imposed by the State or any local government

Since the measure would amend the California Constitution there would be no questions presented as to its validity under the State Constitution. However, serious questions are presented by the measure under the United States Constitution. It is, therefore, necessary to review the decisions of the Supreme Court of the United States in this field

In *American Communications Assoc v Douds* (1950), 339 U.S. 382, 94 L ed 925, the court considered the validity of a provision of the Management Labor Relations Act (29 U S C , Sec. 159 (h)) providing that, as a condition of a union's utilizing the opportunities afforded by the act, each of its officers must file an affidavit that he is not a member of the Communist Party or is not affiliated with such a party. The court upheld the statute. Five of the justices upheld the validity of the portion of the statute requiring disclosure of affiliation or membership in the Communist Party against contentions it exceeded the power of Congress to regulate interstate commerce, infringed the constitutional right of free speech, free assembly, and the right to petition the government, and that it constituted a bill of attainder

The court stated that one of the objectives of the statute was to remove the "political strike" as an obstruction to interstate commerce. The court stated that Congress could rationally find that the Communist Party is not like other political parties in its utilization of positions of union leadership as a means by which to bring about strikes or other obstructions of commerce for purposes of political advantage, and that members of the Communist Party represent a continuing danger of disruptive political strikes when they hold positions of union leadership. The court concluded that the remedy provided by the

statute bore a reasonable relation to the evil which the statute was designed to reach

On the issue of free speech and assembly as guaranteed by the First Amendment, the court stated that these rights are not absolute. In this statute Congress did not interfere with speech because it feared the consequences of speech but it regulated harmful conduct which Congress has determined is carried on by persons who may be identified by their political affiliations and beliefs

"Section 9(h) is designed to protect the public not against what communists and others identified therein advocate or believe but against what Congress has concluded they have done and are likely to do again" (94 L ed at p 942)

The court pointed out that the statute affected only a relative handful of persons, and even those few persons remain free to maintain their affiliations subject only to loss of positions which Congress has concluded are being abused to the injury of the public by members of the described group

The court concluded that the statute did not constitute a bill of attainder because it did not punish for past activities. At any time members of the Communist Party would be free to serve as union officers if they renounced their membership

In *Garner v Board of Public Works* (1951), 341 US 716, 95 L ed 1317, the court upheld a city ordinance which required all city employees, among other things, to submit an affidavit stating whether they were or are members of the Communist Party

The court upheld the requirement as against the contention that it violated Section 10 of Article I of the Federal Constitution prohibiting states from passing a bill of attainder or an ex post facto law, and as depriving the employees of freedom of speech, assembly and the right to petition for redress of grievances. The court stated the provisions operating prospectively were a reasonable regulation to protect the municipal service by establishing an employment qualification of loyalty to the State and the United States. The court assumed that the ordinance would be construed by the state courts to require knowledge of the character of the organization by the member

On the other hand, in *Weiman v Updegraff* (1952), 344 US 183, 97 L ed 216, the court held invalid an Oklahoma statute which required state college employees to take an oath regarding their membership in or affiliation with certain organizations including the Communist Party. The state court had construed the statute as not requiring knowledge at the time of membership of the nature and purposes of the organization

The court said that the due process clause of the United States Constitution does not permit a state in attempting to bar disloyal individuals from its employ, to exclude persons solely on the basis of organizational membership, regardless of their knowledge concerning the organizations to which they belonged

In *Adler v Board of Education* (1952), 342 US 485, 96 L ed 517, the court upheld a New York statute which provided that a person who is knowingly a member of an organization which teaches or advocates the overthrow of the government by force or violence is disqualified

from employment in the public school system. The Board of Regents was authorized to list, after hearings, such organizations, and to issue regulations that membership in any such organization is prima facie evidence of disqualification.

The court upheld the statute as not violating constitutional rights of freedom of speech and assembly and held that the statutory presumption did not violate due process. The court pointed out that the New York courts had construed the statute as requiring knowledge by the employee of the purpose of the organization.

In view of these cases we believe that the courts would probably uphold the provision of A C A 38 prohibiting public employment of members of the Communist Party. It is likely that the California courts, in construing such a measure, would require knowledge of the character of the organization by the person whose membership is in question (see *People v. Steelik* (1921), 187 Cal 361, *Garner v. Board of Public Works*, supra, 95 L. ed. at p. 1324). As so construed, we believe the United States Supreme Court would uphold this provision of A C A 38.

As so construed, the measure apparently is designed to safeguard the public against the disruptive effects of the probable future conduct of knowing members of the Communist Party in public employment. If Congress is competent to remove obstructions to interstate commerce by penalizing the holding of a union office by a member of the Communist Party, we think it likely that the court would allow the states to protect the public against the participation of knowing members of the Communist Party within the government itself.

The court has recognized the importance of the objective of keeping the government free of such disruptive influences in the *Garner* case.

However, the validity of the provision of A C A 38 denying tax exemptions to members of the Communist Party is more doubtful. In *Speiser v. Randall* (1958), 357 U.S. 513, 2 L. ed. 2d 1460, the Supreme Court held invalid a California statute which required any claimant of a tax exemption to sign a statement on his tax return declaring that he does not advocate the overthrow of the government of the United States or of the State of California by unlawful means. The oath was required to supplement the prohibition now contained in Section 19 of Article XX of the California Constitution prohibiting tax exemptions for persons who advocate overthrow of the federal or state government by unlawful means.

Without reaching the question of the constitutionality of the California constitutional provision, the court held that the statutory provision denied the claimants freedom of speech without the procedural safeguards required by the due process clause of the Fourteenth Amendment since the statute sought to enforce the constitutional provision through a procedure which placed the burden of proof of non-engagement in the proscribed advocacy on the taxpayer.

The court did distinguish between the statute in question and others which the court had upheld, as follows:

"The appellees, in controverting this position, rely on cases in which this court has sustained the validity of loyalty oaths required of public employees, *Garner v. Board of Public Works*, 341 U.S. 716, 95 L. ed. 1317, 71 S. Ct. 909, candidates for public

office, *Gerende v Board of Supervisors*, 341 U.S. 56, 95 L. ed. 745, 71 S. Ct. 565, and officers of labor unions, *American Communications Assn. v. Douds*, 339 U.S. 382, 94 L. ed. 925, 70 S. Ct. 674, supra. In these cases, however, there was no attempt directly to control speech but rather to protect, from an evil shown to be grave, some interest clearly within the sphere of governmental concern. The purpose of the legislation sustained in the *Douds* case, the court found, was to minimize the danger of political strikes disruptive of interstate commerce by discouraging labor unions from electing Communist Party members to union office. While the court recognized that the necessary effect of the legislation was to discourage the exercise of rights protected by the First Amendment, this consequence was said to be only indirect. The congressional purpose was to achieve an objective other than restraint on speech. Only the method of achieving this end touched on protected rights and that only tangentially. The evil at which Congress had attempted to strike in that case was thought sufficiently grave to justify limited infringement of political rights. Similar considerations governed the other cases. Each case 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 beliefs but to deny positions to persons supposed to be dangerous because the position might be misused to the detriment of the public. The present legislation, however, can have no such justification. It purports to deal directly with speech and the expression of political ideas" (2 L. ed. 2d at pp. 1473-1474.)

In the recent case of *Communist Party v. Subversive Activities Control Board*, supra, 6 L. ed. 2d at pp. 683 and 684, the court, in holding that the registration features of the Subversive Activities Control Act of 1950 did not unconstitutionally infringe on First or Fifth Amendment guarantees and did not constitute a bill of attainder, stressed that the act was not directed at one party but that it regulated expressly defined conduct (being under foreign control and operating primarily to advance the objectives of the world communist movement).

In *Communist Party v. Catherwood*, supra, the court did not pass on any constitutional issue raised under the Communist Control Act of 1954 which outlaws the Communist Party by name.

In the denial of a tax exemption to a person due to his membership in the Communist Party, we do not have the same type of objective as we do in the public employment and the union officer fields. In view of the foregoing, we think that there is a more serious question as to the validity of the tax exemption provisions of A.C.A. 38 as they pertain to members of the Communist Party

Very truly yours,

A. C. MORRISON
Legislative Counsel
By OWEN K. KUNS
Deputy Legislative Counsel

VI. CONSTITUTIONAL REVISION

During the November 1962, election Proposition 7 (ACA 14), authored by Assemblyman John A. Buserud, was approved by the electorate. Proposition 7 amended Article XVIII of the Constitution as follows:

"SECTION 1 Any amendment or amendments to, or revision of, this Constitution may be proposed in the Senate or Assembly, and if two-thirds of all the members elected to each of the two houses shall vote in favor thereof, such proposed amendment, amendments, or revision shall be entered in their journals, with the yeas and nays taken thereon; and it shall be the duty of the Legislature to submit such proposed amendment, amendments, or revision to the people in such manner, and at such time, and after such publication as may be deemed expedient. Should more amendments than one be submitted at the same election they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, or such revision, by a majority of the qualified electors voting thereon such amendment or amendments shall become a part of this Constitution, and such revision shall be the Constitution of the State of California or shall become a part of the Constitution if the measure revises only a part of the Constitution "

California has had only two Constitutions since its admission into the Union on September 9, 1850. The first arose out of a convention held at Monterey on September 4, 1849. It was not until 30 years later that there was a new Constitution enacted. During this 30-year period, the Legislature in 1859, 1860 and 1873 proposed calling a constitutional convention, but each time their recommendation was rejected by the electorate.

The electorate finally ratified a legislatively proposed constitutional convention in 1877 and the 1878 Legislature passed the necessary enabling act. The convention met in Sacramento and by March 1879 had adopted a new Constitution.

After 1879 the 1897 Legislature proposed calling a constitutional convention but the proposition was rejected by the electorate. Since 1900 there have been only eight regular sessions of the Legislature in which at least one proposal for the submission of the convention question has not been introduced. Finally in 1933 the question of a constitutional convention was approved by the Legislature and in 1934 by the electorate. However, the Legislature of 1935 failed to pass the necessary legislation to assemble the convention and no subsequent Legislature has taken action on the matter.

In 1929 a commission was established to study the problem of revision and its report took the view that the Constitution was "in need of a fundamental review." The Legislature did not act on this recommen-

dition. Again in 1947-1949 a joint interim committee studied the problem but failed to recommend a general revision.

It is worth noting that the arguments against revision which were presented to the 1947-1949 joint interim committee were that there was no popular demand for revision and that by the process of amendment the Constitution had kept pace with changing needs. In addition the present Constitution had been thoroughly adjudicated and many settled questions would be reopened unnecessarily by revision. Finally, the report stated that revision for brevity's sake alone was not a valid basis for change.

There is no question that these contentions contain considerable merit. Proponents of revision agree that a short constitution does not of itself indicate a good constitution. In addition even the most uncontroversial section of the present document, except in rare instances, would have adamant supporters. This would indicate that an effort toward compromise would inevitably be necessary.

Since the amended Article XVIII provides the Legislature for the first time with a convenient and workable vehicle for constitutional revision, all parties involved in this area should support a concerted effort at determining the practical effectiveness of this instrumentality. It is self-evident that a careful study of what substantive revision is necessary will be required. The Legislature must also determine the actual procedural mechanism needed to review the present Constitution and recommended changes. Past efforts should be studied to determine why they failed and how a new effort can avoid similar pitfalls.

Such a study should not be a crash program. A carefully constructed procedure plus a thoughtful consideration of substance with the assistance of new Article XVIII might well result in the first revision of California's Constitution in this century.

CONCLUSION

Due to the fact that the amendment to Article XVIII was not adopted until November 1962, this committee has not been able to hold hearings on this matter. The committee strongly urges that such hearings be commenced as soon as feasible after the general session begins in January 1963. It appears self-evident that the first inquiry which should be made in this area is as to the procedural mechanisms available for implementation and that after that matter has been resolved a study should be conducted as to actual revision. The Legislature should consider the formation of a "Citizens Advisory Committee" made up of interested and qualified persons to work in conjunction with the Legislature on such a revision.

VII. LIMITING LENGTH OF THE BALLOT

Most ballots in California are too long. Their length arises from numerous factors, the existence of minority parties, the number of elective offices, county and city ballot proposals, bond issues, initiative and referendum matters, and finally proposed constitutional amendments. The extent to which proposed constitutional amendments increase the length of the average ballot is a concern of this committee.

An unnecessarily lengthy ballot creates at least two problems. The first and most obvious is that it increases the cost of holding an election by adding printing and paper costs and the time required for voting and counting ballots. Second, it is contended by many that an electorate faced with an unduly long ballot will take one of several detrimental attitudes. They might be discouraged from voting after having seen the size of the sample ballot; they might only superficially scan the ballot voting primarily for candidates known to them and "no" on bond, referendum, initiative and constitutional amendment matters regardless of merit.

Assuming no opposition to shortening California's ballots, the committee is primarily interested in how this might most equitably be accomplished. Several factors must be kept in mind. The Constitution, itself, limits the things the Legislature may do in this area without the electorate's approval. In many areas our form of government demands citizen review of legislative acts. In addition, it is only with great hesitancy that the rights of initiative or referendum should be altered if at all.

It has been contended by some people that the Legislature has avoided its responsibility by passing action on minor matters to the electorate in the form of constitutional amendments. Under our present constitution, however, once the Legislature has determined that there is a valid reason for changing a part of the constitution such legislation, no matter how minor, must in most instances be submitted to the voters. A number of solutions to the present problem have been offered, but as the Legislative Counsel points out some of the suggestions may not be legally possible to implement. Since this problem has reasserted itself only since the November 1962 election wherein there were on the ballot 22 constitutional amendments submitted by the Legislature and two constitutional amendments put before the electorate by the initiative process the committee has conducted no formal study. Several general proposals from assorted sources have come to the committee's attention. They are as follows:

- (1) Establish a joint legislative screening committee whose approval of a constitutional amendment would be a prerequisite to being placed on the ballot;
- (2) Limit the number of constitutional amendments a legislator may introduce in any one legislative session;
- (3) Limit the number of constitutional amendments which may appear on any one ballot;

- (4) Limit the time in any one legislative session during which constitutional amendments may be introduced; and
- (5) Increase from two-thirds to three-quarters of the members in each house as the number of votes necessary to place a constitutional amendment on the ballot.

The committee does not at this time support or oppose any specific method to deal with this problem. Rather the aforementioned proposals are intended as examples of the many different approaches available.

A number of suggestions have been offered as to ways in which the presentation of proposed constitutional amendments might be changed. One of the suggestions is that all measures dealing with similar subject matter could be numerically grouped together. The method of presentation of the arguments in support or opposition to the measures might well be simplified to indicate in concise and nonlegalistic language the purpose and intent of the proposal. It has been suggested that where possible a short statement should be made indicating whether passage of the proposal would increase state revenue or would cause the expenditure of additional funds. An index to the voters' handbook with a one- or two-sentence summary of the ballot proposal would be of assistance. Inasmuch as certain of the ballot arguments are written in the names of various organizations, a short statement of their purpose and composition would help the voters to assess the merits of the arguments presented by such groups.

It should be noted that with the passage of Proposition 7 on the November 1962 ballot resulting in an amendment to Article XVIII of the Constitution the length problem may solve itself. Assuming the Legislature were to propose a complete revision of the Constitution to the electorate in the foreseeable future it is possible much of the existing efforts to amend the present Constitution would be removed. Only legislative implementation of the new Article XVIII will determine its impact in this area.

The following is a compilation of figures with respect to the number of bills introduced and the number of those bills which became law as compared with the number of constitutional amendments introduced and the number of constitutional amendments which appeared on the ballot. These figures are for the 1961 General Session and the 1962 First Extraordinary Session.

	<i>Bills introduced</i>	<i>Bills passed</i>	<i>Bills approved by Governor</i>
1961			
Senate -----	1,553	878	823
Assembly -----	3,150	1,523	1,400
Subtotal -----	4,703	2,401	2,223
1962			
Senate -----	49	34	33
Assembly -----	68	36	34
Subtotal -----	117	70	67
Total -----	4,920	2,471	2,290

Of the 4,920 bills introduced, approximately 47 percent became law.

	<i>Constitutional Amend- ments introduced</i>	<i>Constitutional Amendments passed by both houses and on November ballot</i>
1961		
Senate -----	38	---
Assembly -----	92	---
Subtotal -----	130	20
1962		
Senate -----	2	---
Assembly -----	9	---
Subtotal -----	11	2
Total -----	141	22

Of the 141 constitutional amendments introduced, approximately 16 percent appeared on the ballot. Therefore, it would appear upon the statistical data available for the 1961 and 1962 session that this committee and the Legislature have acted as a significant filtering apparatus between the introduction of constitutional amendments and their placement on the ballot.

CONCLUSION

By reason of the large number of measures upon recent ballots in California there have been a number of suggestions made to find a means of limiting the number of proposals which are submitted to the electorate. This committee has not had an opportunity to formally study such suggestions but does recommend that an effort be made to determine whether steps should be taken to carry out this purpose.

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, November 27, 1962

HON. MILTON MARKS
Russ Building, San Francisco 4, California

SCREENING COMMITTEES—No. 5690

DEAR MR. MARKS:

Question

Could the Legislature, or either house:

(a) Provide that all constitutional amendments must be referred to a screening committee before reference to another committee or before floor action?

(b) Provide that no member can introduce a constitutional amendment without the approval of a specific committee?

Opinion

In our opinion the Legislature by statute, or the Legislature or either house by rule, could require all constitutional amendments after introduction to be referred to a screening committee before reference to another committee or before floor action. However, it is at least doubt-

ful that the Legislature either by statute or rule could prohibit the *introduction* by a member of a constitutional amendment without the approval of a specified committee of the Legislature

Analysis

The proposing of constitutional amendments by the Legislature is governed by Section 1 of Article XVIII of the California Constitution, which reads, in part, as follows

"Any amendment or amendments to, or revision of, this Constitution may be proposed in the Senate or Assembly, and if two-thirds of all the members elected to each of the two houses shall vote in favor thereof, such proposed amendment, amendments, or revision shall be entered in their journals, with the yeas and nays taken thereon; and it shall be the duty of the Legislature to submit such proposed amendment, amendments, or revision to the people in such manner, and at such time, and after such publication as may be deemed expedient . . ."

Other than as set forth above, the Constitution does not purport to direct the Legislature as to the procedure to be followed by it in considering proposed constitutional amendments. The California Supreme Court has held that the Legislature, in proposing constitutional amendments, is performing a legislative function (*People v. Curry* (1900), 130 Cal 82, 89). Thus, it seems clear that the Legislature's constitutional power to determine the rules of its proceedings (Cal Const., Art. IV, Sec 9) applies to the consideration of constitutional amendments. Since the Constitution does not specify the manner in which bills or constitutional amendments are to be referred to standing committees for their recommendations, this is a matter to be determined by the Legislature itself under its power to determine its own rules of procedure. Therefore, it is our opinion that the Legislature, or either house thereof, could provide that all constitutional amendments after introduction must be referred to a screening committee before reference to another committee or before floor action.

It should be noted that the Legislature, in the past, has at budget sessions and special sessions provided for "screening committees." Thus the 1949 Joint Rules (Rule 35) required bills introduced at the budget session to be referred to the Budget Session Joint Standing Committee. Rule 24 of the 1962 Senate Standing Rules provides that at a special session when a bill is received at the desk it is referred to the Rules Committee which decides whether or not such bill can properly be considered at the special session.

However, it should be noted that a statute or rule requiring reference of all constitutional amendments after introduction to a screening committee would bind only the session of the Legislature which adopted it (*Taylor v. Davis*, 102 So 433).

We turn now to the question of whether the Legislature could prohibit a member from *introducing* a constitutional amendment without the approval of a specific legislative committee. The questions raised are whether a Member of the Legislature has a constitutional right to introduce a constitutional amendment, and, if so, whether the right may be restricted in this manner.

There is no constitutional provision which expressly guarantees to Members of the Legislature the right to introduce *bulls*. However, it is at least arguable that Section 1 of Article XVIII grants legislators the right to introduce constitutional amendments. The first phrase of Section 1 states "Any amendment, or amendments to, or revision of, this Constitution may be proposed in the Senate or Assembly. . . ." When the Constitution speaks of proposing constitutional amendments in the Assembly or Senate, it apparently refers to the proposing of constitutional amendments *by Members* of the Legislature. Therefore, it is at least arguable that the phrase gives members a *right* to introduce constitutional amendments. If this construction is followed, it would not appear to be valid for the Legislature to condition such right upon the approval of one of its committees even though the Legislature has the power, under Section 9 of Article IV of the Constitution, to control the procedure for the measure's disposition after its introduction.

In view of the above and in the absence of any cases discussing this matter, we can only conclude that it is at least doubtful that the Legislature or either house could prohibit a member from introducing a constitutional amendment without the approval of a specific committee of the Legislature.

Very truly yours,

A C MORRISON
Legislative Counsel
By OWEN K KUNS
Deputy Legislative Counsel

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, December 4, 1962

HON MILTON MARKS
Russ Building, San Francisco 4, California

CONSTITUTIONAL AMENDMENTS ON BALLOT—No. 5759

DEAR MR MARKS. You ask the following question:

Question

Would a constitutional amendment be necessary to limit the number of constitutional amendments which can appear on any one ballot?

Opinion

In our opinion a constitutional amendment would be necessary to limit the number of constitutional amendments which may appear on any one ballot

Analysis

The great majority of measures which appear on the ballot are submitted to the people under provisions of the California Constitution. In some instances measures automatically go on the ballot upon compliance with specified procedures; in others the submission of the measures is left to the Legislature.

State ballot propositions, in general, fall within one of three categories constitutional amendments proposed by the Legislature, acts proposing the incurring of indebtedness by the State (bond acts), and initiative or referendum measures.

While the Constitution authorizes the Legislature to propose amendments to the Constitution (Art XVIII, Sec 1), and requires the Legislature to submit to the people any act proposing the creation of any indebtedness on the part of the State in excess of \$300,000 (Art XVI, Sec 1), it leaves to the Legislature discretion to determine the time at which and the manner in which any such measure shall be submitted to the people. This, on its face, would seem to give the Legislature the right to control the number of measures of this nature which may be submitted, but any such limitation would have no more practical effect than a voluntary agreement on the part of the Legislature to refrain from submitting more than a specified number of measures. This stems from the fact that one legislative body cannot limit or restrict its own power or that of subsequent Legislatures, and the act of one Legislature does not bind its successors (*In re Collic*, 38 Cal 2d 396). It follows that if the Legislature enacts a statute limiting the number of constitutional amendments or bond acts which it may submit to the people at any one election, it, or its successor, could overcome the limitation, at will, simply by repealing the statute or superseding it by a later enactment.

The Constitution also reserves to the people the rights of initiative and referendum, to be exercised by means of petitions filed with the Secretary of State or, as an alternative, in the case of the initiative measures, with the Legislature (Const, Art IV, Sec 1). The constitutional provision specifically designates the time at which an initiative or referendum measure shall be submitted to the people, and the Legislature has no control over the matter.

The power of the Legislature to control measures submitted to the people of a county or city is also restricted to a large extent by the Constitution. For example, the time for submitting a proposed charter of a county or city, or amendments to any such charter, is specifically fixed by the Constitution (Art XI, Secs 7½, 8), and the Legislature has no authority to limit the submission of a proposed charter or charter amendments. In addition, the Constitution reserves to the people of a county or city the same rights of initiative and referendum as are reserved to the people of the State (Const, Art IV, Sec 1), and the Legislature can do nothing that would impair the exercise of these rights, such as limiting the number of such measures which may be submitted.

It will be seen from the foregoing that it would require a constitutional amendment to impose an effective limitation on the number of state, county, or city ballot propositions which may be submitted at any election.

Very truly yours,

A C MORRISON
Legislative Counsel
By EDWARD K PURCELL
Deputy Legislative Counsel

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, December 5, 1962

HON. MILTON MARKS

Russ Building, San Francisco 4, California

INTRODUCTION OF CONSTITUTIONAL AMENDMENTS—No. 5760

DEAR MR. MARKS

Question

Would a constitutional amendment be necessary to—

(a) Limit the number of constitutional amendments that an individual legislator could introduce in any one session?

(b) Limit the time within any one session within which constitutional amendments can be introduced?

(c) Increase the vote of the Legislature required to pass constitutional amendments from two-thirds to three-fourths?

Opinion

In our opinion it is at least doubtful that the Legislature, either by statute or rule, could limit the number of constitutional amendments that an individual legislator may introduce in any one session. It is probable that a limitation as to the time within which constitutional amendments could be introduced may be enacted without a constitutional amendment. The requirement that two-thirds of the elected members of each house approve a proposed constitutional amendment may be changed only by a constitutional amendment.

Analysis

The California Supreme Court has held that the Legislature, in proposing constitutional amendments, is performing a legislative function (*People v. Curry*, 130 Cal. 82, 89). There is no constitutional provision which expressly guarantees to Members of the Legislature the right to introduce *bills*. However, it is at least arguable that Section 1 of Article XVIII of the California Constitution grants legislators the right to introduce constitutional amendments. The first phrase of Section 1 states, "Any amendment, or amendments to, or revision of, this Constitution may be proposed in the Senate or Assembly. . . ." When the Constitution speaks of proposing constitutional amendments in the Assembly or Senate, it apparently refers to the proposing of constitutional amendments *by* Members of the Legislature. Therefore, it is at least arguable that the phrase gives members a *right* to introduce constitutional amendments. If this construction is followed, it would appear that such a right would include the right to introduce an unlimited number of constitutional amendments. In other words, if the Constitution gives a legislator the right to introduce constitutional amendments an amendment to the Constitution would appear necessary in order to limit the number of amendments that an individual legislator may introduce.

A limit as to the time within any one session within which constitutional amendments can be introduced appears to be a different type of

limitation. Section 9 of Article IV of the California Constitution gives each house of the Legislature the power to determine the rule of its proceedings. Such a time limitation would not directly limit any right to introduce constitutional amendments, but rather it would control the procedure by which such amendments could be introduced.

We note that Rule 83 of the 1962 Joint Rules of the Senate and Assembly restricts the right to introduce constitutional amendments after the 110th calendar day of a general session. We believe that this rule and a limitation as you suggest would be considered proper exercises of the Legislature's power to control its own proceedings.

Article XVIII, Section 1 provides that if two-thirds of all the members elected to each house vote in favor of a proposed amendment the Legislature shall submit the amendment to the people. Since the two-thirds vote requirement is in the Constitution, a constitutional amendment would be necessary in order to increase the required affirmative vote to three-fourths of members of each house.

Very truly yours,

A C MORRISON
Legislative Counsel
By OWEN K KUNS
Deputy Legislative Counsel

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ASSEMBLY INTERIM COMMITTEE REPORTS
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REPORT OF THE
**ASSEMBLY INTERIM COMMITTEE ON
CONSTITUTIONAL AMENDMENTS**

TO THE CALIFORNIA LEGISLATURE
(House Resolution 361, 1961)

PART II

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January 7, 1963

Published by the
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OF THE STATE OF CALIFORNIA

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Speaker pro Tempore

HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk

LETTER OF TRANSMITTAL

SACRAMENTO, January 7, 1963

HON JESSE M. UNRUH
Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber, Sacramento

GENTLEMEN, Pursuant to House Resolution No 361, adopted June 9, 1961, the Assembly Interim Committee on Constitutional Amendments herewith submits Part II of its final report on subjects studied during the 1961-1963 interim period. Part II of the report is devoted entirely to our assigned study of the California judicial system as set out in Article VI of the Constitution.

Respectfully submitted,

MILTON MARKS, *Chairman*

DON A. ALLEN, SR, *Vice Chairman*

TOM BANE
JOHN A. BUSTERUD
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Judicial Council of California	
John A. Sutro	
Noble K. Gregory	

RECOMMENDATIONS AND CONCLUSIONS

MAJORITY

As to those portions of A C A 26 which do not deal with the appointment of judges the committee's position is that

- (1) This committee does not consider the one hearing on this matter sufficient criterion upon which to make a firm recommendation
- (2) The subject matter of this part of A C A 26 is so extensive and contains so many implications not superficially apparent due to judicial interpretation that change in this area must be carried out only after careful study of all the possible implications of any proposed revision
- (3) Inasmuch as the passage of Proposition 7 in the November 1962 election has given the Legislature the authority to undertake a total revision of the Constitution and this committee in Part I of its report has recommended that implementation be immediately undertaken revision of Article VI of the Constitution should await that study

As to that portion of A C A 26 relating to the appointment and qualification of judges the committee's position is that

- (1) The committee does not consider the one hearing on this matter sufficient criterion upon which to make a firm recommendation
- (2) The anticipated implementation of Proposition 7 is equally relevant to this area of A C A 26
- (3) Inasmuch as the State Bar is still considering this question and has not to date made a recommendation and due to the same fact a number of county bar associations including the Los Angeles County Bar Association¹ as well as Conference of Judges² have not made recommendations or presented testimony the committee feels not enough evidence has as yet not been obtained nor is available to take a position. Therefore, further study is recommended

MINORITY

The minority, while concurring in the conclusions and recommendations of the majority as to the first area of A C A 26 took the position that the committee should, "go on record endorsing the principle that an independent commission or committee be charged with the responsibility of approving judicial appointments and the failure to give this approval would result in a judicial appointment not becoming effective."

The minority pointed out that the committee being on record of endorsing a commission or committee with veto power over the Governor's judicial appointments would serve as a guide to the State Bar Association. They felt such a structure might "guard the public against

¹ See Appendix.

² See Appendix.

an unfortunate appointment which otherwise might be made " Finally, they agreed that the committee does not at this time have sufficient information to make specific recommendations as to the structure and composition of this proposed commission or committee

I. INTRODUCTION

The committee held two hearings on A C A 26 during 1962. The first hearing was held in Beverly Hills at the State Bar Convention on September 18 and 19, 1962. This hearing dealt with all those areas of A C A 26 except appointment and qualifications of judges. Witnesses at the first hearing included among others Chief Justice Gibson of the California Supreme Court, Attorney General Stanley Mosk; Assemblyman John Busterud, author of A C A 26, John Sutro, President of the San Francisco County Bar Association, Judge William H. Rosenthal, California Conference of Judges, Eugene Glenn, Attorney at Law, San Diego, Mr. Jack Roberts, Attorney at Law, Menlo Park; and Mr. Hazen Matthews, Legislative Representative, State Bar of California.

A second hearing was held in Sacramento on November 29, 1962, and dealt exclusively with the appointment and qualifications of judges. Representatives of the Governor's office, the Attorney General's office, the State Bar Association and Noble K. Gregory of the law firm of Pillsbury, Madison and Sutro of San Francisco appeared. In addition a prepared statement from the Judicial Council and a letter from Lionel B. Benas, President of the Alameda County Bar Association, were read into the record by the chairman.

Self-evident after these hearings was the fact that further study was needed on a measure as complex as A C A 26. There were several conspicuous voids left in the roster of witnesses the committee heard.

In order to reach a recommendation on this subject it was felt by the committee that the position of the State Bar Association and the various local county bar associations should be presented. Apparently because A C A 26 had not been officially presented to the various county associations for study and pending a study underway by the State Bar Association none of the local groups presented testimony at the hearings. The Conference of California Judges also did not officially testify although a member of the bench did appear as a result of the committee's invitation. His testimony was limited to the part of A C A 26 not related to judges' appointments. The president of the conference by communication advised the committee it took no position. Hazen Matthews, appearing for the State Bar, offered many helpful suggestions, but stated that the State Bar's official position awaited completion of a comprehensive study still underway. Of the testimony which was received by the committee, in many instances it was based on the anticipated result of the State Bar study.

In many other instances as evidenced by committee correspondence found in Appendix "O," county bar associations refrained from sending representatives subject to the conclusion of the State Bar study.

Since to date the State Bar study is still not finished it would appear unsound to conclude that a truly representative sampling of opinion has been obtained on this subject. It is upon these aforementioned circumstances that the majority recommendations and conclusions are based.

II. A.C.A. 26 v. ARTICLE VI

A C A 26 would repeal existing California Constitution Article VI and substitute therefore a substantially modified Article VI. It has been said that California suffers from constitutional "amendomania" resulting perhaps from the incorporation in the Constitution of an excess of detailed procedural or administrative matter in place of more durable general principle. A C A 26 is directed toward rooting out much of the former, but in so doing could have a serious effect on the latter. The mere reduction of clutter should not be the ultimate goal of constitutional amendments. At such times the underlying basis of constitutional provisions should be carefully considered.

It is apparent that A C A 26 merits careful study, both with respect to that which it would accomplish and that which such an amendment ought to accomplish. This task cannot be completed satisfactorily without an extension of time adequate for exhaustive research and debate.

Basically the issue raised by A C A 26 is, should the California Constitution's judicial article contain only a skeleton of principles while leaving to the Legislature to enact as statutes all other administrative and procedural matters. Assemblyman John Busterud, San Francisco, the author of the amendment stated at the committee's first hearing that he considered A C A 26 only a "vehicle" by which the committee might consider the entire area of the judicial article. He pointed out that the committee should not feel that its study has been restricted just to those problems relating to the proposed amendment. He was hopeful that any and all problems would be fully considered whether embodied in A C A 26 or not.

Having the author's declaration as a guide, the committee members and witnesses allowed themselves maximum breadth of consideration. The committee's first witness at its September hearing, Chief Justice Gibson of the California Supreme Court, strongly favored the simplification of Article VI. He felt A C A 26 was a step in the right direction. Like most of the witnesses who followed he expressed concern in a specific area of the amendment. He felt A C A 26 had within its language the traditional problem of special and inferior courts. He expressed concern that Section 1 of the amendment since it provided for "such other courts as may be established by law" in addition to certain specified courts was an invitation to special-interest groups to press the Legislature into creating additional courts below the municipal level. Thus he felt a "veritable jungle of overlapping local courts and conflicting jurisdictions" might arise.¹

The next witness following the Chief Justice, Mr. John A. Sutro, President of the Bar Association of San Francisco, was in opposition to the underlying concept of a basic revision of Article VI. He stated that the views he expressed were his own and not the views of his bar association since to that date they had taken no official position. Mr. Sutro was critical of the lack of detail embodied in A C A 26. He expressed concern that expressly and by implication extensive powers were given to the Legislature which he felt were best left in the Constitution. If his underlying theme were to be summarized it would

¹ Transcript of Hearing, A C A. 26, September 18 and 19, 1962, page 2

appear to have been that the present Article VI is a known, understood, and settled area of the law, to make radical changes was simply to undo much of the work done, money spent, and effort expended over the years to determine the full meaning and implications of Article VI. Since no great evil has been caused or motivated by the present article, why radically change it? He opposed change for its own sake and feared that by an excessive transfer of power in the judicial field to the Legislature the delicate balance of power between the legislative and judicial branches of government might be upset.²

Mr. Jack Robertson, attorney at law, Menlo Park, expressed views primarily in sympathy with the Chief Justice and like him, desired safeguards within a new Article VI to avoid the problem of excessive inferior courts and conflicting jurisdictions.³

Following Mr. Robertson, Judge William H. Rosenthal appeared and although appearing in answer to an invitation extended to the Conference of California Judges expressed his views as an individual since the conference had not yet formally studied A C A 26. He substantively supported the Chief Justice but had a particular concern in one area of the amendment. Judge Rosenthal encouraged the committee to go slowly since he pointed out a measure as comprehensive and with so many judicial implications should not be hastily approached. He urged that any amendment to Article VI be conducted on a piecemeal basis.⁴

Hazen Matthews, while setting forth the State Bar's position which advocated many specific changes, urged the committee to proceed very carefully in making changes and that much of what constituted the present Article VI had only been enacted after many, many months of thoughtful consideration by civic and legal groups.⁵

Finally during this first hearing Attorney General Stanley Mosk testified that he favored A C A 26 since it took out much of the unnecessary detail of Article VI. He compared the present length of Article VI with the brevity of Article III of the United States Constitution and concluded that although a short article was not necessarily a good one it was indicative of the fact that detail in the area of judiciary could be safely left to the Legislature.⁶

SUMMARY

If a summary of attitudes expressed at this first hearing were attempted it would vary from complete opposition to revision of Article VI to complete support for A C A 26. As to specific approaches to individual problem areas within Article VI each of the witnesses appeared to have a primary concern with one or several sections. In terms of the variation of specific opinion as opposed to general support or opposition to change probably the view of several witnesses that change should be dealt with on a piecemeal basis offers the most feasible solution.

² Transcript of Hearing, A C A 26, September 18 and 19, 1962, page 11.

³ Transcript of Hearing, A C A 26, September 18 and 19, 1962, page 23.

⁴ Transcript of Hearing, A C A 26, September 18 and 19, 1962, page 27.

⁵ Transcript of Hearing, A C A 26, September 18 and 19, 1962, page 47.

⁶ Transcript of Hearing, A C A 26, September 18 and 19, 1962, page 54.

CONCLUSION

In light of the problems and opinions aforementioned the appendices to this report have attempted to consolidate in a single place the most relevant material gathered both during this study and the 1959-1961 study. It is anticipated that with this consolidation of evidence and testimony the following recommendations of the committee can be most easily accomplished.

The committee therefore takes the position that as to those portions of A C A 26 which do not deal with the appointment of judges, that

(1) This committee does not consider the one hearing on this matter sufficient criterion upon which to make a firm recommendation,

(2) The subject matter of this part of A C A 26 is so extensive and contains so many implications not superficially apparent due to judicial interpretation that change in this area must be carried out only after careful study of all the possible implications of any proposed revision, and

(3) Inasmuch as the passage of Proposition 7 in the November 1962 election has given the Legislature the authority to undertake a total revision of the Constitution and this committee in Part I of its report has recommended that implementation be immediately undertaken, revision of Article VI of the Constitution should await that study.

III APPOINTMENT AND QUALIFICATION OF JUDGES

The appointment and qualification of judges is one of the important functions of state government. As one of the three equal branches of government, interpretation of law by qualified jurists is of fundamental significance.

In considering the question of appointment and qualification of judges, the committee did so in the light of the procedure followed over the years by Governors of California and more particularly the practice carried on in recent years. Under Governors Warren, Knight and Brown, the names of proposed judicial appointees have been submitted to the State Bar of California for consideration and recommendation to the Governor.

In making its determination on this subject, the committee considered the present system relating to qualification of appointees to the bench. The present Article VI provides for gubernatorial appointment of appellate court judges subject to the approval of the Commission on Judicial Appointments and requires that a judge periodically run "against his record" in an uncontested election. In addition provision is made for counties to adopt this system for the selection of superior court judges but to date no county has done so.

A C A 26 basically proposed to expand the present veto power of the Commission on Judicial Appointments from exclusively appellate appointments to superior and municipal court appointments but not to justice courts.

Another consideration that the committee had to make was the system to be adopted if it had been determined that the present practice was inadequate. Among the alternatives suggested for changes in the present system were:

(1) The establishment of a body on judicial qualifications which would have the power to veto a judicial nomination by the Governor. A number of alternative suggestions were made as to the composition of such a body.

(2) The establishment of the so-called Missouri Plan under which the Governor would have the right to appoint persons to judicial office from a list submitted by a body established for that purpose.

(3) The enactment by statute or by legislative resolution of legislation which would require the Governor to follow the present informal arrangement under which names of prospective judicial nominees are submitted to the State Bar of California for consideration and recommendation. Under such a system, the recommendations of the State Bar of California would be advisory without limiting the power of the Governor to make appointments.

(4) The establishment of a system under which the Governor would be required to submit names of prospective appointees to the Board of Governors of the State Bar for recommendation which recommendation would not be binding upon the Governor but with a requirement that the Governor indicate numerically and not by name the instances in which he had not followed the recommendation of the Board of Governors of the State Bar.

In testimony before the committee, the representative of the State Bar of California stated that they had a special committee studying the subject of judicial appointment and qualification which committee had not rendered its final report. Many bar associations throughout the State reserved their expression of opinion upon this subject pending the completion of the study being made by the State Bar Association.

CONCLUSION

It was in light of these aforesaid facts that the committee took the following position as to that area of A C A 26 dealing with the appointment and qualification of judges:

(1) The committee does not consider one hearing on this matter sufficient criterion upon which to make a firm recommendation;

(2) The anticipated implementation of Proposition 7 is equally relevant to this area of A C A 26, and

(3) Inasmuch as the State Bar is still considering this question and has not to date made a recommendation, and due to the same fact a number of county bar associations, including the Los Angeles County Bar Association¹ as well as the Conference of Judges,² has not made recommendations or presented testimony the committee feels not enough evidence has as yet been obtained nor is available to take a position. Therefore, further study is recommended. To assist in further study of this matter, the committee has appended to this report research material on this subject.

¹ See Appendix

² See Appendix

APPENDICES

APPENDIX A
AMENDED IN ASSEMBLY APRIL 26, 1961
CALIFORNIA LEGISLATURE, 1961 REGULAR (GENERAL) SESSION
Assembly Constitutional Amendment No. 26

Introduced by Messrs. Busterud, Bane, Dahl, Thelin, and Thomas

January 26, 1961

REFERRED TO COMMITTEE ON CONSTITUTIONAL AMENDMENTS

Assembly Constitutional Amendment No. 26—A resolution to propose to the people of the State of California an amendment to the Constitution of the State by repealing Article VI thereof and by adding a new Article VI thereto, relating to the judiciary.

1 *Resolved by the Assembly, the Senate concurring, That the*
2 *Legislature of the State of California, at its 1961 Regular*
3 *Session, commencing on the second day of January, 1961,*
4 *two-thirds of the members elected to each of the two houses*
5 *of the Legislature voting in favor thereof, hereby proposes to*
6 *the people of the State of California that the Constitution of*
7 *the State be amended as follows:*

8 *First—That Article VI be repealed.*

9 *Second—That Article VI be added, to read:*

10

11

ARTICLE VI JUDICIARY

12

13 **SECTION 1.** The judicial power of the State shall be vested
14 in the Senate, sitting as a court of impeachment, in a Supreme
15 Court, district courts of appeal, superior courts, municipal
16 courts and in such other courts as may be established by law.

17 **SEC 2.** The Supreme Court shall be the highest court of
18 the State and shall have final appellate jurisdiction in all
19 causes arising under this Constitution and the laws of this
20 State, with such exceptions and under such regulations as are
21 prescribed by law. The court shall consist of a Chief Justice
22 and six associate justices, and it may sit in departments or
23 en banc.

24 **SEC. 3.** There shall be district courts of appeal, the number,
25 organization, and jurisdiction of which shall be prescribed by
26 law.

(17)

1 SEC. 4. There shall be in each county of the State, includ-
2 ing each city and county, a superior court. The superior courts
3 shall be the trial courts of general jurisdiction and they shall
4 have such jurisdiction, including appellate jurisdiction in cases
5 arising in inferior courts, as may be prescribed by law. There
6 shall be municipal courts, the number, organization, and juris-
7 diction of which shall be prescribed by law.

8 SEC. 5. Justices of the Supreme Court and district courts
9 of appeal shall be selected for terms of 12 years; judges of
10 superior courts for terms of six years, and all other judges for
11 terms and in a manner prescribed by law.

12 SEC. 5. The term of office of a Justice of the Supreme
13 Court and district courts of appeal shall be 12 years, and of
14 judges of superior courts six years, from and after the first
15 day of January next succeeding their election.

16 Judges of all other courts shall be selected in a manner, for
17 the terms, and with the qualifications prescribed by law.

18 Except in counties in which the provisions of Section 8 of
19 this article have been adopted by the electors as applicable
20 to judges of the superior court, judges of the superior court
21 shall be elected by the qualified electors of the county, or city
22 and county, at the general state election.

23 SEC. 6. Whenever a vacancy shall occur in the office of
24 justice of the Supreme Court, justice of a district court of
25 appeal, judge of a superior court, or a judge of a municipal
26 court, the Governor shall appoint a person to fill the vacancy
27 as provided by law. All such appointments are subject to
28 Section 9 of this article. Judges of other courts shall be
29 selected in a manner, for the terms, and with the qualifications
30 prescribed by law.

31 SEC. 6. Whenever a vacancy shall occur in the office of
32 judge of a municipal court, the Governor shall appoint a
33 person to fill the vacancy as provided by law.

34 A vacancy in the office of judge of the superior court of a
35 county in which the provisions of Section 8 of this article
36 have been adopted by the electors as applicable to judges of
37 the superior court shall be filled pursuant to Section 8.

38 A vacancy in the office of judge of other superior courts
39 shall be filled by the election of a judge for a full term at the
40 next general state election after the first day of January next
41 succeeding the accrual of the vacancy; except that if the term
42 of an incumbent, elective or appointive, is expiring at the close
43 of the year of a general state election and a vacancy accrues
44 after the commencement of that year and prior to the com-
45 mencement of the ensuing term, the election to fill the office
46 for the ensuing full term shall be held in the closing year of
47 the expiring term in the same manner and with the same
48 effect as though such vacancy had not accrued. In the event
49 of any vacancy, the Governor shall appoint a person to hold
50 the vacant office until the commencement of the term of the
51 judge elected to the office as herein provided

1 *All appointments made by the Governor pursuant to this*
 2 *section are subject to Section 9 of this article.*

3 SEC 7 The justices of the Supreme Court, justices of the
 4 district courts of appeal, judges of the superior courts, and
 5 judges of the municipal courts shall each prior to his appoint-
 6 ment have been admitted to the practice of law in this State
 7 for at least five years. The Legislature may prescribe addi-
 8 tional qualifications by law.

9 SEC 8. Not less than 60 days prior to the holding of the
 10 general election next preceeding the expiration of his term of
 11 office, any incumbent judge named in Section 7 of this article
 12 may file with the officer charged with the duty of certifying
 13 nominations for publication in the official ballot a declaration
 14 of candidacy for election to succeed himself. If a declaration
 15 is not so filed by any judge the vacancy resulting from the
 16 expiration of his term of office shall be filled by appointment
 17 as herein provided. If such declaration is filed his name shall
 18 be submitted at said next general election.

19 If a majority of the electors voting upon such candidacy
 20 affirm his retention such person shall be elected to said office.
 21 If a majority of those voting reject his retention he shall
 22 not be elected; and may not thereafter be appointed to fill
 23 any vacancy in that court. If a vacancy arises in this fashion
 24 the office shall be filled by appointment as herein provided.

25 SEC 8 Within 30 days before the 16th day of August
 26 next preceeding the expiration of his term, any Justice of the
 27 Supreme Court, justice of a district court of appeal, or judge
 28 of a superior court in any county the electors of which have
 29 adopted the provisions of this section as applicable to the judge
 30 or judges of the superior court of such county in the manner
 31 hereinafter provided, may file with the officer charged with
 32 the duty of certifying nominations for publication in the offi-
 33 cial ballot a declaration of candidacy for election to succeed
 34 himself. If he does not file such declaration the Governor must
 35 nominate a suitable person for the office before the 16th day
 36 of September, by filing such nomination with the officer
 37 charged with said duty of certifying nominations.

38 In either event, the name of such candidate shall be placed
 39 upon the ballot for the ensuing general election in November
 40 in substantially the following form:

41		
42	For-----	Yes
43	(title of office)	
44		
45	Shall-----	No
46	(name)	
47		
48	be elected to the office for the term expiring	
49	January-----?	
50	(year)	
51		
52		

1 No name shall be placed upon the ballot as a candidate for
2 any of said judicial offices except that of a person so declaring
3 or so nominated. If a majority of the electors voting upon such
4 candidacy vote "yes," such person shall be elected to said
5 office. If a majority of those voting thereon vote "no," he shall
6 not be elected, and may not thereafter be appointed to fill any
7 vacancy in that court, but may be nominated and elected
8 thereto as hereinabove provided.

9 Whenever a vacancy shall occur in any judicial office above
10 named, by reason of the failure of a candidate to be elected or
11 otherwise, the Governor shall appoint a suitable person to fill
12 the vacancy. An incumbent of any such judicial office serving
13 a term by appointment of the Governor shall hold office until
14 the first Monday after the first day of January following the
15 general election next after his appointment, or until the quali-
16 fication of any nominee who may have been elected to said
17 office prior to that time. All such appointments are subject to
18 Section 9 of this article.

19 The provisions of this section apply to the judge or judges of
20 the superior court of any county in which, prior to the opera-
21 tive date of this section a majority of the electors of the
22 county voting on the question of the adoption of the provisions
23 of former Section 26 of Article IV of the Constitution, in the
24 manner then provided for by the Legislature, voted in favor
25 thereof.

26 The provisions of this section shall not apply to the judge
27 or judges of the superior court of any other county until a
28 majority of the electors of such county voting on the question
29 of the adoption of such provisions, in a manner to be provided
30 for by the Legislature, shall vote in favor thereof.

31 SEC. 9. No appointment by the Governor of a judge named
32 in Section 7 of this article shall be effective unless there is
33 filed with the Secretary of State a written confirmation of
34 such appointment signed by a majority of the three officers
35 herein designated as members of the Commission on Judicial
36 Appointments. The commission shall consist of (1) the Chief
37 Justice of the Supreme Court; or, if such office be vacant, the
38 Acting Chief Justice; (2) the presiding justice of the district
39 court of appeal of the district in which a justice of a district
40 court of appeal or a judge of a superior court is to serve; or,
41 if there be two such presiding justices, the one who has served
42 the longer as such; or, in the case of the nomination or ap-
43 pointment of a justice of the Supreme Court, the presiding
44 justice who has served longest as such upon any of the district
45 courts of appeal; and (3) the Attorney General. If two or
46 more presiding justices above designated shall have served
47 terms of equal length, they shall choose the one who is to be a
48 member of the commission by lot, whenever occasion for action
49 arises.

50 SEC. 10. The Commission on Judicial Appointments shall
51 consist of: (1) the Chief Justice of the Supreme Court, or in

1 his absence the Acting Chief Justice, who shall be the chair-
2 man; (n) one Associate Justice of the Supreme Court, one
3 justice of a district court of appeal, and one judge of a superior
4 court, and one judge of a municipal court, each selected by
5 the Supreme Court; and (m) two members of the State Bar,
6 who shall have practiced law in this State for at least 10 years
7 and who shall be appointed by the Board of Governors of the
8 State Bar

9 The terms of first members selected under subdivision (n)
10 shall be determined by lot so that the term of each one of the
11 four members will expire in a different year, with one member
12 having a one-year term, one a two-year term, one a three-year
13 term, and one a four-year term. Appointments to fill vacancies
14 arising from the expiration of a term shall thereafter be made
15 by the Supreme Court for four-year terms

16 Whenever a member selected under subdivision (n) ceases
17 to be a member of the commission or a justice or judge of the
18 court from which he was selected, his membership shall forth-
19 with terminate and the Supreme Court shall select a successor
20 for the unexpired term

21 The terms of the first members selected under subdivision
22 (m) shall be determined by lot so that the term of one member
23 will be two years and the term of the other member will be
24 four years. Appointments to fill vacancies arising from the
25 expiration of a term shall thereafter be made by the Board of
26 Governors of the State Bar for four-year terms

27 Whenever a member appointed under subdivision (m)
28 ceases to be a member of the commission or of the State Bar,
29 his membership shall forthwith terminate and the Board of
30 Governors of the State Bar shall appoint a successor for the
31 unexpired term

32 SEC 10 11. Justices and judges shall receive compensation
33 as prescribed by the law which shall not be diminished during
34 their terms of office

35 SEC 11 12. The Legislature shall provide by law for the
36 retirement of justices and judges, and for the basis and amount
37 of retirement allowance. Retired justices and judges may
38 render further judicial service under special assignment made
39 pursuant to rules of the Judicial Council

40 SEC 12 13. Justices of the Supreme Court, justices of the
41 district courts of appeal, judges of the superior courts, and
42 judges of the municipal courts may not, while holding office,
43 practice law, hold office in a political party, or hold any other
44 office or position of profit under the United States, the State,
45 or its political subdivisions

46 SEC 13 14. Justices of the Supreme Court, justices of the
47 district courts of appeal, judges of the superior courts and
48 judges of the municipal courts shall be subject to impeach-
49 ment under Sections 17 and 18 of Article IV and to recall
50 under Article XXIII. All other judicial officers are subject to
51 removal from office for such causes and in such manner as may
52 be provided by law.

1 SEC 14 15 (a) There shall be a Commission on Judicial
2 Qualifications. It shall consist of: (i) two justices of district
3 courts of appeal, two judges of superior courts, and one judge
4 of a municipal court, each selected by the Supreme Court for
5 a four-year term; (ii) two members of the State Bar, who
6 shall have practiced law in this State for at least 10 years and
7 who shall be appointed by the Board of Governors of the State
8 Bar for a four-year term; and (iii) two citizens, neither of
9 whom shall be a justice or judge of any court, active or re-
10 tired, nor a member of the State Bar, and who shall be ap-
11 pointed by the Governor for a four-year term. Every appoint-
12 ment made by the Governor to the commission shall be subject
13 to the advice and consent of a majority of members elected to
14 the Senate, except that if a vacancy occurs when the Legis-
15 lature is not in session, the Governor may issue an interim
16 commission which shall expire on the last day of the next reg-
17 ular or special session of the Legislature. Whenever a mem-
18 ber selected under subdivision (i) ceases to be a member of
19 the commission or a justice or judge of the court from which
20 he was selected, his membership shall forthwith terminate and
21 the Supreme Court shall select a successor for a four-year
22 term; and whenever a member appointed under subdivision
23 (ii) ceases to be a member of the commission or of the State
24 Bar, his membership shall forthwith terminate and the Board
25 of Governors of the State Bar shall appoint a successor for
26 a four-year term; and whenever a member appointed under
27 subdivision (iii) ceases to be a member of the commission or
28 becomes a justice or judge of any court or a member of the
29 State Bar, his membership shall forthwith terminate and the
30 Governor shall appoint a successor for a four-year term. No
31 member of the commission shall receive any compensation for
32 his services as such, but shall be allowed his necessary expenses
33 for travel, board and lodging incurred in the performance of
34 his duties as such.

35 No act of the commission shall be valid unless concurred in
36 by a majority of its members. The commission shall select one
37 of its members to serve as chairman.

38 (b) The State Bar of California is a public corporation
39 with perpetual existence and succession. Every person admitted
40 and licensed to practice law in this State is and shall be a
41 member of the State Bar except while holding office as a jus-
42 tice or judge of a court of record

43 SEC. 15 16 . A justice or judge of any court of this State,
44 in accordance with the procedure prescribed in this section, may
45 be removed for willful misconduct in office or willful and per-
46 sistent failure to perform his duties or habitual intemperance,
47 or he may be retired for disability seriously interfering with
48 the performance of his duties, which is, or is likely to become,
49 of a permanent character. The Commission on Judicial Quali-
50 fications may, after such investigation as the commission deems
51 necessary, order a hearing to be held before it concerning the

1 removal or retirement of a justice or a judge, or the commis-
2 sion may in its discretion request the Supreme Court to ap-
3 point three special masters, who shall be justices or judges of
4 courts of record, to hear and take evidence in any such matter,
5 and to report thereon to the commission. If, after hearing, or
6 after considering the record and report of the masters, the
7 commission finds good cause therefor, it shall recommend to
8 the Supreme Court the removal or retirement, as the case may
9 be, of the justice or judge.

10 The Supreme Court shall review the record of the proceed-
11 ings on the law and facts and in its discretion may permit the
12 introduction of additional evidence and shall order removal or
13 retirement, as it finds just and proper, or wholly reject the
14 recommendation. Upon an order for retirement, the justice or
15 judge shall thereby be retired with the same rights and privi-
16 leges as if he retired pursuant to statute. Upon an order for
17 removal, the justice or judge shall thereby be removed from
18 office, and his salary shall cease from the date of such order.

19 All papers filed with and proceedings before the Commis-
20 sion on Judicial Qualifications or masters appointed by the
21 Supreme Court, pursuant to this section, shall be confidential,
22 and the filing of papers with and the giving of testimony be-
23 fore the commission or the masters shall be privileged; but
24 no other publication of such papers or proceedings shall be
25 privileged in any action for defamation except that (a) the
26 record filed by the commission in the Supreme Court continues
27 privileged and upon such filing loses its confidential character
28 and (b) a writing which was privileged prior to its filing with
29 the commission or the masters does not lose such privilege by
30 such filing. The Judicial Council shall by rule provide for pro-
31 cedure under this section before the Commission on Judicial
32 Qualifications, the masters, and the Supreme Court. A justice
33 or judge who is a member of the commission or Supreme Court
34 shall not participate in any proceedings involving his own
35 removal or retirement.

36 This section is alternative to, and cumulative with, the
37 methods of removal of justices and judges provided in Sec-
38 tions 17 and 18 of Article IV, and Article XXIII, of this
39 Constitution.

40 SEC 16 17. There shall be a Judicial Council. It shall con-
41 sist of: (i) the Chief Justice or Acting Chief Justice; (ii) one
42 associate justice of the Supreme Court, three justices of dis-
43 trict courts of appeal, four judges of superior courts, two
44 judges of municipal courts, and one judge of a justice court,
45 designated by the Chief Justice for terms of two years; (iii)
46 four members of the State Bar of California appointed by the
47 Board of Governors of the State Bar for terms of two years,
48 two of the first such appointees to be appointed for one year
49 and two for two years; and (iv) one member of each house
50 of the Legislature designated as provided by the respective
51 house. If any judge so designated shall cease to be a judge
52 of the court from which he is selected, his designation shall

1 forthwith terminate. If any member of the State Bar so ap-
2 pointed shall cease to be a member of the State Bar, his ap-
3 pointment shall forthwith terminate, and the Board of Govern-
4 nors of the State Bar shall fill the vacancy in his unexpired
5 term. If any Member of the Legislature so designated shall
6 cease to be a member of the house from which designated, his
7 designation shall forthwith terminate, and a new designation
8 shall be made in the manner provided by the respective house.
9 The Chief Justice or Acting Chief Justice shall be chairman
10 and the Clerk of the Supreme Court shall serve as secretary.
11 The council may appoint an administrative director of the
12 courts, who shall hold office at its pleasure and shall perform
13 such of the duties of the council and of its chairman, other
14 than to adopt or amend rules of practice and procedure, as
15 may be delegated to him. No act of the council shall be valid
16 unless concurred in by a majority of its members.

17 The Judicial Council shall from time to time:

18 (1) Meet at the call of the chairman or as otherwise pro-
19 vided by it.

20 (2) Survey the condition of business in the several courts
21 with a view to simplifying and improving the administration
22 of justice.

23 (3) Submit such suggestions to the several courts as may
24 seem in the interest of uniformity and the expedition of busi-
25 ness.

26 (4) Report to the Governor and Legislature at the com-
27 mencement of each regular session with such recommendations
28 as it may deem proper.

29 (5) Submit to the Legislature, at each general session
30 thereof, its recommendations with reference to amendments of,
31 or changes in, existing laws relating to practice and procedure.

32 (6) Adopt or amend rules of practice and procedure for
33 the several courts.

34 (7) Exercise such other functions as may be provided by
35 law.

36 The chairman shall seek to expedite judicial business and
37 to equalize the work of the judges, and shall provide for the
38 assignment of any judge to another court of a like or higher
39 jurisdiction to assist a court or judge whose calendar is con-
40 gested, to act for a judge who is disqualified or unable to act,
41 or to sit and hold court where a vacancy in the office of judge
42 has occurred. A judge may likewise be assigned with his con-
43 sent to a court of lower jurisdiction, and a retired judge may
44 similarly be assigned with his consent to any court.

45 The judges shall co-operate with the council, shall sit and
46 hold court as assigned, and shall report to the chairman at such
47 times and in such manner as he shall request respecting the
48 condition, and manner of disposal, of judicial business in their
49 respective courts.

50 No member of the council shall receive any compensation
51 for his services as such, but shall be allowed his necessary

1 expenses for travel, board and lodging incurred in the per-
2 formance of his duties as such. Any judge assigned to a court
3 wherein a judge's compensation is greater than his own shall
4 receive while sitting therein the compensation of a judge
5 thereof. The extra compensation shall be paid in such manner
6 as may be provided by law. Any judge assigned to a court
7 in a county other than that in which he regularly sits shall be
8 allowed his necessary expenses for travel, board and lodging
9 incurred in the discharge of the assignment.

10 SEC. 17 18. The provisions of Article VI of this Constitu-
11 tion in force at the time of the adoption of this article as pro-
12 posed by the Legislature at its 1961 Regular General Session
13 which are omitted herefrom are continued in force, to the ex-
14 tent consistent with this article, as statutes of the State until
15 changed by law. The Legislature shall at its first session after
16 the adoption of this article incorporate the same in the statutes
17 of the State in such form as may be deemed proper.

APPENDIX B
CALIFORNIA CONSTITUTION

ARTICLE VI

Judicial Department

Courts in Which Judicial Power Is Vested

SECTION 1. The judicial power of the State shall be vested in the Senate, sitting as a court of impeachment, in a Supreme Court, district courts of appeal, superior courts, municipal courts, and justice courts
(Amendment adopted November 7, 1950.)

Judicial Council—Membership—Designation of Members—Termination of Designation—Chairman—Secretary—Administrative Director of the Courts

SEC 1a. There shall be a Judicial Council. It shall consist of (i) the Chief Justice or Acting Chief Justice; (ii) one Associate Justice of the Supreme Court, three justices of district courts of appeal, four judges of superior courts, two judges of municipal courts, and one judge of a justice court, designated by the Chief Justice for terms of two years; (iii) four members of the State Bar of California appointed by the Board of Governors of the State Bar for terms of two years, two of the first such appointees to be appointed for one year and two for two years; and (iv) one member of each house of the Legislature designated as provided by the respective house. If any judge so designated shall cease to be a judge of the court from which he is selected, his designation shall forthwith terminate. If any member of the State Bar so appointed shall cease to be a member of the State Bar, his appoint-

ment shall forthwith terminate, and the Board of Governors of the State Bar shall fill the vacancy in his unexpired term. If any Member of the Legislature so designated shall cease to be a member of the house from which designated, his designation shall forthwith terminate, and a new designation shall be made in the manner provided by the respective house. The Chief Justice or Acting Chief Justice shall be chairman and the Clerk of the Supreme Court shall serve as secretary. The council may appoint an administrative director of the courts, who shall hold office at its pleasure and shall perform such of the duties of the council and of its chairman, other than to adopt or amend rules of practice and procedure, as may be delegated to him. No act of the council shall be valid unless concurred in by a majority of its members.

Judicial Council—Duties—Rules

The Judicial Council shall from time to time :

- (1) Meet at the call of the chairman or as otherwise provided by it.
- (2) Survey the condition of business in the several courts with a view to simplifying and improving the administration of justice.
- (3) Submit such suggestions to the several courts as may seem in the interest of uniformity and the expedition of business.
- (4) Report to the Governor and Legislature at the commencement of each regular session with such recommendations as it may deem proper.
- (5) Submit to the Legislature, at each general session thereof, its recommendations with reference to amendments of, or changes in, existing laws relating to practice and procedure.
- (6) Adopt or amend rules of practice and procedure for the several courts not inconsistent with laws that are now or that may hereafter be in force.
- (7) Exercise such other functions as may be provided by law.

The chairman shall seek to expedite judicial business and to equalize the work of the judges, and shall provide for the assignment of any judge to another court of a like or higher jurisdiction to assist a court or judge whose calendar is congested, to act for a judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of judge has occurred. A judge may likewise be assigned with his consent to a court of lower jurisdiction, and a retired judge may similarly be assigned with his consent to any court.

The judges shall co-operate with the council, shall sit and hold court as assigned, and shall report to the chairman at such times and in such manner as he shall request respecting the condition, and manner of disposal, of judicial business in their respective courts.

Judicial Council—Compensation

No member of the council shall receive any compensation for his services as such, but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties as such.

Any judge assigned to a court wherein a judge's compensation is greater than his own shall receive while sitting therein the compensation of a judge thereof. The extra compensation shall be paid in such manner as may be provided by law. Any judge assigned to a court in a county other than that in which he regularly sits shall be allowed his necessary expenses for travel, board and lodging incurred in the discharge of the assignment.

(Amendment adopted November 8, 1960)

***Commission on Judicial Qualifications—Membership—
Appointments—Vacancies—Compensation***

SEC 1b There shall be a Commission on Judicial Qualifications. It shall consist of: (i) Two justices of district courts of appeal, two judges of superior courts, and one judge of a municipal court, each selected by the Supreme Court for a four-year term; (ii) two members of the State Bar, who shall have practiced law in this State for at least 10 years and who shall be appointed by the Board of Governors of the State Bar for a four-year term; and (iii) two citizens, neither of whom shall be a justice or judge of any court, active or retired, nor a member of the State Bar, and who shall be appointed by the Governor for a four-year term. Every appointment made by the Governor to the commission shall be subject to the advice and consent of a majority of members elected to the Senate, except that if a vacancy occurs when the Legislature is not in session, the Governor may issue an interim commission which shall expire on the last day of the next regular or special session of the Legislature. Whenever a member selected under subdivision (i) ceases to be a member of the commission or a justice or judge of the court from which he was selected, his membership shall forthwith terminate and the Supreme Court shall select a successor for a four-year term; and whenever a member appointed under subdivision (ii) ceases to be a member of the commission or of the State Bar, his membership shall forthwith terminate and the Board of Governors of the State Bar shall appoint a successor for a four-year term; and whenever a member appointed under subdivision (iii) ceases to be a member of the commission or becomes a justice or judge of any court or a member of the State Bar, his membership shall forthwith terminate and the Governor shall appoint a successor for a four-year term. No member of the commission shall receive any compensation for his services as such, but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties as such.

No act of the commission shall be valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as chairman.

(New section adopted November 8, 1960)

State Bar—Public Corporation—Perpetual Existence—Membership

SEC 1c The State Bar of California is a public corporation with perpetual existence and succession. Every person admitted and licensed

to practice law in this State is and shall be a member of the State Bar except while holding office as a justice or judge of a court of record.

(New section adopted November 8, 1960.)

Supreme Court—Distribution and Conduct of Business

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the court in bank. The presence of three justices shall be necessary to transact any business in either of the departments, except such as may be done at chambers, and the concurrence of three justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the court to be heard and decided by the court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within 30 days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited the judgment shall be final. No judgment by a department shall become final until the expiration of the period of 30 days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the court in bank at any time, and shall be the presiding justice of the court when so convened. The concurrence of four justices present at the argument shall be necessary to pronounce a judgment in bank; but if four justices, so present, do not concur in a judgment, then all the justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four judges shall be necessary. In the determination of causes, all decisions of the court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the justices assigned to each department shall select one of their number as presiding justice. In case of the absence of the Chief Justice from the place at which the court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

(Constitution of 1849, Art. VI, Sec. 2, revised 1879.)

Supreme Court Justices—Elections and Terms—Vacancies

SEC. 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large at the general elections, at the time and places at which state officers are elected, except as provided by Section 2 $\frac{1}{2}$ of Article II of this Constitution, and the term of office shall be 12 years from and after the first day of January next succeeding their election. If a vacancy occur in the office of a justice, the Governor shall appoint a person to hold the office until the election and qualification of a justice to fill the vacancy, which election shall take place at the next succeeding general state or primary election after the first day of April next succeeding the occurrence of such vacancy; the justice then elected shall hold office for the unexpired term; provided, that whenever the term of office of the justice whose place is filled by appointment is fixed by law to expire on the first day of January after the next or such succeeding general election, then the person so appointed to fill the vacancy shall hold office for the remainder of such unexpired term.

(Amendment adopted November 6, 1928.)

Jurisdiction of Supreme Court

SEC. 4 The Supreme Court shall have appellate jurisdiction on appeal from the superior courts in all cases in equity, except such as arise in municipal or justices' courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine also, in all such probate matters as may be provided by law; also, on questions of law alone, in all criminal cases where judgment of death has been rendered; the said court shall also have appellate jurisdiction in all cases, matters and proceedings pending before a District Court of Appeal, which shall be ordered by the Supreme Court to be transferred to itself for hearing and decision, as hereinafter provided. The said court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court or before any district court of appeal, or before any justice thereof, or before any superior court in the State, or before any judge thereof

(Amendment adopted November 6, 1928.)

District Courts of Appeal—Organization—New Courts and Divisions

SEC. 4a. The State is hereby divided into three appellate districts, in each of which there shall be a district court of appeal, consisting

of such number of divisions having three justices each as the Legislature shall determine; and until so determined otherwise, the courts of appeal for the First and Second Appellate Districts shall each consist of two divisions, and the court of the Third Appellate District shall consist of one division.

The Legislature may from time to time create and establish additional district courts of appeal and divisions thereof and fix the places at which the regular sessions thereof shall be held and may provide for the maintenance and operation thereof. For that purpose the Legislature may redivide the State into appellate districts, subject to the power of the Supreme Court to remove one or more counties from one appellate district to another as in this section provided.

Each of such divisions shall have and exercise all of the powers of the district court of appeal.

The district court of appeal as existing immediately prior to the approval and ratification of this amendment by the people shall not be affected thereby as to the officers or terms of office of the justices thereof.

Upon the creation of any additional division of the district court of appeal the Governor shall appoint three persons to serve as justices thereof until the first day of January after the next general election. The justices of said division elected at such general election shall so classify themselves by lot that one of them shall go out of office at the end of four years, one of them at the end of eight years, and one of them at the end of 12 years, and entry of such classification shall be made in the minutes of said division, signed by the three justices thereof, and a duplicate thereof filed in the Office of the Secretary of State.

Appellate Court Justices —Election and Terms

The justices of the district courts of appeal shall be elected by the qualified electors within their respective districts at the general state elections except as provided in Section 2½ of Article II;* and the term of office of said justices shall be 12 years from and after the first day of January next succeeding their election.

Appellate Court Justices—Vacancies

If any vacancy occur in the office of a justice of the district courts of appeal, the Governor shall appoint a person to hold office until the election and qualification of a justice to fill the vacancy. Such election shall take place at the next succeeding general state or primary election after the first day of April next succeeding the occurrence of such vacancy; the justice then elected shall hold office for the unexpired term; provided, that whenever the term of office of the justice whose place is filled by appointment is fixed by law to expire on the first day of January after the next or such succeeding general election, then the person so appointed to fill the vacancy shall hold office for the remainder of such unexpired term.

Appellate Courts—Presiding Justices

One of the justices of each of the district courts of appeal, and of each division of said courts, shall be the presiding justice thereof, and as such shall be appointed or elected, as the case may be.

In cases wherein the presiding justice is not acting, the other justices shall designate one of their number to perform the duties and exercise the powers of presiding justice.

The presence of two justices shall be necessary for the transaction of any business by such court except such as may be done at chambers, and the concurrence of two justices shall be necessary to pronounce a judgment.

Transfer of Appeals

No appeal taken to the Supreme Court or to a district court of appeal shall be dismissed for the reason only that the same was not taken to the proper court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein as if regularly appealed thereto.

All statutes now in force allowing, providing for or regulating appeals to the Supreme Court shall apply to appeals to the district courts of appeal so far as such statutes are not inconsistent with this article and until the Legislature shall otherwise provide.

District Courts of Appeal—Districts—Sessions

The First District shall embrace the following counties: San Francisco, Marin, Contra Costa, Alameda, San Mateo, Santa Clara, Fresno,* Santa Cruz, Monterey and San Benito.

The Second District shall embrace the following counties: Tulare,* Kings,* San Luis Obispo, Kern,* Inyo,* Santa Barbara, Ventura, Los Angeles, San Bernardino,* Orange,* Riverside,* San Diego* and Imperial*.

The Third District shall embrace the following counties: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano, Sacramento, El Dorado, San Joaquin, Amador, Calaveras, Stanislaus, Mariposa, Madera, Merced, Tuolumne, Alpine and Mono.

The Supreme Court, by orders entered in its minutes, may from time to time remove one or more counties from one appellate district to another, but no county not contiguous to another county of a district shall be added to such district.

Said district courts of appeal shall hold their regular sessions respectively at San Francisco, Los Angeles and Sacramento, and they shall always be open for the transaction of business.

(New section adopted November 6, 1928.)

* Now in Fourth Appellate District See Government Code, Section 69102

District Courts of Appeal—Jurisdiction

SEC 4b The district courts of appeal shall have appellate jurisdiction on appeal from the superior courts (except in cases in which appellate jurisdiction is given to the Supreme Court) in all cases at law in which the superior courts are given original jurisdiction; also, in all cases of forcible or unlawful entry or detainer (except such as arise in municipal, or in justices' or other inferior courts); in proceedings in insolvency; in actions to prevent or abate a nuisance; in proceedings of mandamus, certiorari, prohibition, usurpation of office, removal from office, contesting elections, eminent domain, and in such other special proceedings as may be provided by law; also, on questions of law alone, in all criminal cases prosecuted by indictment or information, except where judgment of death has been rendered.

The said courts shall also have appellate jurisdiction in all cases, matters, and proceedings pending before the Supreme Court which shall be ordered by the Supreme Court to be transferred to a district court of appeal for hearing and decision. The said courts shall also have power to issue writs of mandamus, certiorari, prohibition and habeas corpus, and all other writs necessary or proper to the complete exercise of their appellate jurisdiction. Each of the justices thereof shall have power to issue writs of habeas corpus to any part of his appellate district upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the district court of appeal of his district, or before any superior court within his district, or before any judge thereof.

(New section adopted November 6, 1928.)

Civil and Criminal Appeals—Transfer of Causes From Supreme Court to Appellate Court or Between Appellate Courts

SEC. 4c. The Supreme Court may order any case; (i) in the Supreme Court transferred to a district court of appeal for decision; and (ii) in the district court of appeal for one district transferred to the district court of appeal for another district, or in one division of a district court of appeal transferred to another division of the same district court of appeal, for decision. An order under this section must be made before decision by the court or division from which the case is to be transferred.

(Amendment adopted November 6, 1956)

Civil and Criminal Appeals—Transfer of Causes From Appellate Court to Supreme Court

SEC. 4d. The Supreme Court may order any case in a district court of appeal transferred to it for decision. An order under this section may be made before decision by the district court of appeal or thereafter up to the time such decision becomes final as provided by rule of the Judicial Council.

(New section adopted November 6, 1956)

District Courts of Appeal—Appellate Jurisdiction

SEC. 4e. The district courts of appeal shall have appellate jurisdiction on appeal in all cases within the original jurisdiction of the municipal and justice courts, to the extent and in the manner provided for by law.

(New section adopted November 8, 1960)

New Trial Only When Miscarriage of Justice Has Resulted

SEC. 4f. No judgment shall be set aside, or new trial granted, in any case, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

(Amendment adopted November 3, 1914.)

Taking of Evidence by Court of Appellate Jurisdiction—Findings

SEC. 4g. In all cases where trial by jury is not a matter of right or where trial by jury has been waived, the Legislature may grant to any court of appellate jurisdiction the power, in its discretion, to make findings of fact contrary to, or in addition to, those made by the trial court. The Legislature may provide that such findings may be based on the evidence adduced before the trial court, either with or without the taking of additional evidence by the court of appellate jurisdiction. The Legislature may also grant to any court of appellate jurisdiction the power, in its discretion, for the purpose of making such findings or for any other purpose in the interest of justice, to take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal, and to give or direct the entry of any judgment or order and to make such further or other order as the case may require.

(New section adopted November 2, 1926.)

Superior Courts—Jurisdiction—Lower Courts

SEC. 5. The superior courts shall have original jurisdiction in all civil cases and proceedings (except as in this article otherwise provided, and except, also cases and proceedings in which jurisdiction is or shall be given by law to municipal or to justices or other inferior courts) ; in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; and of all such special cases and proceedings as are not otherwise provided for; and said court shall have the power of naturalization and to issue papers therefor.

The superior courts shall have appellate jurisdiction in such cases arising in municipal and in justices' and other inferior courts in their respective counties or cities and counties as may be prescribed by law. The Legislature may, in addition to any other appellate jurisdiction of

the superior courts, also provide for the establishment of appellate departments of the superior court in any county or city and county wherein any municipal court is established, and for the constitution, regulation, jurisdiction, government and procedure of such appellate departments. Superior courts, municipal courts and justices' courts in cities having a population of more than 40,000 inhabitants shall always be open, legal holidays and nonjudicial days excepted. The process of superior courts shall extend to all parts of the State; provided, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions, is situated. Said superior courts, and their judges shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus on petition by or on behalf of any person in actual custody, in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and nonjudicial days. The process of any municipal court shall extend to all parts of the county or city and county in which the city is situated where such court is established, and to such other parts of the State as may be provided by law, and such process may be executed or enforced in such manner as the Legislature shall provide.

Judges pro Tempore

Upon stipulation of the parties litigant or their attorneys of record a cause in the superior court or in a municipal court may be tried by a judge pro tempore who must be a member of the bar sworn to try the cause, and who shall be empowered to act in such capacity in the cause tried before him until the final determination thereof. The selection of such judge pro tempore shall be subject to the approval and order of the court in which said cause is pending and shall also be subject to such regulations and orders as may be prescribed by the Judicial Council.

(Amendment adopted November 6, 1928.)

Superior Courts, Organization

SEC. 6. There shall be in each of the organized counties, or cities and counties, of the State, a superior court, for each of which at least one judge shall be elected by the qualified electors of the county, or city and county, at the general state election. There may be as many sessions of a superior court, at the same time, as there are judges elected, appointed or assigned thereto. The judgments, orders, and proceedings of any session of a superior court, held by any one or more of the judges sitting therein, shall be equally effectual as though all the judges of said court presided at such session.

(Amendment adopted November 2, 1926.)

Superior Courts—Presiding Judges

SEC. 7. The judges of each superior court in which there are more than two judges sitting, shall choose, from their own number, a presiding judge, who may be removed as such at their pleasure. Subject to the regulations of the Judicial Council, he shall distribute the business of the court among the judges, and prescribe the order of business.

(Amendment adopted November 2, 1926)

Superior Court Judges—Terms—Vacancies

SEC. 8. The term of office of judges of the superior courts shall be six years from and after the first Monday of January after the first day of January next succeeding their election. A vacancy in such office shall be filled by the election of a judge for a full term at the next general state election after the first day of January next succeeding the accrual of the vacancy; except that if the term of an incumbent, elective or appointive, is expiring at the close of the year of a general state election and a vacancy accrues after the commencement of that year and prior to the commencement of the ensuing term, the election to fill the office for the ensuing full term shall be held in the closing year of the expiring term in the same manner and with the same effect as though such vacancy had not accrued. In the event of any vacancy, the Governor shall appoint a person to hold the vacant office until the commencement of the term of the judge elected to the office as herein provided.

(Amendment adopted November 4, 1952)

Absence of Judge From State—Change in Number of Superior Judges

SEC. 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than 60 consecutive days shall be deemed to have forfeited his office. The Legislature of the State may at any time, two-thirds of the Members of the Senate and two-thirds of the Members of the Assembly voting therefor, increase or diminish the number of judges of the superior court in any county, or city and county, in the State; provided, that no such reduction shall affect any judge who has been elected.

(Constitution of 1949, Art. VI, portion of Sec. 5, revised 1979)

Removal of Judicial Officers

SEC. 10. Justices of the Supreme Court, and of the district courts of appeal, and judges of the superior courts may be removed by concurrent resolution of both houses of the Legislature adopted by a two-thirds vote of each house. All other judicial officers, except justices of the peace, may be removed by the Senate on the recommendation of the Gover-

nor; but no removal shall be made by virtue of this section unless the cause thereof be entered on the Journal, nor unless the party complained of has been served with a copy of the complaint against him and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the Journal.

(Amendment adopted November 8, 1904.)

Removal of Judges for Conviction of Crimes

SEC. 10a. Whenever a justice of the Supreme Court or of a district court of appeal, or a judge of any court of this State, has been convicted in any court of this State or of the United States, of a crime involving moral turpitude, the Supreme Court shall of its own motion or upon a petition filed by any person, and upon finding that such a conviction was had, enter its order suspending said justice or judge from office until such time as said judgment of conviction becomes final, and the payment of salary of said justice or judge shall also be suspended from the date of such order. When said judgment of conviction becomes final, the Supreme Court shall enter its order permanently disbarring said justice or judge and striking his name from the roll of attorneys and counsellors, and removing said justice or judge from office and his right to salary shall cease from the date of the order of suspension. If said judgment of conviction is reversed, the Supreme Court shall enter its order terminating the suspension of said justice or judge and said justice or judge shall be entitled to his salary for the period of the suspension.

(New section adopted November 8, 1933.)

Justices and Judges—Removal for Misconduct in Office— Compulsory Retirement

SEC. 10b. A justice or judge of any court of this State, in accordance with the procedure prescribed in this section, may be removed for willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. The Commission on Judicial Qualifications may, after such investigation as the commission deems necessary, order a hearing to be held before it concerning the removal or retirement of a justice or a judge, or the commission may in its discretion request the Supreme Court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter, and to report thereon to the commission. If, after hearing, or after considering the record and report of the masters, the commission finds good cause therefor, it shall recommend to the Supreme Court the removal or retirement, as the case may be, of the justice or judge.

The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of

additional evidence and shall order removal or retirement, as it finds just and proper, or wholly reject the recommendation. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order.

Privileged Papers and Proceedings—Rules of Procedure

All papers filed with and proceedings before the Commission on Judicial Qualifications or masters appointed by the Supreme Court, pursuant to this section, shall be confidential, and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged, but no other publication of such papers or proceedings shall be privileged in any action for defamation except that (a) the record filed by the commission in the Supreme Court continues privileged and upon such filing loses its confidential character and (b) a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing. The Judicial Council shall by rule provide for procedure under this section before the Commission on Judicial Qualifications, the masters, and the Supreme Court. A justice or judge who is a member of the commission or Supreme Court shall not participate in any proceedings involving his own removal or retirement.

This section is alternative to, and cumulative with, the methods of removal of justices and judges provided in Sections 10 and 10a of this article, Sections 17 and 18 of Article IV, and Article XXIII, of this Constitution.

(New section added November 8, 1960)

SEC. 11. *As printed in Stats 1923, p. 1641, repealed November 6, 1928.*

Municipal and Justice Courts—Establishment of—Election of Judges

SEC. 11. Each county of the State shall be divided into judicial districts in the manner to be prescribed by the Legislature; provided, however, that no incorporated city or city and county shall be divided so as to lie partly within one district and partly within another.

In each district containing a population of more than 40,000 inhabitants, as ascertained in the manner prescribed by the Legislature, and in each consolidated city and county there shall be a municipal court; in each district containing a population of 40,000 inhabitants or less, as ascertained in the manner prescribed by the Legislature, there shall be a justice court, except that the Legislature may provide that each incorporated city the boundaries of which were coextensive with those of the township two years before the effective date of this amendment and which is entirely surrounded by another incorporated city containing a population of more than 40,000 inhabitants shall constitute a judicial district

in which there shall be a municipal court. For each such municipal court and justice court at least one judge, with such additional judges as may be authorized, shall be elected by the qualified electors of the district; provided, however, that the judges of the municipal courts heretofore established pursuant to general law shall continue in office during the terms for which they were elected or appointed and until their successors are elected and qualify.

Municipal and Justice Courts—Regulation, Jurisdiction, Procedure, etc.

The Legislature shall provide by general law for the regulation, government, procedure and jurisdiction of municipal courts and of justice courts, and shall fix by law the powers, duties and responsibilities of such courts and of the judges thereof.

Municipal and Justice Court Judges, Officers, and Attaches—Terms—Number—Qualifications—Compensation

Except as such matters are otherwise provided in this article, the Legislature shall prescribe the manner in which, the time at which, and the terms for which the judges, officers and attaches of municipal courts and of justice courts shall be elected or appointed, the number, qualifications and compensation of the judges, officers and attaches of municipal courts, and provide for the manner in which the number, qualifications and compensation of the judges, officers and attaches of justice courts shall be fixed.

Other Courts

In each judicial district or consolidated city and county in which a municipal or justice court is established, and in cities and townships situated in whole or in part in such district or city and county, there shall be no other court inferior to the superior court; provided, however, that in each such district or city and county existing courts shall continue to function as presently organized until the first selection and qualification of the judge or judges of the municipal or justice court, at which time, unless otherwise provided by law, pending actions, trials and all pending business of existing courts shall be transferred to and become pending in the municipal or justice court established for the judicial district or city and county in which they are situated, and all records of such superseded courts shall be transferred to, and thereafter be and become records of said municipal or justice court.

Courts of Record—Compensation of Justices or Judges

The compensation of the justices or judges of all courts of record shall be fixed, and the payment thereof prescribed, by the Legislature

Validations

The Legislature shall enact such general or special laws, except in the particulars otherwise specified herein, as may be necessary to carry

out the provisions of this section, and all laws relating to municipal and justice courts and to judicial districts enacted by the Legislature at its 1949 Regular Session are hereby validated and made fully and completely effective.

(Amendment adopted November 7, 1950.)

Inferior Courts—Number and Jurisdiction

SEC 11a *Section repealed November 7, 1950*

Courts of Record

SEC. 12. The Supreme Court, the district courts of appeal, the superior courts, the municipal courts, and such other courts as the Legislature shall prescribe, shall be courts of record.

(Amendment adopted November 4, 1924)

Legislature May Fix Jurisdiction of Municipal and Inferior Courts

SEC 13 *Section repealed November 7, 1950.*

Superior Courts—Clerks—Commissioners

SEC 14. The county clerks shall be ex officio clerks of the courts of record, other than municipal courts, in and for their respective counties or cities and counties. The Legislature may also provide for the appointment, by the several superior courts, of one or more commissioners in their respective counties, or cities and counties, with authority to perform chamber business of the judges of the superior courts, to take depositions, and to perform such other business connected with the administration of justice as may be prescribed by law.

(Amendment adopted November 4, 1924.)

Fees of Judicial Officers Abolished

SEC 15. No judicial officer, except court commissioners, shall receive to his own use any fees or perquisites of office; provided, that justices of the peace now holding office shall receive to their own use such fees as are now allowed by law during the terms for which they have been elected.

(Amendment adopted October 10, 1911.)

Publication of Opinions of Appellate Courts

SEC. 16 The Legislature shall provide for the speedy publication of such opinions of the Supreme Court and of the district courts of appeal as the Supreme Court may deem expedient, and all opinions shall be free for publication by any person.

(Amendment adopted November 8, 1904)

Compensation of Judges

SEC. 17. *Section repealed November 6, 1956*

Judge Ineligible to Other Office—Not to Practice Law

SEC. 18 The Justices of the Supreme Court, and of the district courts of appeal and the judges of the superior courts and the municipal courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected or appointed, and no justice or judge of a court of record shall practice law in or out of court during his continuance in office; provided, however, that a judge of the superior court or of a municipal court shall be eligible to election or appointment to a public office during the time for which he may be elected, and the acceptance of any other office shall be deemed to be a resignation from the office held by said judge.

(Amendment adopted November 4, 1930.)

Instructions to Jury—Comment on Evidence

SEC. 19 The court may instruct the jury regarding the law applicable to the facts of the case, and may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the case. The court shall inform the jury in all cases that the jurors are the exclusive judges of all questions of fact submitted to them and of the credibility of the witnesses.

(Amendment adopted November 6, 1934 Initiative measure)

Style of Process

SEC. 20. The style of all process shall be, "The people of the State of California," and all prosecutions shall be conducted in their name and by their authority.

(Constitution of 1849, Art. VI, Sec. 18, revised 1879.)

Clerks and Reporters of Supreme and Appellate Courts

SEC. 21. The Supreme Court shall appoint a Clerk of the Supreme Court; provided, however, that any person elected to the office of Clerk of the Supreme Court before the adoption hereof, shall continue to hold such office until the expiration of the term for which he may have been elected. Said court may also appoint a reporter and not more than three assistant reporters of the decisions of the Supreme Court and of the district courts of appeal. Each of the district courts of appeal shall appoint its own clerk. All the officers herein mentioned shall hold office and be removable at the pleasure of the courts by which they are severally appointed, and they shall receive such compensation as shall be prescribed by law, and discharge such duties as shall be prescribed by law,

or by the rules or orders of the courts by which they are severally appointed.

(Amendment adopted October 10, 1911.)

Judge Not to Practice Law

SEC. 22. *Section repealed November 4, 1930.*

Judge Must Be an Attorney

SEC. 23. No person shall be eligible to the office of the Justice of the Supreme Court, or of a district court of appeal, or of a judge of a superior court, or of a municipal court, unless he shall have been admitted to practice before the Supreme Court of the State for a period of at least five years immediately preceding his election or appointment to such office; provided, however, that any elected judge or justice of an existing court who has served in that capacity by election or appointment for five consecutive years immediately preceding the effective date of this amendment shall be eligible to become the judge of a municipal court by which the existing court is superseded upon the establishment of said municipal court or at the first election of judges thereto and for any consecutive terms thereafter for which he may be re-elected. The requirement of consecutive years of judicial service shall be deemed to have been met even though interrupted by service in the armed forces of the United States during the period of war.

(Amendment adopted November 7, 1950)

Salary of Judge Not to Be Paid, When—Written Decisions

SEC. 24. No Justice of the Supreme Court nor of a district court of appeal, nor any judge of a superior court nor of a municipal court shall draw or receive any monthly salary unless he shall make and subscribe an affidavit before an officer entitled to administer oaths, that no cause in his court remains pending and undetermined that has been submitted for decision for a period of 90 days. In the determination of causes all decisions of the Supreme Court and of the district courts of appeal shall be given in writing, and the grounds of the decision shall be stated.

(Amendment adopted November 4, 1924)

Supreme Court Commission Abolished

SEC. 25. *Section repealed November 6, 1956*

Judges' Candidacy

SEC. 26. Within 30 days before the sixteenth day of August next preceding the expiration of his term, any Justice of the Supreme Court, justice of a district court of appeal, or judge of a superior court in any

county the electors of which have adopted provisions of this section as applicable to the judge or judges of the superior court of such county in the manner hereinafter provided, may file with the officer charged with the duty of certifying nominations for publication in the official ballot a declaration of candidacy for election to succeed himself. If he does not file such declaration the Governor must nominate a suitable person for the office before the sixteenth day of September, by filing such nomination with the officer charged with said duty of certifying nominations.

Ballot Form

In either event, the name of such candidate shall be placed upon the ballot for the ensuing general election in November in substantially the following form:

For -----
(title of office)

Shall -----
(name)

Yes
No

be elected to the office for the term expiring Janu-

ary ----- !
(year)

No name shall be placed upon the ballot as a candidate for any of said judicial offices except that of a person so declaring or so nominated. If a majority of the electors voting upon such candidacy vote "yes," such person shall be elected to said office. If a majority of those voting thereon vote "no," he shall not be elected, and may not thereafter be appointed to fill any vacancy in that court, but may be nominated and elected thereto as hereinabove provided.

Vacancies in Judicial Offices

Whenever a vacancy shall occur in any judicial office above named, by reason of the failure of a candidate to be elected or otherwise, the Governor shall appoint a suitable person to fill the vacancy. An incumbent of any such judicial office serving a term by appointment of the Governor shall hold office until the first Monday after the first day of January following the general election next after his appointment, or until the qualification of any nominee who may have been elected to said office prior to that time.

Confirmation of Nominations and Appointments—Commission on Qualifications -- Retirement of Judges

No such nomination or appointment by the Governor shall be effective unless there be filed with the Secretary of State a written confirmation of such nomination or appointment signed by a majority of the three officials herein designed as the Commission on Qualifications. The Commission on Qualifications shall consist of (1) the Chief Justice of the Supreme Court, or, if such office be vacant, the acting Chief Justice; (2) the presiding justice of the district court of appeal of the district in which a justice of a district court of appeal or a judge of a superior court is to serve, or, if there be two such presiding justices, the one who has served the longer as such; or, in the case of the nomination or appointment of a Justice of the Supreme Court, the presiding justice who has served longest as such upon any of the district courts of appeal, and (3) the Attorney General. If two or more presiding justices above designated shall have served terms of equal length, they shall choose the one who is to be a member of the Commission on Qualifications by lot, whenever occasion for action arises. The Legislature shall provide by general law for the retirement, with reasonable retirement allowance, of such justices and judges for age or disability.

Judges—Removal From Office

In addition to the methods of removal by the Legislature provided by Sections 17 and 18 of Article IV and by Section 10 of this article, the provisions of Article XXIII relative to the recall of elective public officers shall be applicable to justices and judges elected and appointed pursuant to the provisions of this section so far as the same relate to removal from office.

Superior Courts

The provisions of this section shall not apply to the judge or judges of the superior court of any county until a majority of the electors of such county voting on the question of the adoption of such provisions, in a manner to be provided for by the Legislature, shall vote in favor thereof.

Diminishing Number of Superior Judges

If the Legislature diminishes the number of judges of the superior court in any county or city and county, the offices which first become vacant, to the number of judges diminished, shall be deemed to be abolished.

(New section adopted November 6, 1934 Initiative measure)

Commission on Judicial Appointments

SEC. 26a The "Commission on Qualifications" created by Section 26 of this article is renamed and henceforth shall be known as the "Commission on Judicial Appointments"

(New section added November 8, 1900)

APPENDIX C

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, August 21, 1962

HONORABLE MILTON MARKS
Russ Building, San Francisco 4, California

A.C.A. 26, 1961 REGULAR SESSION—COURTS—No 4791

DEAR MR MARKS Pursuant to your request we have prepared the following analysis of the changes that would be made by A C A 26 of the 1961 Regular Session as amended in Assembly April 26, 1961

A C A. 26 would repeal Article VI of the Constitution and add a revised Article VI to provide for the state judicial system

Section 1 of Article VI now provides that the judicial power of the State shall be vested in the Senate, sitting as a court of impeachment, in a Supreme Court, district courts of appeal, superior courts, and justice courts A C A 26 would delete the reference to justice courts and would permit the Legislature to establish additional courts (Sec 1, A C A 26)

Section 4 of Article VI now specifies in detail the scope of the appellate jurisdiction of the Supreme Court A C A 26 provides that the Supreme Court shall have final appellate jurisdiction in all cases arising under this Constitution and the laws of this State, with such exceptions and under such regulations as are prescribed by law (Sec 2, A C A 26)

Section 4a of Article VI provides that the State shall be divided into a minimum of three appellate districts, in each of which there shall be a district court of appeal Section 4b of Article VI provides in detail for the jurisdiction of district courts of appeal A C A 26 would permit the Legislature to prescribe by statute the number, organization, and jurisdiction of district courts of appeal (Sec 3, A C A 26)

It should be noted that the provisions of Sections 4 and 4b of Article VI which authorize an individual justice of the Supreme Court or district courts of appeal to issue writs of habeas corpus returnable before himself, his court, or a lower court, would be deleted by A C A 26

A C A 26 would substantially delete the provisions (Sees 5, 6, 7, 11, present Art VI) providing for the jurisdiction and organization of superior and municipal courts, leaving these matters to be fixed by law (Sec 4, A C A 26)

Section 6 of A C A 26 would expressly authorize the Governor to fill vacancies in municipal courts by appointments (see Art V, Sec 8)

Section 26 of Article VI provides that all appointments by the Governor to the bench of the Supreme Court, district courts of appeal, and superior courts of those counties, the electors of which have voted to have the section apply to superior courts of the county (i.e., that the judges thereof shall "run against their record"), must be confirmed by a majority of the members of the Commission on Judicial Appointments A C A 26, Sections 7 and 9, would add all superior courts and

all municipal courts to the list of appointments to judicial offices which must be confirmed by the Commission on Judicial Appointments

The membership of the Commission on Judicial Appointments would be altered by A C A 26, Section 10 At present the members are:

" . (1) the Chief Justice of the Supreme Court, or, if such office be vacant, the Acting Chief Justice, (2) the presiding justice of the district court of appeal of the district in which a justice of a district court of appeal or a judge of a superior court is to serve, or, if there be two such presiding justices, the one who has served the longer as such, or, in the case of the nomination or appointment of a Justice of the Supreme Court, the presiding justice who has served longest as such upon any of the district courts of appeal; and (3) the Attorney General If two or more presiding justices above designated shall have served terms of equal length, they shall choose the one who is to be a member of the Commission on Judicial Appointments by lot, whenever occasion for action arises . " (Sec 26, Art VI)

Section 10 of A C A. 26 would provide that the members of the Commission on Judicial Appointments shall be

" (i) the Chief Justice of the Supreme Court, or in his absence the Acting Chief Justice, who shall be the chairman, (ii) one Associate Justice of the Supreme Court, one justice of a district court of appeal, and one judge of a superior court, and one judge of a municipal court, each selected by the Supreme Court, and (iii) two members of the State Bar, who shall have practiced law in this State for at least 10 years and who shall be appointed by the Board of Governors of the State Bar "

Section 13 of A C A 26 is similar to Section 18 of Article VI, except that it would specify that a judge would be ineligible to hold an office in a political party

Section 17 of A C A 26 provides for a Judicial Council similar to that provided by Sections 1a and 10b of Article VI However, Article VI, Section 1a, subdivision (6), provides "[the Judicial Council shall] adopt or amend rules of practice and procedure for the several courts not inconsistent with laws that are now or that may hereafter be in force " A.C.A. 26, Section 17, subdivision (6), would delete the words following "several courts" thus apparently giving the Judicial Council power to adopt rules of practice and procedure inconsistent with statutes which would prevail over such statutes

A C A 26, Section 11, would be a new provision which would prohibit the diminishing of a judge's compensation during his term of office

Section 18 of A C A 26 provides that provisions of the present Article VI which are omitted from and are not inconsistent with the proposed Article VI, are to continue in force as statutes of the State until changed by law Thus any such provision could be changed by statute rather than by a constitutional amendment

In addition to the detailed provisions concerning the organization, procedure, and jurisdiction of the various courts, the following provisions would be deleted from Article VI

(1) The provision that a new trial may be granted only when a miscarriage of justice has resulted (Sec 4½)

(2) The provision that upon stipulation of the parties litigant, a member of the bar may be empowered as a judge pro tempore to hear a cause in a superior or municipal court (Sec 5)

(3) The provisions (i) that the Legislature shall have no power to grant leave of absence to any judicial officer, and that an absence of more than 60 days shall be deemed a forfeiture of the office; (ii) that by a two-thirds vote of each house of the Legislature, the number of superior court judges of any county or city and county may be increased or diminished—reductions not to affect judges who have been elected

(4) The provision that Justices of the Supreme Court, the district courts of appeal, and judges of the superior courts may be removed by concurrent resolution of both houses of the Legislature adopted by a two-thirds vote of each house. All other judicial officers, except justices of the peace, may be removed by the Senate on recommendation of the Governor (Sec 10)

(5) The provision permitting the Supreme Court to order suspension, and, when the conviction becomes final, removal, of judges convicted of crimes involving moral turpitude (Sec 10a)

(6) The designation of various courts as courts of "record" (Sec 12)

(7) The provision for clerks and commissioners for superior courts (Sec 14)

(8) The prohibition of the receipt of fees, to his own use, by any judicial officer other than commissioners (Sec 15)

(9) The requirement of publication of the opinions of appellate courts (Sec 16)

(10) The provision permitting comment on the evidence by the judge in a jury trial, and requiring certain instructions to a jury on its fact-finding function. (Sec 19)

(11) The style of process to be used in prosecutions (Sec 20)

(12) The provision for the clerks and reporters of the appellate courts. (Sec 21)

(13) The provision that all appellate court decisions must be in writing, with the grounds for the decision stated, and that the salary of a judge is to be withheld if there are causes in his court submitted for decision and undecided for a period of 90 days (Sec 24)

(14) The provision that in the event the number of judges of a superior court are to be diminished, the offices which first become vacant are to be deemed abolished (Sec. 26)

Very truly yours,

A C MORRISON
Legislative Counsel

By TERRY L BAUM
Deputy Legislative Counsel

APPENDIX D

STUDY OF THE ASSEMBLY INTERIM COMMITTEE ON CONSTITUTIONAL AMENDMENTS, 1959-1961

ARTICLE VI (Judicial Article)

GENERAL

During the first two public hearings, many witnesses pointed to Article VI as an area of the Constitution that was in need of basic revision. Since this article is substantially free from constitutional details delineating spheres of special interest, it presents a favorable opportunity to approach the problem of revision on a rational and relatively non-controversial basis. But, although the Judicial Article has been less subject to the pressures of various interest groups than other areas of the Constitution, it is, nevertheless, in most respects, typical of our lengthy and inflexible fundamental law and is encumbered with detailed, obsolete, and inconsistent provisions. The detailed provisions of this article have given rise to 62 amendments since the adoption of the 1879 Constitution.

The Judicial Council and the California State Bar have traditionally been concerned with Article VI and have continually made recommendations for the improvement of the administration of justice. In a report to Governor Goodwin J. Knight in 1956 concerning the condition of judicial administration in California, the Honorable Phil S. Gibson, Chief Justice of the California Supreme Court and Chairman of the Judicial Council, stated that on the council's current agenda of study projects was a "study of the entire Judicial Article of the California Constitution directed toward the elimination of obsolete and restrictive matter which now hampers the modernization of court structure and procedure." In an article published in the same year, the Chief Justice advocated a program of revision that would eliminate obsolete and procedural matters, restate and simplify remaining provisions, and make necessary substantive changes.

In a statement before the committee in San Francisco, the President of the California State Bar Association testified that:

"Article VI is the article with which our legal profession is most directly concerned. This article contains some 26 section headings and a great many subsections. Like the other articles, it has been amended frequently. For example, two amendments were adopted by the people in 1956, both for the purpose of authorizing the Judicial Council to fix the time when a decision of the District Court of Appeal should become final. These amendments are a good illustration of the cumbersomeness of our Constitution. Surely the establishment of appropriate time factors for the operation of the appellate process in our courts is a matter for legislative action or for delegation by the Legislature to the Judicial Council. It should not be necessary to ask the people to consider a matter of such relatively minor procedural detail and have to vote upon it at a general election. . . .

"Because of its original length and its frequent amendment, Article VI is now badly in need of rearrangement. Also, it contains much obsolete material and some material which should not be in the Constitution at all."

Professor Arvo Van Alstyne, Professor of Law at UCLA, appeared before the committee in Los Angeles and commented as follows:

"The judicial article of the Constitution is in need of revision. Numerous provisions in Article VI are anachronistic or simply of no present force and effect. Much of the judicial article is occupied with provisions dealing with the structure, organization, and jurisdiction of the various courts. The bulk of these matters should be omitted from the Constitution and replaced by general authorizations for legislative enactments relating thereto. The present procedures to make needed changes in the judicial system, via constitutional amendments, are neither efficient nor necessary. Such matters are usually of such a nature as to be difficult for the lay voter to adequately understand. They are technical matters with which lawyers and legislators are not only conversant, but equipped by specialized training and experience to evaluate. Their resolution is more appropriately a matter for legislative concern. Furthermore, flexibility and the capacity to meet changing needs in our rapidly changing world would seem to be desirable qualities for an effective system for administering justice. Such flexibility can better be found in the vesting of lawmaking authority in the Legislature than in the electorate through the medium of constitutional amendment. The Constitution, of course, should retain the basic structural provisions and authorizations for legislative action, but the details properly should be left to legislative delineation, preferably with some form of liaison or recommendatory participation by the Judicial Council."

Similar views were expressed by Professor Donald P. Kommers, a political scientist, who has devoted considerable study to the problems of the state court organization and judicial administration:

"In the last 10 years there have been major drives to overhaul the judicial articles of the state constitutions of Arkansas, Delaware, Florida, Illinois, Texas, New York, Connecticut, Tennessee, Minnesota and Wisconsin, to mention more outstanding examples. Moreover, the judicial articles of the constitutions of Hawaii, Alaska, New Jersey and Puerto Rico, all recently drafted, are models that should be imitated by California."

"In revising the judicial article of the California Constitution some very basic principles should be kept in mind. First, it is the nature of a Constitution to embody a very broad political framework and basic principles of government. Never should a Constitution be so detailed in its provisions as to hamstring future generations in meeting their public responsibilities, and one of the greatest of these responsibilities is seeing that justice is administered economically, efficiently, and without delay. The inadequacies of many state judicial systems have been attributed to the fact that details of court organizations and administration have been

frozen into State Constitutions. A related principle is that the judicial article should be flexible so as to give the legislature the widest possible latitude in providing the proper organization and administration of the judicial system in order to meet the ever-expanding and rising demands of modern justice "

THE DELETION OF OBSOLETE MATTER

A beginning was made in this area in 1956 when an amendment, recommended by the Judicial Council, was adopted that removed a superseded salary schedule and eliminated the section dealing with the Supreme Court Commission (which had been abolished after the creation of the District Courts of Appeal) However, there is still much obsolete and obsolescent matter that should be deleted, such as the prominent examples listed below

Section 2

The provision of this section which relates to the Supreme Court sitting in departments, although possibly not unequivocally obsolete, is clearly obsolescent This provision, adopted in 1879 and designed to serve a function similar to the present District Courts of Appeal, provides that the Supreme Court may divide itself into two departments to hear separate cases and establishes a procedure whereby certain such cases may be referred to the court sitting in bank With the establishment of the District Courts of Appeal in 1928, the practice of sitting in departments was essentially terminated and this provision appears to serve no useful purpose at present.

Section 3

Provisions of this section, last amended in 1928, referring to the election and terms of office of Supreme Court Justices and the manner of filling vacancies have been superseded by Section 26 adopted in 1934.

Section 4A

This section contains provisions regarding the election of justices to the District Courts of Appeal which, similar to the provisions of Section 3, have been superseded by Section 26

The language in this section added in 1928 designating the counties comprising the appellate districts and the number of divisions in each is now obsolete since the Legislature, in 1941, exercised its power under this section to redistrict

The clause in this section that provides that statutes "regulating appeals to the Supreme Court shall apply to the district courts . . . until the Legislature shall provide otherwise" should be removed since the Legislature has provided that such appeals will be regulated by the Judicial Council Also, the clause maintaining the status of officers and terms of office of the district court justices as they existed prior to 1928 is no longer necessary

Section 15

This section of the 1879 Constitution provided that no judicial officer except justices of the peace and court commissioners could receive to their own use any fees or perquisites of office. An amendment adopted

in 1911 removed the exception for justices of the peace except for those then in office. This "saving clause" pertaining to justices now serves no purpose. Also it is doubtful if any court commissioners are now paid on a fee basis and if this should be verified by subsequent study, that exception should also be deleted.

Section 21

Although this section provides that the Supreme Court Clerk shall be appointed, there is an unnecessary "saving clause" designed to protect, until the expiration of their term, clerks holding office prior to the adopting of this provision.

Elimination of Detailed Provisions

An adequate revision of Article VI should undertake to eliminate much of the inflexible and detailed language pertaining to court organization, jurisdiction and procedure. A step was made in this direction in 1956 when an amendment was adopted which removed from Section 4C its unrealistic time limitations on petitions for hearing in the Supreme Court and provided that the time for filing and acting on such petitions should be regulated by rules adopted by the Judicial Council. The judicial article contains many requirements of a similar nature that should be eliminated from the Constitution and implemented at the discretion of the Legislature or the Judicial Council. (See Appendixes I and II.)

Substantive Changes

A significant improvement in the California judicial system was made in 1950 when an amendment, sponsored by the Judicial Council and supported by the bench and bar, was adopted which provided for inferior court reorganization. At the past general election two other amendments were adopted which made substantive changes in Article VI.

The first of these amendments increased the membership of the Judicial Council, formerly composed entirely of judges, by providing for the inclusion of an additional municipal court judge, four members of the State Bar, and one member from each house of the Legislature. This change has made the council more representative and has formalized its ties with the Legislature and the State Bar who are intimately connected with the judicial system. In addition the amendment provided for the appointment of an administrative director to assist the council and its chairman. The importance of such an office has been demonstrated by the experience of the federal government as well as several states.

Finally, in regard to the removal of judges, this measure establishes as an effective alternative to such cumbersome and rarely invoked procedures as impeachment, recall, and removal by the Legislature, a Commission on Judicial Qualifications with the power to recommend to the Supreme Court the removal of judges for willful misconduct in office, persistent failure to perform their duties, or habitual intemperance. The commission was also given the power to recommend involuntary retirement because of permanent disability.

The second amendment adopted in November 1960 eliminated the situation whereby the district courts did not normally have appellate

jurisdiction over cases tried in municipal or justice courts. The measure provided that the district courts should have jurisdiction in such cases to the extent and in the manner provided by law and consequently if an appeal is taken to the district court, the State Supreme Court could review the case under its transfer power. Formerly, cases could have conceivably been appealed to the United States Supreme Court without an opportunity for review in the California appellate courts.

Despite the significant improvement that has been made in the judicial system by these amendments, there are other possible reforms that demand attention.

Rule Making

Until recent years state constitutions have vested the power to regulate practice and procedure in the legislature. The result, in many instances, was detailed, inflexible, and obsolescent statutes that have inhibited the judicial process. In order to insure clear and flexible rules, recent constitutions, following the precedent set by the United States Supreme Court's Federal Rules of Civil Procedure established in 1938, have placed rule-making power in the hands of the appropriate judicial authorities. It would appear that establishment of rules of practice and procedure is a judicial function since their formulation should be the responsibility of those most clearly connected with the administration of justice.

For many years the Judicial Council in California has supplemented the statutes regarding rules of practice and procedure in accordance with its power to adopt such rules that are not inconsistent with law. In 1941 the Legislature gave the council authority over all rules governing appellate practice and in 1955 the council was given the power to make rules regarding pretrial conference procedure. If rule making is properly a judicial function, there is no reason that it should be subject to legislative control, and the Judicial Council and the State Bar have supported the view that complete rule-making power over all practice and procedure should be vested in the council. In 30 states the courts have complete rule-making authority in civil procedure, and 22 states have extended this power to the field of criminal procedure as well.

Judicial Appointments

During the course of its study of the judicial article, the committee devoted considerable attention to the important problem of the selection and qualifications of judges. In this regard the committee concentrated, principally, on the present method of selecting superior and municipal judges and whether this method could be improved by requiring that gubernatorial appointments to these courts be subject to the approval of the Commission on Judicial Appointments.

Although several of the older state constitutions provide for the appointment of judges in a manner similar to the federal system, the early 19th century marked the beginning of a trend toward the popular election of judges for relatively short terms, and this method is followed in a majority of the states today. However, in 1934 following widespread dissatisfaction among the states with systems of popular election, California became a leader in judicial reform by adopting

Article 26 which provides for gubernatorial appointment of appellate court judges subject to the approval of the Commission on Judicial Appointments and requires that a judge periodically run "against his record" in an uncontested election. Article 26 also provides that counties may adopt this system for the selection of superior court judges, but thus far no county has done so.

Although, in theory, superior and municipal court judges are elected by the people, the overwhelming majority have gained their seats by gubernatorial appointments to vacancies caused by death or retirement, and normally there is little opposition to their election when their term expires. The Holbrook Report published in 1955 stated that in Los Angeles County only 8 of 78 superior court judges were originally elected to office, and of 39 municipal court judges, all but one had been appointed.¹

There are few limitations on the Governor's power to appoint superior and municipal court judges other than such general requirements that the appointee be a United States citizen and qualified to practice law. This lack of an effective screening process prompted the State Bar and the Judicial Council to recommend to the 1957 Legislature that the membership of the Commission on Judicial Appointments be increased and that superior and municipal court appointments be subject to the approval of the commission. This proposal, advocated in the report of the Joint Judiciary Committee on the Administration of Justice, was subsequently introduced in the 1957 session, but the proposal was not adopted by the Legislature.² Recently the Judicial Council and the State Bar have formulated, as part of a long-range program for the improvement of the administration of justice, a proposal designed to improve the present system of selecting superior and municipal court judges. The measure would provide that all vacancies would be filled by gubernatorial appointments, that all such appointments be subject to the approval of a body such as the Commission on Judicial Appointments or the Commission on Judicial Qualifications, and that appointees be assured of at least two years in office before being required to stand for election. This proposal would place a check on the Governor's present unqualified power of appointment and would be consistent with the requirement in a number of states that such appointments be approved by an independent body. Also, it would give an appointed judge an opportunity to prove himself before his record is presented to the electorate.

Although at present there are no provisions for screening superior and municipal court appointments, an informal arrangement has evolved whereby the Governor normally submits the name of a prospective appointee to the State Bar in order to determine the individual's qualifications. However, it appears that this system has serious inadequacies which may inhibit a proper evaluation as well as prejudice the interests of the appointee. Goscoe Farley, representing the State Bar, appeared before the committee and testified as follows:

¹ *A Survey of the Metropolitan Trial Courts of the Los Angeles Area*

² Senate of the State of California, *Partial Report of the Joint Committee on the Administration of Justice*, May 1959, SCA 14 as originally introduced, March 4, 1959, and ACA 47, April 23, 1959.

"If a vacancy occurs in the superior or municipal court, the Governor fills that vacancy by appointment. The appointee must run at the next general election. It is seldom that he is then not elected, which may indicate that they are all very good, but the fact is they have almost no opposition. The reason I mention this is to point up the great importance of the Governor's appointments. At least 90 percent of our judges on the superior and municipal courts owe their seats to appointment by the Governor and it has been estimated that usually a governor, after two full terms, has appointed about half of the members of the two trial courts. If we had a governor who was prone to make poor appointments, he could fill up half the bench with such appointments, and so we in the State Bar have proposed that these appointments be screened by a commission.

"It has been the practice of the last three governors—Warren, Knight and now Brown—to submit names of prospective appointees to the state bar and request that the Board of Governors advise him whether in their opinion it is a satisfactory appointment, i.e., whether there is anything derogatory in the background or a defect in the experience of the person under consideration. The State Bar is proud to have assisted the Governor, but the present system is not satisfactory.

"The system is not satisfactory because of the fact that the Governor desires that the individual's name be kept confidential which prevents an adequate investigation; the Board of Governors meets only once a month for three days and thus there is not time for an extensive check; there is no assurance that the Governor will request the opinion of the Bar or that the Bar's recommendation will be followed; and finally, the individual normally is not informed that he is under consideration and is not given an opportunity to answer any charges that might be made against him during the course of the investigation.

"We propose that you take away this closed door proceeding. The present Commission, which has been in effect for 20 years or more, has open hearings regarding appointments to the appellate courts and if any charges are made, the person under consideration can be present. Also the Commission system serves a preventive function since an attorney who has some blemish would not allow his name to be submitted because he would know that it would come out publicly."

Many of the witnesses appearing before the committee stated that, as a minimum standard, Superior and Municipal Court appointments should be subject to the approval of the Commission on Judicial Appointments or a body serving a similar function. However, Stanley Mosk, Attorney General for the State of California, opposed the commission plan. He testified that:

"As a member of the current Commission on Judicial Appointments, I find the most difficult problem we have is to ascertain the standards by which we can evaluate prospective appointees to the appellate courts. Fortunately, our problem is a relatively easy one, for Governors generally designate appellate court judges with

particularly distinguished legal and judicial backgrounds, men whose identity, work, public record, are all a matter of clear public and professional recognition. But I conceive it a most difficult, and I submit, probably an impossible task for a commission such as ours, to determine the capabilities of trial court judges. The significant difficulty is that these appointees, for the most part, will not have had judicial experience. One by one, we can shoot holes through probable standards by which the commission could evaluate nominees for the trial courts."

As a possible alternative to the commission, Assemblyman William Biddick, Jr. proposed that the present arrangement between the Governor and the State Bar might be formalized and strengthened by providing:

1. That the names of all prospective Municipal and Superior Court appointees be submitted to the State Bar but that the recommendations of the bar would not be binding on the Governor;

2. That the State Bar be given sufficient funds to provide an adequate system for investigating prospective appointees;

3. That the statistics regarding the number of names submitted to the bar and the number of times the bar's recommendations are followed by the Governor be published, but that the names of the prospective appointees would not be divulged.

Such a plan, he suggested, would improve and regularize the procedure for evaluating an appointee while retaining the principal features of the present appointive system.

Several witnesses testified that although providing that appointments be subject to the approval of the commission would be a substantial improvement, it would be more desirable to adopt a version of what is popularly known as the Missouri Plan. This method was first recommended by the American Bar Association in 1937, and proposed that judges be appointed from a list of nominees submitted by an agency composed of judges and laymen. In 1940 Missouri adopted a variation of this plan whereby the Governor appoints judges from a list of three names submitted by a non-partisan nominating commission composed of judges, lawyers and laymen. Such a system has been proposed in California on several occasions and was studied by the Joint Judiciary Committee in 1957 but it was decided that because of executive opposition, such a plan was politically impracticable and that a "movement for its adoption now would be inopportune."³ However, among leading authorities on judicial administration it is the consensus of opinion that some variation of this plan is desirable and most recent Constitutions have embodied either a variant of this system or the Federal plan of appointment "with the advice and consent of the Senate."

APPENDIX E

THE JUDICIARY

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1. GENERAL

Although basically similar in many central respects, the judiciary articles of State Constitutions, together with those of the United States and the Commonwealth of Puerto Rico, vary widely in scope and complexity of detail. They range from Connecticut, with its three brief sections, to Louisiana, the largest of all, with approximately 100 sections. Next to Connecticut in comparative brevity follow Massachusetts, Vermont, Maine, Rhode Island and New Hampshire, in that order. These six New England states reflect, in their organic provisions, the early tradition of simplicity and lack of restrictive limitations in defining their respective judicial departments. The virtue thereof is demonstrated in recent legislatively enacted reforms in Connecticut, wherein the 1959 General Assembly swept away a minor court system that had proliferated piecemeal since the seventeenth century, and in lieu thereof created 44 state-maintained circuit courts to supplant a congeries of 168 locally supported trial tribunals.

At the other end of the spectrum, next to Louisiana in length and complexity, and at a somewhat respectful distance, follow the judiciary articles of Maryland, New York, Florida and California. True, judicial reforms have been achieved, notably in California and Florida, but they have required the cumbersome, delaying and expensive process of constitutional amendment through voter approval. The November 1958 experience in Illinois, where a proposed new judicial article, having finally passed the legislature on the third successive biennial effort, and having received a decisive majority of favorable votes at the general election, still fell slightly short of the constitutionally required total number of votes, shows the difficulties involved. A test case pending in the Illinois courts to determine the validity of the vote computation serves to emphasize the complications of delay, expense and uncertainty of the amendment process.

In general, therefore, a constitutional judiciary article should be brief and concise, embodying only the barest essentials necessary to guarantee a sound and efficient judicial system. Implementing details should be left to the Legislature and to the appropriate judicial authorities. These virtues are illustrated in the four examples of modern constitutional provisions included in the Appendix. They are also exemplified in Article VI of the Model State Constitution of the National Municipal League, as revised in 1948, and in other proposals now pending or in the process of preparation.

The basic essentials are hereinafter discussed, with consideration given to various possible alternatives where tenable differences exist.

2. COURT STRUCTURE AND ORGANIZATION

Typically, the opening section of a judiciary article declares where the judicial power is vested, namely, in the courts comprising the judicial establishment. Thus, in Connecticut it is "vested in a Supreme

Court of Errors, a superior court, and such inferior courts as the General Assembly shall, from time to time, ordain and establish." Puerto Rico states it even more briefly: "The judicial power of Puerto Rico shall be vested in a Supreme Court and in such other courts as may be established by law." Probably the modern trend in constitution-making, in accord with the older Connecticut form, is to specify the top appellate court, usually nowadays the "Supreme Court," and a trial court of general jurisdiction—Superior Court, Circuit Court, or District Court—followed by "and other courts established by the legislature" (or "by law"). To limit the latter to "inferior" courts would preclude the legislative authority from creating intermediate appellate courts should the latter prove to be necessary or desirable as was the case in Florida. However, the Puerto Rican approach allows full flexibility to create intermediate appellate, general trial, and lower courts by legislative action.

In any case, it is desirable to specify, as does the Alaska Constitution, that "The courts shall constitute a unified judicial system for operation and administration." The Puerto Rico Constitution goes even further by declaring unification "for purposes of jurisdiction," thereby permitting even greater flexibility within the court system as a single integrated entity.

To identify its position at the top of the judicial structure, the Supreme Court is declared in Alaska to be "the highest court of the State" and in Puerto Rico "the court of last resort," and comparable provisions are found in many other constitutions. It is also customary to specify the composition and membership of the Supreme Court "... the Chief Justice and _____ Associate Justices." To permit possible enlargement to meet future needs, and at the same time to prevent the Legislature from itself adding judges where there is no such need, the Puerto Rico and Alaska articles provide that the highest tribunal may be enlarged only "by law upon the request of the supreme court." The size of other courts should be left to legislative authority.

3. JURISDICTION

In most states the tendency to spell out in constitutional detail the substantive as well as the geographical jurisdiction of courts has needlessly rigidified their functions and has prevented or retarded adaption to meet changing needs. In some states, the mandatory appellate jurisdiction of courts of last resort has resulted in a growing and uncontrollable caseload and mounting backlogs.

Modern constitutional provisions accordingly avoid specifying jurisdictional details, and leave these to legislative enactment. For example, the Hawaii article merely states that "The several courts shall have original and appellate jurisdiction as provided by law"—a striking parallel to the older provision of Connecticut that "the powers and jurisdiction of [the] courts shall be defined by law."

It is probably preferable, however, in the interest of constitutional clarification of status, to delineate as does the Alaska judiciary article, in addition to reciting that "The jurisdiction of courts shall be prescribed by law," the further provisions that "The supreme court shall be the highest court of the State, with final appellate jurisdiction," and "The superior court shall be the trial court of general jurisdiction."

The traditional power to issue prerogative writs, such as *certiorari*, *mandamus*, prohibition, *quo warranto* and *habeas corpus*, is inherent in the courts unless expressly proscribed. Hence it is unnecessary to specify such authority in the Constitution.

4. SELECTION, TENURE AND QUALIFICATIONS OF JUDGES

The matter of judicial selection and tenure presents one of the most controversial and difficult areas of constitutional draftsmanship, so wide is the variety of organic law on the subject. Federal judges are nominated and appointed by the President, subject to the advice and consent of the Senate, and hold office (except for certain special courts) for life or "during good behavior." This method also prevails in Massachusetts and New Hampshire. In New Jersey, judges of the Supreme Court and superior courts are appointed initially for seven-year terms, and on reappointment are given life tenure during good behavior. Hawaii limits the terms of appointed Supreme Court justices to seven years, and of circuit court judges to six years. In Puerto Rico, as in the federal system, Supreme Court justices are appointed by the executive, with senatorial advice and consent, and hold office during good behavior; other judges are similarly appointed, but their terms are "fixed by law." In Connecticut, Rhode Island, South Carolina, Vermont and Virginia, some or all of the judges are elected by the Legislature.

Popular election of state judges for relatively short terms was an innovation of the "Jacksonian Revolution" of the early 19th century, and still prevails in a large majority of the states. Terms of office vary from 2 to 21 years for appellate judges and from 2 to 14 years for trial court judges, the median for both groups being six years. In some states, particularly in the West, election of judges is on a nonpartisan basis, but in the others they are subject to political designation and partisan election.

Dissatisfaction with the latter method has generated a strong movement for some mode of judicial selection that combines the virtues of an appointive system with certain limitative safeguards. California in 1934 amended its Constitution to provide for gubernatorial appointment of appellate court judges, subject to approval of a special commission on qualifications, the appointee thereafter to be subject to periodic submission to the people for his retention in office on the basis of his record alone rather than in contest with an opposing candidate.

In 1937 the American Bar Association endorsed the following plan as a substitute for the direct election of judges:

WHEREAS, The importance of establishing methods of judicial selection that will be most conducive to the maintenance of a thoroughly qualified and independent judiciary that will take the state judges out of politics as nearly as may be, is generally recognized; and

WHEREAS, In many states movements are under way to find acceptable substitutes for direct election of judges;

Now therefore be it resolved, by the House of Delegates of the American Bar Association that in its judgment the following plan offers the most acceptable substitute available for direct election of judges;

(a) The filling of vacancies by appointment by the executive or other elective official or officials, but from a list named by another agency, composed in part of high judicial officers and in part of other citizens, selected for the purpose, who hold no other public office

(b) If further check upon appointment be desired, such check may be supplied by the requirement of confirmation by the state senate or other legislative body, of appointments made through the dual agency suggested

(c) The appointee after a period of service should be eligible for reappointment periodically, or periodically go before the people upon his record, with no opposing candidate, the people voting upon the question, "Shall Judge Blank be retained in office?"

Missouri in 1940 adopted a modified version of this plan, establishing nonpartisan nominating commissions composed of equal numbers of lawyers elected by the state bar and nonlawyers appointed by the Governor, with the top judicial officers as chairmen of the respective commissions. Terms of commission members, other than the chairman, are fixed by the Supreme Court, and are staggered so as to prevent the Governor, during his single term, from controlling the selection of all nonlawyer members. Each commission nominates three candidates for each judicial vacancy, and the Governor appoints one of the persons so nominated. Thereafter the appointee comes before the voters on the question of his retention in office, as in the California and American Bar Association plans.

The Alaska judiciary article embodies a variant of the plan, designating the nominating commission as the Judicial Council, its three lawyer members to be appointed by the governing body of the State Bar and its three nonlawyer members appointed by the Governor subject to confirmation by the Legislature in joint session, with the Chief Justice of the Supreme Court as chairman. The council nominates two or more candidates for each judicial vacancy.

The American Bar Association or Missouri Plan is gathering increasing adherence among the states seeking an improved method of judicial selection. It was approved by the voters of Kansas in November 1958 for the selection of Supreme Court justices, and a comparable proposal has recently been passed by the 1959 Iowa Legislature.

One problem posed by the plan is the selection of lawyer members of the nominating body. If the state has an integrated bar, as do more than half of the states today, the official and all-inclusive status of the lawyer group permits their participation in designating the lawyer-commissioners. If there is no integrated bar, however, the unofficial status of voluntary bar associations would present possible legal questions as to their representative authority. In such circumstances, the designation of lawyer members of judicial nominating commissions might be more properly a function of the Supreme Court or of its Chief Justice.

A further problem lies in the choice of the appointing authority. The National Municipal League's former proposal contemplated an elected Chief Justice who would in turn appoint, from among the Judicial Council's nominees, the persons to fill judicial vacancies. Tradition, however, weighs heavily in favor of having the chief executive,

rather than the chief judicial officer, as the ultimate appointing authority. In light of these considerations, therefore, the choice would appear to be between (1) a variant of the American Bar Association, Missouri and Alaska plans and (2) direct appointment by the Governor, either for life, or for a fixed term, subject to senatorial confirmation. If the latter alternative method is adopted, it would be advisable to provide, as does the Hawaii article, that "No nomination shall be sent to the senate, and no interim appointment shall be made when the senate is not in session, until after 10 day's notice by the Governor."

Eligibility qualifications of judicial candidates should not be constitutionally restricted to such a degree that the available choices are unduly restricted. New Jersey, Hawaii, and Puerto Rico specify admission to the bar at least 10 years prior to judicial appointment. Alaska requires that "supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law." Certainly, admission to the bar is an essential qualification, but further limitations might well be left to legislative action or to the discretion of the judicial nominating commission.

In the matter of judicial salaries, the judiciary article should leave full freedom for the Legislature to provide both basic compensation and subsequent increases. Protection should be provided, as in the constitutions of most jurisdictions, against diminution of judicial salaries during term of office, with the possible reservation, as in Hawaii and Alaska, that any reduction could only be "by general law applying to all salaried officers of the State." Clearly there should be no constitutional restriction against increasing judges' salaries during their respective terms. Otherwise there will be inequitable results, as in several states today, whereby incumbent judges are serving at lower salaries than their colleagues who have been selected following the enactment of judicial salary increases.

An important incident of judicial service is the provision for retirement. The median specified age for compulsory or optional retirement in present-day judicial systems is 70 years, and there is an increasing trend to make retirement at the age-limit mandatory rather than optional. Also gaining increasing recognition, as exemplified in the judiciary articles of New Jersey, Hawaii, Puerto Rico and Alaska, is the provision that judges shall be entitled to retirement benefits or pensions as provided by the Legislature. Most of the states, by legislative action, have prescribed retirement benefits not only for judges but also for their widows and surviving dependents.

Typical of most judiciary articles is a provision that a justice or judge shall not, while holding judicial office, engage in the practice of law, hold office in a political party, or hold any other office or position of profit in the federal, state or local government. Also typical, at least in the modern view, is a provision that any judge who files for another elective public office, forfeits his judicial position. Such provisions are desirable and necessary to assure that a judge's allegiance to his primary function will not be diverted by possible conflicting interests. However, for judicial officials at the lower court level, it has been argued that a rigid prohibition against engaging in law practice would preclude the availability of judicial services in communities where the

volume of court business does not warrant the designation of a full-time judge. The solution, as demonstrated in Connecticut, may be to allow sufficient constitutional flexibility so that the Legislature may shift from local part-time judges to full-time judges on circuit, as the feasibility thereof becomes adequately demonstrated.

5. REMOVAL OF JUDGES

Traditional methods for the removal of judges, both federal and state, have centered on the basic, but seldom-used, power of impeachment. Even in the modern constitutions of New Jersey, Puerto Rico, and Alaska, the tradition is preserved. However, because of its cumbersome and the burden it imposes on legislative bodies at the expense of their other and more pressing duties, impeachment, at least of judicial officers, should give way to other methods. One of these, as provided in many states, including Hawaii, is by two-thirds concurrent vote of both houses of the Legislature. New Jersey, in addition to impeachment, provides that superior court and county court judges are "subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law."

Although removal is a proper device in case of malfeasance in office, some provision should also be made for the retirement of judges for incapacity. Typical of this modern view is the wording in the New Jersey, Hawaii and Alaska constitutions that when a justice (or judge) is "so incapacitated as substantially to prevent him from performing his judicial duties," the Governor shall, on certification of an appropriate body, "appoint a board of three persons to inquire into the circumstances" and the Governor may, on their recommendation, retire the justice (or judge) from office. In New Jersey, the initial certifying body is the Supreme Court; in Hawaii it is "a commission or agency, authorized by law for such purpose"; and in Alaska it is the Judicial Council. Alaska, however, limits the applicability of such involuntary retirement procedure to justices of the Supreme Court, and provides that for other judges, removal shall be by majority vote of the Supreme Court, on notice and hearing, and after initial recommendation by the Judicial Council. Puerto Rico provides that judges of other courts than the Supreme Court may be removed by the latter "for the causes and pursuant to the procedure provided by law."

All things considered, the Hawaii provisions seem to offer the greatest merits of simplicity, potential effectiveness and nonencroachment on the normal judicial duties of the highest appellate tribunal.

6. JUDICIAL COUNCILS AND JUDICIAL CONFERENCES

Unless the Judicial Council is to be vested with specific administrative and supervisory duties with respect to the court system, as it is in California, or is to constitute the commission for nomination of candidates for judicial appointments, as in Alaska, there would appear to be no need for establishing or maintaining it in the constitution. In some states, as in New York and New Jersey, the trend has been to supersede judicial councils by judicial conferences, patterned somewhat on the Judicial Conference of the United States in composition and functions. Flexibility for the creation, enlargement, or alteration of such advisory bodies is much better achieved by leaving it to legislation rather than to constitutional prescription.

7. COURT ADMINISTRATION

New Jersey's success in the efficient handling of its judicial business since 1947 has been largely attributed to the provisions of Section VII of its judicial article, designating the Chief Justice of the Supreme Court as the administrative head of all the courts, authorizing him to appoint an administrative director, and to assign superior court judges to divisions or parts of the superior court, as well as "to transfer judges from one assignment to another, as need appears." Herein lies a key prerequisite of a modern judicial system.

Hawaii and Alaska have comparable provisions, the former being most direct and succinct. Section 5 of the Hawaii Judiciary Article states:

"The Chief Justice of the Supreme Court shall be the administrative head of the courts. He may assign judges from one circuit court to another for temporary service. With the approval of the Supreme Court he shall appoint an administrative director to serve at his pleasure."

Alaska offers a possible improvement in the wording of the second sentence by authorizing the assignment of judges "from one court or division thereof to another for temporary service," thereby permitting their temporary assignment to higher or lower courts as the need may arise, as well as to courts at the same level.

Experience in the federal system since the establishment of the administrative office of the United States courts in 1939, reinforced by New Jersey and the now nearly 20 other jurisdictions having similar offices, has amply demonstrated the wisdom of providing an administrative director for the court system. His office should be established by the Constitution and his appointment by, as well as his responsibility to, the Chief Justice should be directed by organic law.

8. RULE-MAKING

The power to regulate practice and procedure has been allowed, until recent years, to remain primarily in the hands of the legislatures. Cumbersome, needlessly-detailed, outmoded and inflexible practice acts and procedure codes have been a frustrating deterrent to improving and modernizing the machinery of justice.

The promulgation of the Federal Rules of Civil Procedure by the United States Supreme Court in 1938 pointed the way to efficient and simplified methods. Courts and judges are better equipped than legislatures to know the needs of practice and procedure, and to provide for adjustments to meet those needs as they arise.

Following the lead of the federal experience, the framers of the New Jersey Constitution of 1947 expressly directed the Supreme Court, in Section II of the judicial article, to "make rules governing the administration of all courts in the State, and, subject to law, the practice and procedure in all such courts." Puerto Rico goes even further and requires the Supreme Court to adopt rules not only of civil and criminal procedure, but also of evidence. The rules, however, are to be submitted to the legislature, with power in the latter "to amend, repeal or supplement any of said rules by a specific law to that effect."

The accelerating trend among the states to adopt rules of practice patterned on the Federal Rules of Civil Procedure, and, to a slower

degree, of the later Federal Rules of Criminal Procedure, gives emphasis to the desirability of placing procedural rule-making power in the highest court of the state. With respect to rules of evidence the issue is more debatable, since legislative dominance in this field is more deeply entrenched and more stoutly defended.

If, however, the power over practices and procedure is properly a judicial one, there is no need to make it either "subject to law" or subject to legislative approval or amendment. The Supreme Court is the proper body to determine the boundary between procedural and substantive law and is, in fact, the only body that can ultimately do so. For this reason, the language of the Hawaii Constitution, vesting full authority in the highest court, has much to commend it. It reads, in Section 6 of the Judiciary Article:

"The Supreme Court shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedures and appeals, which shall have the force and effect of law."

If, for reasons of compromise or expediency, some limitation is deemed desirable, the following language, from Section 15 of the Alaska Judiciary Article, could be added: "These rules [and regulations] may be changed by the Legislature by two-thirds vote of the members elected to each house."

9. TRANSITIONAL PROVISIONS

To prevent interruption or delay in the handling of judicial business during the period of transition from a pre-existing court system to a new one, as well as to protect incumbent judges from possible ouster and to provide for the orderly transfer of records, equipment and personnel, there should be adequate provision for continuity and readjustment. These provisions should not, however, because of their necessarily temporary nature, be made a part of the judiciary article itself. Rather, they should appear in either the general "Schedule" article of the new Constitution, or in appropriate transitional legislation.

In any case, they should include: (1) absorption of incumbent judges into the new courts; (2) continuance of their salaries at undiminished levels; (3) transfer of pending actions, proceedings or appeals, and the records pertaining thereto, to appropriate courts in the new system; (4) transfer of records, seals, papers and documents to appropriate courts or depositories; and (6) transfers of non-judicial personnel, court facilities and funds, as may be required.

10. CONCLUSION

From the foregoing analysis and exemplification, it should not be too difficult to arrive at a consensus on the basic elements of a model judiciary article for a State Constitution. Differences of opinion there will necessarily be, and perhaps no more so than on the thorny question of judicial selection and tenure. Even the latter, however, can be reduced to a fairly limited choice between appointive and a combination of selective-appointive-with-periodic-referendum methods. Whatever the choice, the essential goals should be: simplicity, clarity, and flexibility.

APPENDIX F

MISSOURI PLAN

MISSOURI CONSTITUTION, ARTICLE V

Nonpartisan Selection of Judges

Section 29(a). Courts subject to plan—appointments to fill vacancies. Whenever a vacancy shall occur in the office of judge of any of the following courts of this state, to wit: The supreme court, the courts of appeals, the circuit and probate courts within the city of St. Louis and Jackson county, and the St. Louis courts of criminal correction, the governor shall fill such vacancies by appointing one of three persons possessing the qualifications for such office, who shall be nominated and whose names shall be submitted to the governor by a nonpartisan judicial commission established and organized as hereinafter provided.

Source: Const. of 1875, Amdt. of 1940, §1

Section 29(b). Adoption of plan in other circuits. At any general election the qualified voters of any judicial circuit outside of the city of St. Louis and Jackson county, may by a majority of those voting on the question elect to have the judges of the courts of record therein appointed by the governor in the manner provided for the appointment of judges to the courts designated in section 29(a). The general assembly may provide the manner in which the question shall be submitted to the voters.

Source: Const. of 1875, Amdt. of 1940, §2 For case notes, see Vol. III RSMo 1949

Section 29(c)(1). Tenure of judges—declarations of candidacy—form of judicial ballot—rejection and retention. Each judge appointed pursuant to the provisions of sections 29(a)-(g) shall hold office for a term ending December 31st following the next general election after the expiration of twelve months in the office. Any judge holding office, or elected thereto, at the time of the election by which the provisions of sections 29(a)-(g) become applicable to this office, shall, unless removed for cause, remain in office for the term to which he would have been entitled had the provisions of sections 29(a)-(g) not become applicable to his office. Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any judge whose office is subject to the provisions of sections 29(a)-(g) may file in the office of the secretary of state a declaration of candidacy for election to succeed himself. If a declaration is not so filed by any judge, the vacancy resulting from the expiration of his term of office shall be filled by appointment as herein provided. If such a declaration is filed, his name shall be submitted at said next general election to the voters eligible to vote within the geographic

jurisdictional limit of his court, or circuit if his office is that of circuit judge, on a separate judicial ballot, without party designation, reading

"Shall Judge _____

(Here the name of the judge shall be inserted)

of the _____

(Here the title of the court shall be inserted)

Court be retained in office? Yes No "

(Scratch one)

If a majority of those voting on the question vote against retaining him in office, upon the expiration of his term of office, a vacancy shall exist which shall be filled by appointment as provided in section 29(a); otherwise, said judge shall, unless removed for cause, remain in office for the number of years after December 31st following such election as is provided for the full term of such office, and at the expiration of each such term shall be eligible for retention in office by election in the manner here prescribed

Source Const of 1875, Amdt of 1940, §3.

Section 29(c)(2). Certification of names upon declarations—law applicable to elections. Whenever a declaration of candidacy for election to succeed himself is filed by any judge under the provisions of this section, the secretary of state shall not less than thirty days before the election certify the name of said judge and the official title of his office to the clerks of the county courts, and to the boards of election commissioners in counties or cities having such boards, or to such other officials as may hereafter be provided by law, of all counties and cities wherein the question of retention of such judge in office is to be submitted to the voters, and, until legislation shall be expressly provide otherwise therefor, the judicial ballots required by this section shall be prepared, printed, published and distributed, and the election upon the question of retention of such judge in office shall be conducted and the votes counted, canvassed, returned, certified and proclaimed by such public officials in such manner as is now provided by the statutory law governing voting upon measures proposed by the initiative

Source Const of 1875, Amdt of 1940, §30

Section 29(d). Nonpartisan judicial commissions—number, qualification, selection and terms of members—majority rule—reimbursement of expenses—rules of supreme court. Nonpartisan judicial commissions whose duty it shall be to nominate and submit to the governor names of persons for appointment as provided by sections 29(a)-(g) are hereby established and shall be organized on the following basis. For vacancies in the office of judge of the supreme court or of any court of appeals, there shall be one such commission, to be known as "The Appellate Judicial Commission", for vacancies in the office of judge of any other court of record subject to the provisions of section 29(a)-(g), there shall be one such commission, to be known as "The _____ Circuit Judicial Commission," for each judicial circuit which shall be subject to the provisions of section 29(a)-(g); the appellate judicial commission shall consist of seven members, one of whom shall be the chief justice of the supreme court, who shall act as chairman, the remaining six members shall be chosen in the following manner: The members of the bar of this state residing in each court of appeals district shall elect one of their number to serve as a member

of said commission, and the governor shall appoint one citizen, not a member of the bar, from among the residents of each court of appeals district, to serve as a member of said commission, each circuit judicial commission shall consist of five members, one of whom shall be the presiding judge of the court of appeals of the district within which the judicial circuit of such commission or the major portion of the population of said circuit is situated, who shall act as chairman, and the remaining four members shall be chosen in the following manner: The members of the bar of this state residing in the judicial circuit of such commission shall elect two of their number to serve as members of said commission, and the governor shall appoint two citizens, not members of the bar, from among the residents of said judicial circuit, to serve as members of said commission, the terms of office of the members of such commission shall be fixed by the supreme court and may be changed from time to time, but not so as to shorten or lengthen the term of any member then in office. No member of any such commission other than the chairman shall hold any public office, and no member shall hold any official position in a political party. Every such commission may act only by the concurrence of a majority of its members. The members of such commissions shall receive no salary or other compensation for their services as such, but they shall receive their necessary traveling and other expenses incurred while actually engaged in the discharge of their official duties. All such commissions shall be administered, and all elections provided for under this section shall be held and regulated, under such rules as the supreme court shall promulgate.

Source: Const. of 1875, Amdt. of 1940, §4.

Section 29(e). Payment of expenses. All expenses incurred in administering sections 29(a)-(g), when approved by the supreme court, shall be paid out of the state treasury. The supreme court shall certify such expense to the state auditor, who shall draw his warrant therefor payable out of funds not otherwise appropriated.

Source: Const. of 1875, Amdt. of 1940, §5.

Section 29(f). Prohibition of political activity by judges. No judge of any court of record in this state, appointed to or retained in office in the manner prescribed in sections 29(a)-(g), shall directly or indirectly make any contribution to or hold any office in a political party or organization, or take part in any political campaign.

Source: Const. of 1875, Amdt. of 1940, §6.

Section 29(g). Self-enforceability. All of the provisions of sections 29(a)-(g) shall be self-enforcing except those as to which action by the general assembly may be required.

APPENDIX G

MISSOURI SUPREME COURT RULES

RULE 10—NONPARTISAN JUDICIAL COMMISSIONS

(Adopted and Effective July 23, 1954)

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Procedure

10.01. Definitions. The term "commission" as used in this Rule 10 refers to any nonpartisan judicial commission now or hereafter existing under Sections 29 (a)-(g) of Article V of the Constitution. The term "member" includes the chairman of a commission, except where otherwise specified. The term "Non-partisan Court Plan" refers to Sections 29 (a)-(g) of Article V of the Constitution.

10.02. Members of Judicial Commissions, Terms. Subject to subdivision 10.03 of this Rule 10, the term of office of elective and appointive members of any commission shall be six years. The respective current terms of the elective and appointive members of presently existing commissions will expire on December 31 of the following years:

Appellate Judicial Commission

Court of Appeals

<i>District</i>	<i>Elective Member</i>	<i>Appointive Member</i>
Springfield -----	1959	1954
Kansas City -----	1955	1956
St. Louis -----	1957	1958

Each Circuit Judicial Commission*Elective Members*

One in 1955

One in 1957

Appointive Members

One in 1956

One in 1958

Each six year term shall begin at the expiration of the term which immediately preceded it

10.03. Terms of Members of New Circuit Commissions. Whenever any new circuit judicial commission shall come into existence the terms of office of the first elective and appointive members shall begin when all of the first elective and appointive members of such commission shall have been duly chosen, and shall respectively expire on December 31 of the third, fourth, fifth and sixth years following the year in which the general election was had as a result of which the Non-partisan Court Plan shall have become applicable to such circuit, as follows

<i>Year</i>	<i>Member whose term shall expire in such year</i>
3rd year	One elective member
4th year	One appointive member
5th year	One elective member
6th year	One appointive member

10.04. Members Hold Until Successor Chosen—Members Not to Succeed Selves—Vacancies, How Filled. Elective and appointive members of any commission shall hold office for the terms for which they were elected or appointed and until their respective successors are duly chosen. However, no member, except one serving out the unexpired term of another, shall be appointed or elected as his own successor. When a vacancy occurs in the office of any elective or appointive member of a commission, such vacancy shall be filled by election or appointment, as the case may be, for the unexpired term.

10.05. Regular Elections, When Held. A regular election shall be held on the first Saturday of November in any year at the end of which the term of an elective member of a commission will expire, for the purpose of electing a member for the next succeeding term.

10.06. Special Elections, Called When—Procedure. A special election to fill for the unexpired term a vacancy in the office of any elective member of a commission, or to elect the first elective members of a new circuit judicial commission that shall have theretofore come into existence, may be held at any time upon being called by the Chief Justice of the Supreme Court or by the Supreme Court itself, provided that (a) no special election to fill a vacancy for an unexpired term, shall be called for a date which is sixty days or less before the end of such unexpired term, and (b) the call of such election shall be made not less than sixty days before the date fixed for the election, and (c) special elections to fill a vacancy may be called for the same date as the date for a regular election and combined with a regular election. An election shall be deemed called when the call thereof (whether in the form of an order of the Supreme Court or a call signed by the Chief Justice) shall have been filed with the clerk of the Supreme Court. The clerk of the Supreme Court shall, promptly upon the filing of any call of a special election, send a certified copy thereof to the clerk of the court in whose office such election is to take place. Every call of a special elec-

tion shall be a public record and the Supreme Court or the Chief Justice may give such further publicity thereto as it or he may see fit.

10.07. Elections, Where Held. Elections for elective members of The Appellate Judicial Commission shall be held in the office of the clerk of the Court of Appeals for the district from which an elective member is to be elected. Elections for elective members of any circuit judicial commission shall be held in the office of the clerk of the Circuit Court of such circuit, except that if such circuit shall consist of more than one county, it shall be held in the office of the clerk of the Circuit Court for the county in such circuit which has, according to the last decennial census of the United States, a larger population than any other county in the circuit.

10.08. Ballots and Signature Cards—Form. The clerk in whose office an election is to be held shall prepare, print, and distribute the ballots and signature cards. The ballots shall be numbered consecutively and each ballot shall be accompanied by a signature card bearing the same number. The ballots shall designate each office and term to be filled and shall contain the names and residence addresses of all qualified persons who have been nominated for such office and term as hereinafter provided, and who have not before the printing of the ballots given written notice to the clerk of their withdrawal as nominees, and also one blank line for each such office and term on which the voter may write the name of any qualified person for whom he desires to vote. A box or square shall be printed alongside each name and also alongside each such blank line, for the use of the voter in indicating his choice. The signature cards shall contain a printed certification to the effect that the voter is a member of the bar of this state in good standing and that he resides in the court of appeals district, or circuit, as the case may be, in which the election is being held, and blanks for the voter's signature and residence address.

10.09. Supreme Court Clerk to Furnish Lists of Attorneys. The clerk of the Supreme Court shall, not less than thirty days nor more than sixty days before an election (other than a run-off election) is to be held in any court of appeals district, furnish to the clerk of the Court of Appeals of such district a certified list (as shown by the records of the Supreme Court) of the members of the bar in good standing residing in such district.

10.10. Nomination of Candidates for Commission. Nominations (the effect of which shall be to entitle the nominees to have their names printed on the ballot) may be made by petition or petitions mailed or delivered to and received by the clerk in whose office the election is to be held, not later than thirty days before the election; provided, however, that this subdivision 10.10 shall not apply to run-off elections. In the case of a member of The Appellate Judicial Commission to be elected from a court of appeals district, such petition or petitions must be signed by not less than twenty members of the bar in good standing residing in such district, at least ten of whom do not reside in the same judicial circuit as the proposed nominee. In the case of a member to be elected to a circuit judicial commission, such petition or petitions must be signed by not less than twenty members of the bar in good standing residing in such circuit if the circuit contains, according to

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the last decennial census of the United States, 400,000 or more inhabitants, and by not less than ten if the circuit contains fewer than 400,000 such inhabitants. If any members of the bar shall have signed a petition for a proposed nominee for a particular office and term and such petition shall have been received by the clerk as above provided, his signature on any petition for another proposed nominee for the same office and term shall not be counted, unless the first proposed nominee shall have died, become disqualified or given written notice to the clerk of his withdrawal as a nominee.

10.11. Clerks to Send Ballots to Attorneys, When. Not less than twenty nor more than thirty days before the election the clerk in whose office the election is to be held, shall mail or deliver at least one ballot (with the signature card bearing the same number as the ballot) to each member of the bar in good standing residing in the circuit, or court of appeals district, as the case may be, and in case the election is of an elective member of The Appellate Judicial Commission, the clerk of the Court of Appeals in whose office the election is to be held, shall also send a reasonable number of ballots (with the corresponding signature cards) to each circuit clerk in the district of such Court of Appeals, who shall furnish them to any member of the bar who may request them.

10.12. Ballots, How Voted. The ballots shall be mailed to or deposited with the clerk in whose office the election is to be held. Each ballot must be accompanied by a signature card signed by the voter, otherwise it shall not be counted. All ballots must be received by the clerk before 10 o'clock a. m. central standard time, on the day of the election, ballots received after that hour shall not be counted. Ballots shall be marked by the voter by placing an "X" or check mark in the box or square alongside the name of the person for whom he desires to vote.

10.13. Canvass and Return of Vote—Ballots Destroyed, When. The canvassers at an election shall consist of the clerk in whose office the election is to be held, and two or more persons, who shall be members of the bar or judges of the court in the office of whose clerk the election is to be held, designated to act as such by such court or by the presiding judge thereof. The canvassers shall proceed to open and canvass the ballots and shall tabulate and sign the results. Within ten days after the election such clerk shall certify the results as so tabulated to the Secretary of State and to the clerk of the Supreme Court. Upon completion of the canvass the clerk shall place all ballots in one package and all signature cards in another, and shall retain them in his office for a period of six months, and shall permit no one to inspect them except upon an order of the Supreme Court, at the end of such six months period he shall, unless otherwise ordered by the Supreme Court, destroy them. The clerk and other canvassers shall not disclose how any voter cast his ballot except upon an order of the Supreme Court or in the course of giving evidence lawfully required.

10.14. Ballots Not Counted, When—Run-off Election, When. No ballot shall be counted unless cast by a member of the bar residing in the circuit, or court of appeals district, as the case may be, and no ballot shall be counted which is cast for a person who does not possess the qualifications specified by the Constitution. If at any election any

person receives a majority of all of the valid votes cast for a particular office and term, he shall be deemed elected. If because of the failure of any person to receive such a majority, no person shall be elected, there shall be a run-off election, except that if before the time for holding such run-off election all or all but one of the candidates entitled to have their names printed on the ballots at such run-off election shall have died, become disqualified, or given written notice of their withdrawal to the clerk in whose office the election was held, there shall be no run-off, but there shall be a special election for the office and term in question.

10.15. Candidates at Run-off Election—Ballots. The persons entitled to have their names printed on the ballots at run-off election shall be (1) if the election which made the run-off necessary resulted in one candidate standing in first place and another in second place in the number of votes received, said two candidates, and no others, shall be entitled to have their names printed on the ballots at the run-off elections, (2) if said election resulted in a tie for first place between two or more candidates, said two or more candidates, and no others, shall be so entitled, (3) if said election resulted in one candidate standing in first place and a tie between two or more candidates for second place, said first place candidate and said two or more second place candidates, and no others, shall be so entitled. The only names printed on the ballots at a run-off election shall be those of such persons entitled to have their names so printed as have not before the printing of the ballots given written notice to the clerk of their withdrawal as nominees. No blank line for the writing in of a name shall appear on such ballot.

10.16. Run-off Elections Held, When. A run-off election, when required by this Rule 10, shall without any call thereof, be held on the day which is five weeks from the date of the election which made such run-off necessary, unless such day be a legal holiday, in which case it shall be held on the next day which is not a Sunday or legal holiday.

10.17. Plurality at Run-off Required for Election. The person receiving the greatest number of votes in the run-off election shall be declared elected. In event of a tie vote in such run-off election, a further run-off election shall be held under the provisions of Rule 10.16.

10.18. Special Election Held, When. If no person shall be elected at any election or run-off election in circumstances where no run-off, or further run-off, election is required by this rule (as, for example, if the person receiving a majority of all the valid votes cast shall have died before the election is complete) there shall be a special election for the office and term in question.

10.19. Fees of Clerks of Courts. (a) Clerks of the several Courts of Appeals and Circuit Courts shall be entitled to receive compensation for the additional duties enjoined upon them under these rules, which shall be on the basis of a flat fee for each election, whether regular, special or run-off election, conducted by them under these rules, irrespective of the number of separate offices or terms filled thereat, provided that when one kind of election is held at the same time as another

kind of election, it shall for this purpose be treated as a single election. Said fees shall be as follows:

To the Clerk of the St. Louis Court of Appeals, \$500.00
To the Clerk of the Kansas City Court of Appeals, \$500.00
To the Clerk of the Springfield Court of Appeals, \$400.00
To the Clerk of the Circuit Court of the City of St. Louis, \$400.00
To the Clerk of the Circuit Court of Jackson County, \$400.00

(b) The Clerk of the Supreme Court shall be entitled to receive the sum of \$125 per annum, payable annually in December, for his services in keeping accounts, and in furnishing lists as required by this Rule 10.

10.20. Commission May Act, How. A commission shall act only at a meeting and may act only by the concurrence of a majority of its members.

10.21. Meetings of Commissions—Notice. (a) Meetings of a commission may be called by the chairman or a majority of the members by written or telegraphic notice to the other members specifying the time and place of meeting. Such notice shall be mailed or sent at least five days before the time specified, except that a meeting may be held on shorter notice if the notice specifies that the meeting will be an emergency meeting. The place of meeting specified in the notice may, in the case of any circuit judicial commission, be any place in the circuit, and, in the case of The Appellate Judicial Commission, any place in the State, if called by the Chief Justice, and otherwise in Jefferson City. Notice of meeting may be waived by any member or members either before or after the meeting takes place, and attendance at a meeting by any member shall constitute a waiver of notice by such member unless he shall, at or promptly after the beginning of such meeting, object to the holding of the meeting on the ground of lack of or insufficiency of notice.

(b) Meetings of any commission may be held without notice at any time or place whenever the meeting is one as to which notice is waived by all members or whenever the commission at a previous meeting shall have designated the time and place for such meeting.

10.22. Chairman to Preside. The chairman shall preside at any meeting at which he is present, in his absence the commission shall choose a member to act as temporary chairman.

10.23. Secretary Selected. Each commission shall choose one of its members as secretary. It shall be the duty of the secretary to prepare and keep the minutes of all meetings. In the secretary's absence the commission shall choose a member to be acting secretary.

10.24. Minutes—Contents. The minutes shall record the names of the members present, any objections to the holding of the meeting on the ground of lack of or insufficiency of notice, any and all action taken by the commission, and any other matters that the commission may deem appropriate.

10.25. Commission May Nominate Panel Prior to Vacancy, When. When it is known that a vacancy will occur at a definite future date, within sixty days, but the vacancy has not yet occurred, the commission may make its nominations and submit to the Governor the names of the persons nominated before the occurrence of the vacancy.

It is the purpose of this rule to facilitate the administration of justice by preventing delay in filling court vacancies so that all courts may

have all judges ready to dispose of their judicial business as nearly as may be possible

10.26. Nominees Considered—Tender of Nomination Before Action. A commission should at all times take cognizance of the fact that the best qualified nominees may be those whom it would be most difficult to persuade to serve. Accordingly, the commission should not limit its consideration to persons who have been suggested by others or to persons who have indicated their willingness to serve. It shall be in order for the commission, if it sees fit to do so, to tender nomination to one or more qualified persons, prior to, and subject to, the formal action by the commission in making its nominations, in order to ascertain whether such a person will agree to serve if nominated.

10.27. Names of Suggested Nominees Publicized, When. A commission may, in its discretion, publicize some, all, or none of the names of the possible nominees who have been suggested to it or whom it has under consideration. In exercising this discretion the commission should take account of the fact that there may be lawyers who merely desire the publicity, that there may be lawyers whom publicity would deter from agreeing in advance to serve, and that, on the other hand, the commission needs all pertinent information about the possible nominees whom it is seriously considering. In no circumstances should the commission describe possible nominees as "applicants" or by any other term suggesting that they are seeking to be nominated.

10.28. Action, How Taken—Certificate of Nomination. The action of the commission in making nominations with respect to any vacancy shall be taken only at a meeting and only by the execution of a certificate of nomination (which may be in the form of a communication to the Governor), setting forth the nominations thereby made, signed on behalf of the commission by the chairman and secretary. The commission or its chairman shall forthwith cause the original of such certificate to be transmitted to the Governor.

10.29. Commission May Withdraw Nominees for Cause After Submission—Procedure. After any commission has nominated and submitted to the Governor the names of three persons for appointment to fill a vacancy in accordance with the Non-partisan Court Plan any name or names may be withdrawn for cause deemed by such commission to be of a substantial nature affecting the nominee's qualifications and showing he is not a fit and proper person to hold the office, and another name or names may be substituted therefor at any time before the Governor acts by making an appointment to fill such vacancy. Nothing herein contained shall be deemed to impose (or to recognize) any obligation whatsoever upon any commission to reconsider or withdraw any nomination, whether or not the Governor shall have requested reconsideration thereof, or shall have purported to reject, such nominations. If any nominee dies or requests in writing that his name be withdrawn the commission shall nominate another person to replace him. Whenever there are existing at the same time two or more vacancies in the same court, and the commission has nominated and submitted to the Governor lists of three persons for each of such vacancies, the commission, in its sole discretion may, if it desires to do so, before the Governor acts by making an appointment, withdraw the lists of nominations, change the names of any of such persons nominated from one

list to another and re-submit them as so changed, and may substitute a new name for any of those previously nominated when a name has been withdrawn for cause

The action of a commission in withdrawing a nomination or nominations and submitting a new nomination or nominations shall be taken only at a meeting and only by the execution of a certificate of withdrawal of nomination and a certificate of substituted nomination (both of which may be in the form of a communication to the Governor) signed on behalf of the commission by the chairman and secretary of the commission. If any nomination or nominations being withdrawn have already been transmitted to the Governor, the commission or its chairman shall forthwith notify the Governor by telegram of the commission's action and cause the original of such certificate of withdrawal to be transmitted to the Governor. Meetings of a commission to consider the withdrawal of nominations may be called by the chairman or a majority of such commission. Action of a commission in withdrawing nominations may be taken at the same meeting at which the nominations were made, or at any later meeting, and such action may be proposed by any member of the commission.

APPENDIX H
CONSTITUTION OF THE STATE OF NEW JERSEY

ARTICLE VI. JUDICIAL

Section I

1. *Courts, in general, legislative control over inferior courts*

The judicial power shall be vested in a Supreme Court, a Superior Court, County Courts and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

Section II

1. *Supreme Court, in general*

The Supreme Court shall consist of a Chief Justice and six Associate Justices. Five members of the court shall constitute a quorum. When necessary, the Chief Justice shall assign the Judge or Judges of the Superior Court, senior in service, as provided by rules of the Supreme Court, to serve temporarily in the Supreme Court. In case the Chief Justice is absent or unable to serve, a presiding Justice designated in accordance with rules of the Supreme Court shall serve temporarily in his stead.

2. *Supreme Court, appellate jurisdiction*

The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution.

3. *Supreme Court, rules, admission to practice law, discipline of persons admitted*

The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

Section III

1. *Superior Court, in general*

The Superior Court shall consist of such number of Judges as may be authorized by law, but not less than twenty-four, each of whom shall exercise the powers of the court subject to rules of the Supreme Court.

2. *Superior Court, jurisdiction*

The Superior Court shall have original general jurisdiction throughout the State in all causes.

3. *Superior Court, Divisions, in general*

The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division. Each division shall have such parts, consist of such number of Judges, and hear such causes, as may be provided by rules of the Supreme Court.

4 Superior Court, Divisions, power and functions

Subject to rules of the Supreme Court, the Law Division and the Chancery Division shall each exercise the powers and functions of the other division when the ends of justice so require, and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined

Section IV

1. County courts, jurisdiction

There shall be a County Court in each county, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and such other jurisdiction consistent with this Constitution as may be conferred by law

2. County courts; judges, in general

There shall be a Judge of each County Court and such additional Judges as shall be provided by law, and they shall be appointed in the same manner as heretofore provided for Judges of the Court of Common Pleas

3. County courts, judges, jurisdiction

Each Judge of the County Court may exercise the jurisdiction of the County Court

4. County courts; alteration of jurisdiction, powers and functions

The jurisdiction, powers and functions of the County Courts and of the Judges of the County Courts may be altered by law as the public good may require

5. County courts, legal and equitable relief

The County Courts, in civil causes including probate causes, within their jurisdiction, and subject to law, may grant legal and equitable relief so that all matters in controversy between the parties may be completely determined.

Section V

1. Appeals to the Supreme Court

Appeals may be taken to the Supreme Court

(a) In causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State,

(b) In causes where there is a dissent in the Appellate Division of the Superior Court,

(c) In capital causes,

(d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the County Courts and the inferior courts; and

(e) In such causes as may be provided by law

2. Appeals to Appellate Division of Superior Court

Appeals may be taken to the Appellate Division of the Superior Court from the Law and Chancery Divisions of the Superior Court, the County Courts and in such other causes as may be provided by law

3. Original jurisdiction of Supreme Court and Appellate Division of Superior Court

The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review

4 Review by Superior Court in lieu of prerogative writs

Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary

Section VI

1. Justices of the Supreme Court and judges of other courts; appointment

The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and Associate Justices of the Supreme Court, the Judges of the Superior Court, the Judges of the County Courts and the judges of the inferior courts with jurisdiction extending to more than one municipality. No nomination to such an office shall be sent to the Senate for confirmation until after seven days' public notice by the Governor

2. Justices of the Supreme Court and judges of the Superior and County Courts; eligibility for office

The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall each prior to his appointment have been admitted to the practice of law in this State for at least ten years.

3 Justices of the Supreme Court and judges of the Superior Court; term; retirement; pensions

The Justices of the Supreme Court and the Judges of the Superior Court shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior. Such Justices and Judges shall be retired upon attaining the age of seventy years. Provisions for the pensioning of the Justices of the Supreme Court and the Judges of the Superior Court shall be made by law.

4. Justices of the Supreme Court and judges of the Superior and County Courts; impeachment, removal

The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The Judges of the Superior Court and the Judges of the County Courts shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Justices of the Supreme Court, and judges of the Superior and County Courts; incapacity to perform duties; retirement; pensions

Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court, Judge of the Superior Court or Judge of the County Court is so incapacitated as substantially

to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances, and, on their recommendation, the Governor may retire the Justice or Judge from office, on pension as may be provided by law.

6. *Justices of the Supreme Court and judges of the superior court, salaries; practice of law or other gainful occupation*

The Justices of the Supreme Court and the judges of the superior court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment. They shall not, while in office, engage in the practice of law or other gainful pursuit.

7. *Justices of the Supreme Court and judges of the superior and county courts; ineligibility for other public office or position*

The Justices of the Supreme Court, the judges of the superior court and the judges of the county courts shall hold no other office or position, of profit, under this State or the United States. Any such Justice or judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

Section VII

1. *Chief Justice of the Supreme Court, in general; administrative director*

The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an administrative director to serve at his pleasure.

2. *Chief Justice of the Supreme Court; assignment and transfer of superior court judges*

The Chief Justice of the Supreme Court shall assign judges of the superior court to the divisions and parts of the superior court, and may from time to time transfer judges from one assignment to another, as need appears. Assignments to the appellate division shall be for terms fixed by rules of the Supreme Court.

3. *Clerk of Supreme Court; clerk of superior court*

The Clerk of the Supreme Court and the clerk of the superior court shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law.

APPENDIX J
CONSTITUTION OF THE COMMONWEALTH
OF PUERTO RICO

ARTICLE V. THE JUDICIARY

§ 1. [Judicial power; Supreme Court; other courts]

The judicial power of Puerto Rico shall be vested in a Supreme Court, and in such other courts as may be established by law.

§ 2. [Unified judicial system; creation, venue, and organization of courts]

The courts of Puerto Rico shall constitute a unified judicial system for purposes of jurisdiction, operation and administration. The Legislative Assembly may create and abolish courts, except for the Supreme Court, in a manner not inconsistent with this Constitution, and shall determine the venue and organization of the courts.

§ 3. [Supreme Court as court of last resort, composition]

The Supreme Court shall be the court of last resort in Puerto Rico and shall be composed of a Chief Justice and four Associate Justices. The number of Justices may be changed only by law upon request of the Supreme Court.

§ 4. [Sessions and decisions of Supreme Court]

The Supreme Court shall sit, in accordance with rules adopted by it, as a full court or in divisions. All the decisions of the Supreme Court shall be concurred in by a majority of its members. No law shall be held unconstitutional except by a majority of the total number of Justices of which the court is composed in accordance with this Constitution or with law.

§ 5. [Original jurisdiction of Supreme Court]

The Supreme Court, any of its divisions, or any of its Justices may hear in the first instance petitions for *habeas corpus* and any other causes and proceedings as determined by law.

§ 6. [Rules of evidence and of civil and criminal procedure]

The Supreme Court shall adopt for the courts rules of evidence and of civil and criminal procedure which shall not abridge, enlarge or modify the substantive rights of the parties. The rules thus adopted shall be submitted to the Legislative Assembly at the beginning of its next regular session and shall not go into effect until 60 days after the close of said session, unless disapproved by the Legislative Assembly, which shall have the power both at said session and subsequently to amend, repeal or supplement any of said rules by a specific law to that effect.

§ 7. [Rules of administration; Chief Justice to direct administration and appoint administrative director]

The Supreme Court shall adopt rules for the administration of the courts. These rules shall be subject to the laws concerning procurement, personnel, audit and appropriation of funds, and other laws which apply generally to all branches of the government. The Chief Justice shall direct the administration of the courts and shall appoint an administrative director who shall hold office at the will of the Chief Justice.

§ 8. [Appointment of judges, officers, and employees]

Judges shall be appointed by the Governor with the advice and consent of the Senate. Justices of the Supreme Court shall not assume office until after confirmation by the Senate and shall hold their offices during good behavior. The terms of office of the other judges shall be fixed by law and shall not be less than that fixed for the term of office of a judge of the same or equivalent category existing when this Constitution takes effect. The other officials and employees of the courts shall be appointed in the manner provided by law.

§ 9. [Qualifications of Justices of Supreme Court]

No person shall be appointed a Justice of the Supreme Court unless he is a citizen of the United States and of Puerto Rico, shall have been admitted to the practice of law in Puerto Rico at least ten years prior to his appointment, and shall have resided in Puerto Rico at least five years immediately prior thereto.

§ 10. [Retirement of Judges]

The Legislative Assembly shall establish a retirement system for judges. Retirement shall be compulsory at the age of seventy years.

§ 11. [Removal of Judges]

Justices of the Supreme Court may be removed for the causes and pursuant to the procedure established in Section 21 of Article III of this Constitution. Judges of the other courts may be removed by the Supreme Court for the causes and pursuant to the procedure provided by law.

§ 12. [Political activity by judges]

No judge shall make a direct or indirect financial contribution to any political organization or party, or hold any executive office therein, or participate in a political campaign of any kind, or be a candidate for an elective public office unless he has resigned his judicial office at least six months prior to his nomination.

§ 13. [Tenure of judge of changed or abolished court]

In the event that a court or any of its divisions or sections is changed or abolished by law, the person holding a post of judge therein shall continue to hold it during the rest of the term for which he was appointed and shall perform the judicial functions assigned to him by the Chief Justice of the Supreme Court.

APPENDIX K

THE CONSTITUTION OF THE STATE OF ALASKA

ARTICLE IV. THE JUDICIARY

Judicial Power and Jurisdiction

SECTION 1 The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Supreme Court

SECTION 2. The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

Superior Court

SECTION 3 The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Qualifications of Justices and Judges

SECTION 4. Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

Nomination and Appointment

SECTION 5. The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Approval or Rejection

SECTION 6 Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a non-partisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

Vacancy

SECTION 7. The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

Judicial Council

SECTION 8 The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

Additional Duties

SECTION 9. The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Incapacity for Judges

SECTION 10. Whenever the judicial council certifies to the governor that a supreme court justice appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the governor shall appoint a board of three persons to inquire into the circumstances, and may on the board's recommendation retire the justice. Whenever a judge of another court appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the judicial council shall recommend to the supreme court that the judge be placed under early retirement. After notice and hearing, the supreme court by majority vote of its members may retire the judge.

Retirement

SECTION 11. Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law. Retired judges shall render no further service on the bench except for special assignments as provided by court rule.

Impeachment

SECTION 12. Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers.

Compensation

SECTION 13 Justices, judges, and members of the judicial council shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.

Restrictions

SECTION 14 Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

Rule-making Power

SECTION 15. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

Court Administration

SECTION 16. The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at his pleasure and to supervise the administrative operations of the judicial system.

APPENDIX L

DRAFT ARTICLE VI—JUDICIAL DEPARTMENT

By Donald P. Kommers
Los Angeles State College

1. Judicial Power

The judicial power of the State shall be vested in a Supreme Court, District Courts of Appeal, Superior Courts, and in such other courts as the Legislature may from time to time establish

2. Judicial Council: Membership

There shall be a Judicial Council. It shall consist of one Justice of a District Court of Appeal, two judges of the Superior Courts, and one Judge from the courts of limited jurisdiction, assigned by the Chief Justice of the Supreme Court to sit thereon for terms of four years. Three attorney members shall be appointed for six-year terms by the governing body of the organized State Bar. Three non-attorney members shall be appointed for six-year terms by the Governor subject to confirmation by a majority of the Senate. All vacancies shall be filled for unexpired terms in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The Chief Justice shall be the eleventh member and the Chairman of the Judicial Council. No act of the Council shall be valid unless concurred in by six members.

3. Judicial Council: Duties

The Judicial Council shall be granted general superintending control over all courts in the State. It shall have the power to make or alter rules relating to pleading, practice, and procedure in all courts. It shall make all other rules pertaining to the general administration of State courts. The Judicial Council shall also provide for the assignment of any judge to another court of a like or higher jurisdiction in order to expedite judicial business and equalize the work of judges. The Council shall perform all other duties assigned by law.

4. Supreme Court

The Supreme Court shall be the highest court of the State and shall have final appellate jurisdiction in all causes arising under this Constitution and the laws of this State, with such exceptions, and under such regulations as the Legislature shall make. The Court shall consist of a Chief Justice and no less than six Associate Justices. The Court may sit in departments or en banc.

5. District Courts of Appeal

There shall be District Courts of Appeal, the number, organization, and jurisdiction of which shall be prescribed by law.

6. Superior Courts

There shall be in each of the organized counties, or cities and counties, of the State, a Superior Court. The Superior Courts shall be the trial courts of general jurisdiction and shall have appellate jurisdiction in such cases arising in inferior courts as may be prescribed by law.

7. Terms

Justices of the Supreme Court and District Courts of Appeal shall be selected for terms of twelve years, Judges of Superior Courts for terms of six years, and all other judges for terms and in a manner prescribed by law.

8. Vacancies

Whenever a vacancy shall occur in the office of the Justice of the Supreme Court, Justice of a District Court of Appeal, Judge of a Superior Court, or judge of an inferior court with jurisdiction extending to an area containing a population of more than 40,000 inhabitants, the Governor shall fill such vacancy by appointing one of three persons possessing the qualifications for such office, who shall be nominated and whose names shall be submitted to the Governor by the Judicial Council. Judges of other courts shall be selected in a manner, terms and with qualifications prescribed by law.

9. Retention or Rejection

Not less than sixty days prior to the holding of the general election next preceeding the expiration of his term of office, any incumbent judge above named may file with the officer charged with the duty of certifying nominations for publication in the official ballot a declaration of candidacy for election to succeed himself. If a declaration is not so filed by any judge the vacancy resulting from the expiration of his term of office shall be filled by appointment as herein provided. If such a declaration is filed his name shall be submitted at said next general election. If a majority of the electors voting upon such candidacy affirm his retention such person shall be elected to said office. If a majority of those voting reject his retention he shall not be elected, and may not thereafter be appointed to fill any vacancy in that court. If a vacancy arises in this fashion the office shall be filled by appointment as herein provided.

10. Eligibility

The Justices of the Supreme Court, Justices of the District Courts of Appeal, and Judges of the Superior Courts shall each prior to his appointment have been admitted to the practice of the law in this State for at least five years. The Legislature may prescribe additional qualifications.

11. Compensation

Justices, judges, and members of the Judicial Council shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office.

12. Incapacity

Whenever the Judicial Council shall certify to the Governor that it appears that any Justice of the Supreme Court, Justice of a District Court of Appeal, or Judge of a Superior Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendations, the Governor may retire the Justice or Judge from office, on pension as may be provided by law.

13. Impeachment

Justices of the Supreme Court, Justices of the District Courts of Appeal, and Judges of Superior Courts shall be subject to impeachment according to the procedures prescribed by law. All other judicial officers may be subject to removal from office by the Judicial Council for such causes and in such manner as shall be provided by law.

14. Retirement

The Legislature shall provide by general law for the retirement of justices and judges. The basis and amount of retirement pay shall be prescribed by law. Retired justices and judges may render further service on the bench by special assignments that the Judicial Council may provide

15. Restrictions

Justices of the Supreme Court, Justices of the District Courts of Appeal, and Judges of the Superior Courts, while holding office, may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions.

APPENDIX M

(Excerpt from—*Journal of the State Bar of California*, Vol. 37, No. 4,
July-August, 1962)

PRESIDENT'S MESSAGE

By Theodore R. Meyer, of San Francisco, President

Adoption by the Iowa voters of the Missouri plan for non-political selection of judges lends encouragement to our own efforts to deal with this all important problem. Alaska has embodied the Missouri plan in its new Constitution, and Kansas has placed its Supreme Court justices under the plan. Nebraska will vote on a modified version of the plan in November. Similar plans have been drafted and approved by Bar Associations in many other states.

Under the Missouri plan, judicial vacancies are filled by appointment made by the Governor from a list of nominees submitted by a non-partisan commission.

Our State Bar has not in recent years advocated the Missouri plan, but in the last two general legislative sessions we sponsored a constitutional amendment under which a non-partisan commission would have veto power over the appointment of judges to our trial courts. This would represent merely an extension to the trial courts of the system under which the Commission on Judicial Appointments has passed upon appointments to the appellate courts for many years.

Under the Missouri plan, the non-partisan commission takes the first step in the appointive process; the Governor takes the second step. Under the plan which we have supported the process is reversed. Both plans have the common feature of providing checks and balances against the unrestricted power of the Executive to appoint the Judiciary.

In the 1961 general session of the California Legislature we made an all out effort to obtain legislative approval of a bill known as ACA 47, which would permit the voters to pass upon a constitutional amendment embodying our plan. We had the support of the Judicial Council and of many bar associations throughout the State. The bill, in somewhat modified form, was reported favorably by the Assembly Committee on Constitutional Amendments. However, instead of going from that committee to the floor of the Assembly, the bill was referred to the Ways and Means Committee, and there it died.

But the problem did not die, nor did our interest in it. Heretofore we have proceeded on the assumption that the veto power commission provided for in ACA 47 would have a better chance of obtaining legislative and voter approval than the nominating commission provided for in the Missouri plan. Experience has led us to reconsider this assumption. Twice (in 1959 and 1961) we have failed to obtain legislative approval of the veto power commission. Meanwhile the Missouri plan with its nominating commission is making progress in other states. This has led many lawyers to conclude that we will have the same op-

position to either plan, and that we may as well go all out for the Missouri plan.

Neither plan has any political motivations whatsoever. Both have the support of lawyers of different political faiths. Both are designed to protect the appointive power from intense and inevitable political pressures and to assure the appointment of the very best men available for judicial office.

For twenty years the Governors of California have submitted to the Board of Governors of the State Bar the names of prospective appointees to the trial courts. The Board has expressed its confidential opinion to the Governor on the names submitted. The Board has done this without any legislative authority, but in the belief that the arrangement served a useful purpose and that our members would not wish to see it discontinued.

At the same time successive Boards have expressed the view that the present informal system has many weaknesses, and that it should be superseded by a procedure provided for by law. This view found expression in our two unsuccessful attempts to obtain legislative approval of a constitutional amendment, of which ACA 47 was the latest form.

An excellent State Bar Committee, headed by Edwin A. Heafey of Oakland, has recently reviewed the subject and has recommended that the State Bar should not support a version of the Missouri Plan. The Board hopes to formulate a definite course of action at an early date.

The trend of the times seems to be on our side. The progress of the Missouri plan is evidence to this effect. The favorable vote in Iowa shows that our point of view can be communicated to the voters. I am sure that it is only a matter of time when we will put an end to the anachronistic system under which the Executive, free from any checks or balances, appoints most of the members of the Judiciary, in clear contravention of the principle of the separation of powers.

APPENDIX N

(Excerpt from—*Journal of the State Bar of California*, Vol. 37, No. 5,
September-October, 1962)

JUDICIAL APPOINTMENTS

For twenty years the Governors of California have followed the practice, initiated by then Governor Warren, of requesting the opinion of the Board of Governors of the State Bar concerning the qualifications of prospective appointees to the trial courts of this State.

There has been an unprecedented number of such requests during the past year, and the investigation and consideration of the nominees has occupied much time and effort on the part of the Board members during and between Board meetings. Altogether, since the last annual meeting, we have given the Governor our opinion on the qualifications of 150 persons whose names he has submitted to us.

This arrangement is informal. We have felt that it serves a useful purpose and that our members would not wish to have it discontinued.

At the same time the system has its drawbacks. Our advice to the Governor is confidential, and we are unable to state to the public or to our members what that advice is. As a result, erroneous inferences are sometimes drawn, which we are powerless to correct.

For these reasons and others, it is the opinion of the present Board of Governors, as it has been the opinion of other Boards in the past, that the present informal system is not the best that could be devised, and that in matters of judicial selection nothing but the best is good enough.

At the 1959 and 1961 legislative sessions we unsuccessfully sponsored constitutional amendments which would have made appointments to the trial courts subject to the approval of a non-partisan commission, as appointments to the appellate courts are now subject to the approval of the Commission on Judicial Appointments. Such constitutional amendments were first proposed by the State Bar and the Judicial Council in 1958, during the administration of then Governor Knight.

Our State Bar Committee on Judicial Selection, headed by Edwin A. Heafey of Oakland, has recently made a new study of the problem and has recommended that, in lieu of the plan which we have heretofore advocated for a non-partisan commission having power to approve or disapprove appointments to the trial courts, we should not sponsor the so-called Missouri plan, under which the Governor appoints judges from a panel of names selected by such a commission. This plan has been in effect in Missouri for many years, it has recently been adopted in Alaska and Iowa, and it is under serious consideration in other States.

It will be up to the Board of Governors to formulate a definite plan of action, and this we hope can be done in the near future.

APPENDIX O

CONFERENCE OF CALIFORNIA JUDGES

" unfortunately, this matter (A C A 26) has not been presented to the conference or before the executive board. Therefore, we are not in a position to make an expression which would represent a consensus of the conference.

"My own viewpoint coincides with the position of the Judicial Council in this regard and I believe you have been informed that the council will recommend a constitutional amendment which would provide for a Commission on Judicial Appointments which would pass upon all gubernatorial appointments to the superior and municipal courts. In this pure abstract theory, this would insure that only qualified persons would be appointed to the bench . "

ALAMEDA COUNTY BAR ASSOCIATION

" we have studied and discussed A C A. 26 at great length. It is our opinion that judicial appointments should be submitted to the Board of Governors of the State Bar of California, and that the said board should act in the position of a commission with veto power over the Governor's judicial appointments. I believe that the records concerning judicial appointments should be kept confidential even if the disapproved party requested that they may be made public, and all investigation done concerning the possible appointment should also be kept as confidential.

"We believe that it is not necessary to appoint an additional commission and that any commission made up primarily of judges themselves would not be satisfactory. The Board of Governors of the State Bar representing all the various districts and areas of the State of California, are probably the best qualified to study, recommend and act on the matter of judicial appointment . "

LOS ANGELES COUNTY BAR ASSOCIATION

" Our judiciary committee will be engaging in further study and our board of trustees was unwilling for the association, as such, to be represented until completion of such study. In due course, the association's board will receive the report of the judiciary committee and determine whether or not to forward (it) to you for consideration. . . "

SACRAMENTO COUNTY BAR ASSOCIATION

“ It develops that the matter concerning A C A 26 is subject to study by a special committee on judicial selection of the State Bar of California, whose report and findings as yet have not been completed. It therefore appears advisable for presentation of the Sacramento County Bar Association before such committee to be deferred until the filing and rendition of said report ”

SANTA CLARA COUNTY BAR ASSOCIATION

“ It was the unanimous consensus of the committee that the amendment should be disapproved with regard to the system of election of superior court judges provided therein. It was the thinking of the committee that superior court judges, being trial judges and having close responsibility to the people, should be elected by the people. It was thought that the quality of the bench would be better maintained through the elective procedure than through the procedure outlined in the proposed amendment. The elective procedure provides deterrents to arbitrary capricious conduct and provides an effective vehicle for the removal of a member of the bench who is not performing his duty properly. Experience has indicated that the system proposed by the amendment makes difficult, if not impossible, the removal of a judge who is not performing his duties properly. The Legislative Committee of the Santa Clara County Bar Association therefore strongly opposes the proposed amendment insofar as it would change the procedure for the election of superior court judges.

“The committee, however, looked with favor upon the principle that appointments to the bench should be conditioned upon approval by a commission on judicial appointments. The committee further heartily concurs in the principle that this commission should include members of the bar association. It was suggested that a higher percentage of members of the State Bar should be named to this commission ”

APPENDIX P

STATEMENT BY GOVERNOR EDMUND G. BROWN

Joint Hearing of Assembly Committee on Constitutional Amendments and
Assembly Judiciary Committee, Room 2117, 9 30 a m.,
State Capitol, November 29, 1962

Mr. Chairman and Members of the Committee:

I would like to express my appreciation of the excellent work which your committees have been doing for many years to improve the structure and content of California government.

This morning, the particular business of your committees is to consider the portion of Assembly Constitutional Amendment 26 relating to appointments of the judiciary. No more serious business can command the attention of the Legislature.

As you know, the constitutional authority for appointment is vested in the Governor, who must answer to the people for his selections. Once appointed, the judge must also answer directly to the people. This system assures the citizen direct control over the quality of the judiciary and the courts.

It is 20 years since former Governor Warren initiated the practice of asking the opinion of the Board of Governors of the State Bar concerning the qualifications of prospective appointees to the courts.

Like Governor Warren and Governor Knight, I have counseled with the Governors of the State Bar as to the professional standing and competence of judicial candidates. I respect this counsel highly. Nevertheless, the ultimate responsibility for a wise choice is mine. It cannot be delegated and it should not be delegated.

A C A 26, however, conflicts directly with these principles. Let us consider why.

The critical provisions of this proposal read as follows:

[“Sec. 9. No appointment by the Governor of a judge named in Section 7 of this article shall be effective unless there is filed with the Secretary of State a written confirmation of such appointment signed by a majority of the members of the Commission on Judicial Appointments.”]

Sec. 10. The Commission on Judicial Appointments shall consist of: (i) the Chief Justice of the Supreme Court, or in his absence the Acting Chief Justice, who shall be the chairman; (ii) one Associate Justice of the Supreme Court, one justice of a district court of appeal, and one judge of a superior court, and one judge of a municipal court, each selected by the Supreme Court; and (iii) two members of the State Bar, who shall have practiced law in this State for at least 10 years and who shall be appointed by the Board of Governors of the State Bar.”]

The constitutional amendment, then, would for practical purposes remove from the Governor the right of judicial appointment, and would

vest in the Commission on Judicial Appointments a form of selective and veto power over the Governor's appointments

Further, you have been asked to consider alternate proposals limiting the authority of the Governor. The first such proposal would require the Governor to submit to the Board of Governors the names of candidates for judicial appointments 30 days before appointment. In addition, the Governor would submit to the Legislature a report on his compliance with the recommendations of the board of governors. The second alternate proposal would limit the restrictions on the Governor to the 30-day waiting period prior to appointment.

This morning, I want to state my unequivocal opposition to all of these proposals, and I shall give my reasons for rejecting them.

First, however, I want to review briefly my own record as Governor with regard to appointments to the courts.

Since 1959, it has been my high privilege to make 266 judiciary appointments, including four to the Supreme Court, 22 to the district courts of appeal, 124 to the superior court and 116 to the municipal courts of California.

These appointments include many elevations of judges originally appointed by previous Governors. Of 14 elevations from the superior courts to the district courts of appeal, for example, 3 were judges originally appointed by me and 11 had been appointed in earlier administrations.

What are the factors in the background of these appointments? Let me tell you the personal philosophy which governs my selections.

First, I look for men who will have the courage and the capacity to administer our laws with equity and equality.

Second, I look for men who will have a passion for justice and a sympathy for human error.

Third, I look for men who have the qualities best described as the "judicial temperament."

Fourth, I look for men who will display a fineness of character that will set a standard for the community.

Fifth, I look for men who will be fiercely independent—men strong enough to walk upright in a wind of gale force. I look for men who, having searched their consciences for the right decision, will act on that determination without fear or favor.

Before the actual appointment of a judge, however, much more must be reckoned with than the Governor's own orientations and decision-making process.

Thus, for 46 judgeships created by the 1959 California Legislature, we received written recommendations on behalf of over 730 members of the California Bar. More than 3,000 letters poured in supporting these nominees during a single 10-week period. In addition came countless telephone calls and visits by the nominees, their supporters and their detractors.

Along with all the individually inspired counseling, semiofficial plebiscites by local bar associations were also placed on the scales in the weighing of potential judges.

I have neither encouraged nor discouraged these plebiscites. But I have consistently made it clear that the final responsibility has been vested in me by the Constitution. I am obliged to exercise my own

judgment, after considering the viewpoint of segments of the professional bar

Let me here and now express my appreciation to the board of governors for their assistance. At my request, they have regularly given me the information available to them about the qualifications of those whom I have considered for appointment.

Let me emphasize that I have also secured relevant information on prospective appointees from numerous other sources, because I am aware that the information available to the board of governors is sometimes limited. As this great State grows, the 15 members of the board will increasingly find that they can have but little direct knowledge of many lawyers in various communities who nonetheless are excellently qualified for the bench.

The Governor, then, does not expect from the board more information than it traditionally possesses. He must go farther.

In addition to all the nominees urged upon us, for example, I also seek to determine whether there are other possible candidates who should be considered.

I have therefore consulted with men already sitting on the state and federal benches, especially the appellate courts; with former presidents of the State Bar, with legislators, district attorneys and other public officials, with deans of law schools; with dozens of distinguished attorneys; and with numerous other community leaders throughout the State. Some of these we talk with directly; with many, we rely on telephone calls and correspondence.

After completing my appraisal and selection of a potential judicial appointee, I, like Governors Warren and Knight, have sent my list to the board of governors for their comment. We have, in fact, submitted for comment the names not only of those under consideration for immediate appointment, but also some whom we might later consider.

The referral to the State Bar is made not to have the board retrace, *de novo*, the discretionary action of the Governor. Rather, it is an effort to determine if the records of the bar show grounds indicating that the candidate is unfit.

The fact that in the overwhelming majority of cases I have concurred with the recommendations is clear evidence that I consider it of great value. But just as clearly, I believe it should not be the sole determining factor.

In the Governor's office we constantly seek to improve our techniques for obtaining full information concerning the fitness of a candidate. We have devised mechanics for obtaining fuller biographical data.

I therefore believe that I already have ample means of assistance. There is no need for a commission to approve or veto those whom the Governor proposes to appoint as judges.

There is no need for the board of governors to seek to shield the Governor from the pressures of his job.

This function should not be shifted. The obligation of selection and the responsibility for the proper discharge of that obligation properly

belong to the Chief Executive. And here I believe—as has the Legislature with great consistency down the years—that the obligation should remain.

Let me emphasize that the best review of all—that of the people—is doubly available under the present appointment system.

The people pass judgment every four years on their Governor and his performance—including the quality of his appointments.

They also vote periodically on the judicial appointees themselves. If any unsatisfactory judge should be appointed, the people themselves can and will remove him from office at the polls.

For these reasons, I believe the Constitution properly places the final decision on judicial appointments with the Governor. Like Governors Warren and Knight, I feel obligated to protect the independence of the State's highest office.

In fact, along with past governors, the appointment of judges might be described as the duty which I have most rigorously met myself.

My staff has been used to appraise recommendations and to supplement them with additional material. They have relieved me of preliminary talks with scores of contenders. But the actual determination of judicial appointments, I have kept solely to myself, subject only to the constitutionally required review by the Judicial Qualifications Commission for appellate court appointments.

I propose to continue meeting this obligation in the future.

We must not tamper with a system which has given California the finest judicial system and the highest caliber of judges in the nation. The results are plain. It is no accident that in California, a good judge who serves society well generally is elected and re-elected by the public throughout his lifetime. This is a system which must be protected and extended in the future.

We must remember that judicial selection should be related to the ultimate public sanction of our judges. Our courts serve not just the bar and its hierarchy of values, but our whole society. Lawyers and judges must remember that the courts are essentially the business of the people, not merely of the bench and bar.

Just 19 years ago, former Governor Warren appeared before the "State Bar War Conference" in San Francisco to express his appreciation for the bar's co-operation.

"I am of the opinion," he said, "that no man should aspire to the bench unless he can run the gauntlet of his own profession."

As Governor today, I share that opinion. Just as firmly, I believe that the judge must run the gauntlet of the entire public.

In that spirit I will continue to carry on the search for able men—my most challenging quest. I will continue to try to perform it well. I will continue to seek the counsel and advice of others, including the board of governors, but I must make the choice.

I strongly oppose A.C.A. 26 on these grounds.

**STATEMENT BY CHIEF JUSTICE PHIL S. GIBSON,
CALIFORNIA SUPREME COURT**

I have debated somewhat whether I should talk to you rather informally, or whether I should give you a prepared statement with my views with respect to the action of this committee. I decided that I should not make the same mistake I made in 1947, when I was asked to appear before the Joint Assembly and Senate Committee on Constitutional Revision in Santa Barbara. I think probably Don Allen is the only member of this committee who was officially present at that meeting. I was preceded on the platform by Governor Young, Governor Olson, Governor Warren, and I don't remember whether Governor Merriam was present or not. I know that by the time they called on me to make my remarks the audience had listened to everything they wanted to hear on constitutional revision. I said to them that there was probably nothing more indigestible so far as a judge or a lawyer was concerned than an undelivered speech. I saved them the pain of enduring my speech by saying I would mail it to them.

However, I think this is a very important problem and I would like to tell you my views with respect to the revision of the judicial article of our Constitution.

Mr. Chairman and members of the committee, I would like to preface my remarks by expressing wholehearted approval of the work which your committee has done in the past several years toward improving the structure and content of California's government to the pressing demands of the second half of the 20th century.

The Judicial Council has a 35-year record of interest and accomplishment in constitutional revision as it affects our court system, and I have a deep personal interest in the matter as well. In Volume 29 of the Southern California Law Review I undertook to express my view of the problem, as well as to suggest methods of approach in revising the judiciary article.

The law review article was published in 1956 and it contained some of the material that I prepared for the Assembly and Senate Committees on Constitutional Review at the Santa Barbara meeting. The Judicial Council takes a good deal of pride in the fact that substantial constitutional improvement in Article VI has taken place in the meantime along the lines indicated. We have assisted in bringing about constitutional changes, for example, to provide appellate review for municipal and justice court judgments and to eliminate obsolete provisions from the judiciary article. We now have in California the first procedure in any state by which judges may be disciplined through action of the Commission on Judicial Qualifications in the Supreme Court.

Your committee, too, can take pride in your work in this field. It must be a source of considerable satisfaction for you to know that the fall general election ballot will carry two measures resulting directly from the work of this committee during the 1959-60 biennium. Proposition 16 carries forward the committee's continuing program for eliminating obsolete and superseded language from the Constitution while Proposition 7 broadens the Legislature's power to propose revisions of the Constitution in the future. These measures were recommended to the 1961 Legislature by your committee, as was Assembly Constitutional

Amendment No 26 which is before you for consideration today. Your 1961 report to the Legislature contains a full discussion of the concepts underlying A C A. 26, together with much valuable background material.

That 1961 report makes a specific recommendation for revision of the judiciary article which I should like to quote in full The committee there recommended a revision of Article VI which would

- "A. Delete obsolete and inconsistent provisions;
- "B. Eliminate detailed procedural provisions;
- "C Vest complete rulemaking power in the Judicial Council; and
- "D Require that all judicial appointments be subject to approval of the Commission on Judicial Appointments."

The recommendation states the principles of a program with which the Judicial Council is in full agreement In fact, successive recommendations have been submitted to the recent sessions of the Legislature by the Judicial Council in co-operation with the State Bar for the purpose of achieving the very goals which your committee has set forth

I do not desire to oversimplify the problem, however, and I would be the first to concede that such an agreement as to general principles does not necessarily forecast agreement as to the details Revision of constitutional language, of course, is a matter of detail, and this is the rock upon which many a proposed simplification of the Constitution has been stranded.

Taking the first goal announced by your committee in 1961, however, it is encouraging to note that many of the areas of obsolescence in Article VI identified by your 1961 report will be cleared up if Proposition 16 is adopted at the 1962 general election There are other such provisions in Article VI which could be eliminated or revised, as for example the provisions dealing with the practice of the Supreme Court sitting in departments. I hope that your committee, working in conjunction with other interested groups, will continue its efforts to clarify or eliminate these outmoded portions of Article VI.

The second goal, that of eliminating detailed procedural provisions from the Constitution, is one which has always raised serious doubts as one approaches a particular elimination. We can agree, I think, that the fundamentals of an independent and integrated judicial system must be stated in the Constitution in order that those fundamentals will not be subject to casual change at each session of the Legislature. The application of this principle to particular issues is not easy however What is a procedural detail to one person is often a fundamental provision to another

I do not intend to examine the proposed A C A 26 in detail, but in this connection I would like to direct your attention to Section 1 of the proposed Article VI It provides in addition to certain specified courts, for vesting judicial power in "such other courts as may be established by law " The purpose of this kind of language, of course, is to give the Legislature a free hand in the creation and organization of courts below the municipal court level. In California, however,

we eliminated such a provision from our Constitution in 1950 because, after 100 years of experience with it, we found a tangle of legislatively created inferior courts in California. They constituted a veritable jungle of overlapping local courts and conflicting jurisdiction, a condition which was finally eliminated by constitutional amendment.

Not only is there an inferior court problem concealed in the proposed language, but there is a problem involving the very substantial pressure for specialized courts. Those of us who participated in the debate can still remember the 1946 ballot proposition which would have amended Article VI to vest judicial power in a court of tax appeals. If the language proposed by Assembly Constitutional Amendment No. 26 were adopted, I see no reason why the Legislature could not create as many kinds of specialized courts as it pleased from time to time.

We cannot afford, in my opinion, to open Article VI for continuing local pressures for inferior courts and like pressures for specialized courts of various kinds.

Thus, while we can agree that unnecessary procedural details should be eliminated from the Constitution, careful and informed consideration must be given to each particular deletion if you are to get general support for a proposed revision such as that embodied in A C A 26.

The third goal stated by your committee in its 1961 report is that of prescribing the details of court practice by rule of the Judicial Council rather than by constitutional provision or by statutory enactment. This has been an aim of California lawyers and judges for nearly 50 years. Originally, under the common law, the courts had a free hand to prescribe their own rules of procedure but this system required practitioners to go to decisions, textbooks and individual court practices in a great many situations. In the mid-19th century, legislatures took a hand and most states turned toward the regulation of court procedure by statutory enactment.

While practice codes such as the Field Code were a great improvement over the common law system, our situation today is very different. It calls for us to move forward from the mid-19th to the mid-20th century. The modern trend is clearly in the direction of vesting full rulemaking authority in the judicial branch which bears the responsibility for providing an efficient and modern procedure. In at least 34 of our 50 states this is the situation, and it should be the law in California as well.

The fact that we have a constitutional Judicial Council representing the lawyers, makes it particularly fitting for the Legislature to delegate the rulemaking power in this State. Court procedure is a problem which the Legislature should not be forced to contend with session after session. Indeed, our many years of experience in California with statutory court procedure prove that a better system is needed. I hope that representatives of the Legislature, of the Judicial Council, of the State Bar and of other interested groups can work out an acceptable compromise on this issue. In any event, a provision such as the one found in A C A 26, in proposed Section 17, would be desirable from the viewpoint of the Judicial Council.

The fourth goal stated by your 1961 report deals with the selection and appointment of judges. I understand that your consideration of this issue has been deferred to a later date and, for that reason, I should like to forego comment on the judicial selection matter at this time. Both the Judicial Council and the State Bar are at work on the subject, however, and will have views to express, I am sure, at the time of your later consideration of the matter.

There is one final comment which I should like to make on the subject of constitutional revision insofar as Article VI is concerned. To be acceptable, a general revision of Article VI must be worked out in consultation with the groups most intimately involved and I am sure that you can count on the assistance of the Judicial Council and the State Bar. Using these resources, and the expert drafting services of the Legislative Counsel, the chances are good that a revision of Article VI can be produced which would have a good chance for general acceptance.

I should like to say, incidentally, that the Judicial Council considers itself fortunate to have obtained the services of your former Legislative Counsel, Ralph N. Kleps. In his new capacity as director of our administrative office his long experience as the Legislature's legal adviser, and his proven skill as an administrator have been very valuable to us. We expect to rely heavily upon him in our future work directed toward revision of Article VI.

A major effort toward general revision is long overdue and I would recommend it to your committee with the hope that we can jointly offer the Legislature a new and improved judiciary article after appropriate consideration. I am not sure, however, that we can do it at the next session of the Legislature. This is a very important matter. This matter will take considerable study before it should be presented to the Legislature. In that connection I might say that two weeks ago, over the weekend, I read the debates of the 1879 Constitutional Convention, and I am sure the members of this committee would find them very interesting reading in connection with their present work. Thank you very much.

REMARKS OF ATTORNEY GENERAL STANLEY MOSK

BEVERLY HILLS, September 19, 1962

Comments re A.C.A. No. 26

Assembly Constitutional Amendment No. 26, as amended in Assembly April 26, 1961, would delete the present Article VI, dealing with the judiciary, from the Constitution of California and substitute a new Article VI in its place. If the choice were between the present constitutional provisions and the new proposal, I would favor the new proposal. I would hope, however, that Article VI might be further improved.

I favor A.C.A. 26 primarily because it takes some of the restrictive details out of the current Constitution and leaves those details for the Legislature to prescribe. I believe that this is wise, its wisdom having been demonstrated by the constitutional history of the United States since 1789. I am critical of A.C.A. 26 because it only approaches the

federal model I am critical because one or two of the specific details which the new Article VI would contain seem less advisable than provisions of present Article VI

Article III of the Constitution of the United States contains only three very short and very simple sections—fewer than 500 words. Only two of the three sections truly deal with establishment and jurisdiction of the judiciary. Section 3 of Article III places restrictions on the power of Congress and the courts with respect to treason. Article III has been amended only once—by the 11th amendment which became effective in 1804.

By contrast, Article VI of the California Constitution contains some 30 sections. Some sections are longer than Article III of the United States Constitution. It has been amended over and over again. I asked my secretary to count the words in Article VI. She said she would be glad to do so if I would give her a week with nothing else to do. I think she thought I intended to make my request as a joke, and I am just as happy on reflection that she thought so.

The new Article VI is still very long by contrast to the United States Constitution. It is materially shorter than present Article VI. I do not say that "shorter" necessarily means better, but I do say that *in this case* "shorter" does mean a great improvement. It means an improvement because it leaves to the Legislature the filling in of details which the Legislature should be free to alter as experience dictates, without resort to a constitutional amendment. It leaves in our Constitution, and beyond the reach of ordinary legislation, only a few of the intricate details now found in that Constitution. This is a change in the direction of what a constitution should be—a declaration of fundamental principles unalterable except by the people. The details of how to carry out those principles should be left to the Legislature.

Let me give you an example.

Here is the first sentence of Article III of the Constitution of the United States: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Here is Section I of present Article VI of the California Constitution:

"The judicial power of the State shall be vested in the Senate, sitting as a court of impeachment, in a Supreme Court, district courts of appeal, superior courts, municipal courts, and justice courts."

Here is Section 1 of Article VI of the California Constitution as it would be established by A C A 26:

"The judicial power of the State shall be vested in the Senate, sitting as a court of impeachment, in a Supreme Court, district courts of appeal, superior courts, municipal courts and in such other courts as may be established by law."

What is the difference? The United States Constitution establishes only one court, the United States Supreme Court, and leaves it to Congress to establish the other federal courts.

The California Constitution now provides for five courts: the Supreme Court, district courts of appeal, superior courts, municipal

courts, and justice courts. The new Article VI would cut this number from five to four, eliminating justice courts from the courts required by the Constitution. New Article VI would add "such other courts as may be established by law." The Legislature could eliminate justice courts if it chose, and it could add additional courts, or it could do both.

I think this is wise. Whether there should be justice courts or additional courts is a technical question. That question can better be decided by the Legislature than by an amendment to the California Constitution voted upon by the people. The only criticism I have is that the amendment is too timid. I would see no objection to going all the way by adopting the federal provision: one Supreme Court and such other courts as the Legislature has established, or may hereafter establish.

I concede that there is a theoretical risk. With the amendment the Legislature might abolish all except the Supreme Court. This would be disastrously bad. However, the United States has been subject to that same risk of what Congress might do to the federal courts ever since 1789. The risk is slight. I might say that upgrading legislative salaries, as proposed in Proposition 1 (\$11,250 per year maximum) and Proposition 17 (\$10,000 per year maximum), should go a good way toward indicating confidence which I think we should have—indeed must have—in our Legislature.

I can give you other examples even more striking. Our present California Constitution contains a myriad of provisions prescribing the organization and jurisdiction of the Supreme Court, the district courts of appeal, and the superior courts. These provisions would all be replaced, under A C A 26, by three short sections which I shall read:

"Section 2. The Supreme Court shall be the highest court of the State and shall have final appellate jurisdiction in all causes arising under this Constitution and the laws of this State, with such exceptions and under such regulations as are prescribed by law. The court shall consist of a Chief Justice and six associate justices, and it may sit in departments or en banc.

"Section 3. There shall be district courts of appeal, the number, organization, and jurisdiction of which shall be prescribed by law.

"SECTION 4. There shall be in each county of the State, including each city and county, a superior court. The superior courts shall be the trial courts of general jurisdiction and they shall have such jurisdiction, including appellate jurisdiction in cases arising in inferior courts, as may be prescribed by law. There shall be municipal courts, the number, organization, and jurisdiction of which shall be prescribed by law."

The key words which state the principle are "*prescribed by law*." That means prescribed by statute enacted by the Legislature, or by a constitutional amendment which may hereafter be enacted. I believe that the Legislature can be relied upon to do a good enough job that amendments to the new Article VI of the California Constitution in the future might be as rare as amendments have been to Article III of the United States Constitution.

There are some provisions in A C A 26 about which I am not so enthusiastic. Vacancies are now filled on the Supreme Court, the district courts of appeal, and the superior courts by appointment of the Governor with approval of a majority of the Commission on Qualifications. This commission consists of (1) the Chief Justice of the Supreme Court, (2) a judge of the district court of appeal, the superior court, or the Supreme Court, depending on the appointment to be approved, and (3) the Attorney General.

This would change its name to the Commission on Judicial Appointments, but more significant than the change in name would be replacement of the Attorney General by two members of the State Bar appointed by the Board of Governors. Were I not a modest man, I would suggest that recent history has shown that the Attorney General is likely to be as well suited to perform in this capacity as members nominated by the Board of Governors of the State Bar. The Board of Governors now acts in an advisory capacity to the Governor. At least one of its widely publicized adverse recommendations is ascribable only to a spirit of parochial vindictiveness, or to failure of the board to acquaint itself with the accomplishments of the candidate which it urged the Governor to reject.

I do not press my objection, because the point is not fundamental. Precisely because it is not fundamental, I would omit it from the Constitution, leaving to the Legislature the power to prescribe qualifications of such a body.

On some of the provisions of A C A 26 I would like to withhold judgment at the present time. For example, Article VI, Section 4½, of the present Constitution would be repealed. This provides that no judgment shall be set aside or reversed because of certain types of errors in the trial "unless, after an examination of the entire cause including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."

Article VI, Section 4½, has been in the California Constitution since 1911. It is based on a recognition that in any trial, particularly if it is a long one, there is likely to be some type of error. It makes sense to provide that the mere discovery of error, from which no prejudice has resulted, should not compel reversal of the judgment of the trial court. Nevertheless, when an error has been discovered, it is often hard for an appellate court to say whether that error "has resulted in a miscarriage of justice." Would the verdict or judgment have been different had the error not taken place?

I have sometimes suspected that Article VI, Section 4½, is usually cited by an appellate court only to support a result that courts in other jurisdictions, without Section 4½, would probably have reached anyway. But what message would the repeal of Article VI, Section 4½, convey to the appellate courts?

I would like to hear this issue debated before making up my mind whether Section 4½ should go. And until making that judgment, it occurs to me that the repeal of Section 4½ should probably be submitted as a separate constitutional amendment, detached from the rest of A C A 26.

I have touched on only some of the problems. I believe they are modest. I have touched on what I believe is the greatest virtue in the

proposed amendment I believe that virtue is substantial. For this reason I favor the principles of A.C.A. 26. However, because the courts are essential to the life of our State, I would like to commend this committee for giving careful consideration to all of the details of the constitutional proposal which you are considering.

I should like an opportunity to study the record of your hearings. If you encounter problems in which I can help, the resources of my office will be at your disposal.

JUDICIAL COUNCIL OF CALIFORNIA RECOMMENDATION RELATING TO SELECTION OF SUPERIOR AND MUNICIPAL COURT JUDGES

Approved by Judicial Council
November 16, 1962

SELECTION OF SUPERIOR AND MUNICIPAL COURT JUDGES

1 *Selection of Superior and Municipal Court Judges*

For nearly 30 years gubernatorial appointments to the Supreme Court and district courts of appeal have been subject to approval by the Commission on Judicial Appointments.¹ This system has worked well, but it does not apply to municipal court appointments and no county has used the authority given in Section 26 of Article VI to apply it to superior court appointments.

Because the competence of the trial court bench is of no less importance to the proper administration of justice, the Judicial Council believes that the confirmation system should be extended to appointments to the principal trial courts. Such a plan was recommended in the council's last two biennial reports, and is renewed at this time in a somewhat modified form.²

The council proposes three changes in the existing system of selecting superior and municipal court judges. First, all vacancies including vacancies arising upon incumbent judges not running for re-election should be filled by gubernatorial appointment. Second, all the appointments by the Governor should be subject to approval by the Commission on Judicial Appointments. Third, if an appointee desires to, continue in office he should go before the voters at the second general election following his appointment, when he would be subject to opposition and could be replaced by any qualified candidate who opposed him. This plan would insure that in every election for superior or municipal court judge there would be at least one candidate who had previously been found qualified for the office by the Governor and the Commission on Judicial Appointments and who had had an opportunity through judicial service to demonstrate his competence to the electorate. The plan would also be consistent with the requirement in a number of other states that trial court appointments be approved by an independent body.³

The council's proposal would substantially increase the responsibilities of the Commission on Judicial Appointments, and it is believed these responsibilities could be better met if the information files and

¹ Const., Art. VI, Sec. 23, added to the Constitution in 1934.

² Seventeenth Biennial Report 19 (1959), 18th Biennial Report 93 (1961). Resolutions proposing an appropriate constitutional amendment were introduced in the 1959 and 1961 General Session of the Legislature, but without success.

³ Haynes, *Selection and Tenure of Judges* 30-50 (1944), see 42 J. Am. Jud. Soc'y 91.

investigatory facilities of the State Bar were available to the commission. The value of State Bar facilities in the selection of judges is attested by the practice of California governors since 1942 to refer their proposed judicial appointments to the Board of Governors of the State Bar. The Judicial Council accordingly proposes that the composition of the Commission on Judicial Appointments be changed by substituting the President of the State Bar for the presiding justice of the district court of appeal. As thus reconstituted, the commission would be composed of the Chief Justice, the Attorney General, and the President of the State Bar.

The council believes that its proposed changes would improve the quality of justice in the trial courts and, in addition, would reduce the present heavy burden on the Governor in making judicial appointments. The Governor would still have the appointive responsibility, but in carrying out his responsibility he would have the assistance of the investigatory facilities of the Attorney General's office and the State Bar. He would also have the assurance that an appointee had been found qualified by an independent expert commission.

2 Right to seek nonjudicial office

The Judicial Council renews the proposal made by the council and the State Bar in 1957⁴ to eliminate from the Constitution the exception created by a 1930 amendment that permits a superior or municipal court judge to seek a nonjudicial public office during his term as judge.⁵ California has been a leader in the effort to establish a nonpartisan judiciary, and the council believes that the adoption of this proposal would be an important further step in this direction.

The following measures contain the council's recommendations:

A

A resolution to propose to the people of the State of California an amendment to the Constitution of said State by amending Section 8 and the fifth paragraph of Section 26 of, and adding Section 1d to, Article VI of said Constitution, relating to justices and judges

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1963 Regular Session, commencing on the seventh day of January, 1963, two-thirds of all members elected to each of the two houses of the Legislature voting in favor thereof, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 1d be added to Article VI, to read:

SEC. 1d. The Commission on Judicial Appointments shall consist of the Chief Justice of the Supreme Court, or the Acting Chief Justice, who shall be the chairman, the Attorney General, and the President of the State Bar of California.

Second—That Section 8 of Article VI be amended to read:

SEC. 8. The term of office of judges of the superior courts and of the municipal courts shall be six years from and after the first Monday

⁴ SCA No. 17 of 1957.

⁵ Const., Art. VI, Sec. 18. See Gibson, *For Modern Courts* (1957) 32 State Bar J 727, 736.

of January after the first day of January next succeeding their election. If an incumbent judge of any such court shall, in the manner which shall be required by law, file a declaration of intention to become a candidate for the office held by him at the general state election next preceding the expiration of his term, the office held by such judge shall be filled for a full term at such election. If any such incumbent judge does not file such a declaration, his office shall not be subject to election at such general state election and shall become vacant at the expiration of his term. Whenever for any cause a vacancy occurs in any such office, the Governor shall appoint a suitable person to fill the vacancy. Such appointment by the Governor shall not be effective unless there be filed with the Secretary of State a written confirmation of such appointment signed by a majority of the members of the Commission on Judicial Appointments. Such appointee shall serve until the commencement of the term of the judge elected to the office for a full term at the second general state election next succeeding the accrual of the vacancy which he was appointed to fill, except that if he was appointed to fill a vacancy in an office for which the incumbent judge had filed a declaration of candidacy as provided for in this section and had not been elected, the appointee shall serve only until the succeeding first Monday after the first day of January. A vacancy in such office shall be filled by the election of a judge for a full term at the next general state election after the first day of January next succeeding the accrual of the vacancy, except that if the term of an incumbent, elective or appointive, is expiring at the close of the year of a general state election and a vacancy accrues after the commencement of that year and prior to the commencement of the ensuing term, the election to fill the office for the ensuing full term shall be held in the closing year of the expiring term in the same manner and with the same effect as though such vacancy had not accrued. In the event of any vacancy, the Governor shall appoint a person to hold the vacant office until the commencement of the term of the judge elected to the office as herein provided.

Third—That the fifth paragraph of Section 26 of Article VI be amended to read.

No such nomination or appointment by the Governor shall be effective unless there be filed with the Secretary of State a written confirmation of such nomination or appointment signed by a majority of the three officials herein designated as members of the Commission on Judicial Appointments. The commission shall consist of (1) the Chief Justice of the Supreme Court, or, if such office be vacant, the acting Chief Justice; (2) the presiding justice of the district court of appeal of the district in which a justice of a district court of appeal or a judge of a superior court is to serve, or, if there be two such presiding justices, the one who has served the longer as such, or, in the case of the nomination or appointment of a justice of the Supreme Court, the presiding justice who has served longest as such upon any of the district courts of appeal; and (3) the Attorney General. If two or more presiding justices above designated shall have served terms of equal length, they shall choose the one who is to be a member of the commission by lot, whenever occasion for action arises. The Legislature shall provide by general law for the retirement, with reasonable retirement allowance, of such justices and judges for age or disability.

B

A resolution to propose to the people of the State of California an amendment to the Constitution of said State by amending Section 18 of Article VI of said Constitution, relating to justices and judges.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1963 Regular Session, commencing on the seventh day of January, 1963, two-thirds of all members elected to each of the two houses of the Legislature voting in favor thereof, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 18 of Article VI be amended to read:

Sec. 18. The Justices of the Supreme Court, and of the district courts of appeal and the judges of the superior courts and the municipal courts shall be ineligible to any other *public* office or public employment than a judicial office or employment during the term for which they shall have been elected or appointed, and no justice or judge of a court of record shall practice law in or out of court during his continuance in office; ~~provided, however, that a judge of a superior court or of a municipal court shall be eligible to election or appointment to a public office during the time for which he may be elected, and the acceptance of any other office shall be deemed to be a resignation from the office held by said judge~~

STATEMENT OF JOHN A. SUTRO, PRESIDENT OF THE
BAR ASSOCIATION OF SAN FRANCISCO

My name is John A. Sutro. I am president of the Bar Association of San Francisco and a member of the law firm of Pillsbury, Madison & Sutro

I am appearing before this committee at the request of your chairman, the Honorable Milton Marks, to express my views on Assembly Constitutional Amendment 26, introduced on January 26, 1961, and amended in the Assembly on April 26, 1961. Complying with Mr. Marks' request, I will not discuss those sections of the proposed amendment which relate to the appointment and removal of judges. May I also say that, not having reviewed A.C.A. 26 with the Board of Directors of the Bar Association of San Francisco, the opinions I am about to express are my own.

The proposed constitutional amendment would repeal present Article VI of the Constitution of the State of California, which establishes the judicial branch of our government, and add a new Article VI in its place

The governments of the State of California and of the United States, as set forth in the State and Federal Constitutions, are founded on the fundamental concept of our forefathers, and to which I submit we should and do adhere, that there must be separation of power between the three branches of our government, the executive, the legislative and the judicial. A.C.A. 26, as amended, flies in the teeth of that fundamental concept in that it would place the judiciary under the control of the Legislature. My opinion in this regard is based on the provision in practically every section of the proposed amendment that

the jurisdiction of the courts or the conditions which shall govern the application of the particular section "shall be prescribed by law." In other words the Legislature could limit the jurisdiction of our courts in any manner it might choose. If, for example, a majority of the legislators were dissatisfied with a decision of our Supreme Court construing a provision of the Constitution, it could by statute change the jurisdiction of that court so that it could not in the future pass upon that constitutional question. This would result in complete supremacy of the Legislature. The powers of the courts would be subject to the whims of the Legislature.

Another real danger of A.C.A. 26 in repealing in toto present Article VI is that it will inevitably result in confusion of what are now settled principles of law. Many of the sections of present Article VI which our courts have construed in reaching their decisions would not be re-enacted in new Article VI and others are completely revised. For example, those portions of Sections 2 and 4 of present Article VI, which set forth the jurisdiction and rules for the distribution and conduct of business by our Supreme Court, are omitted. A.C.A. 26 leaves these matters for the Legislature. Section 4a through 4e of present Article VI have been omitted. They relate to our district courts of appeal, their organization and jurisdiction. Section 3 of the proposed amendment would leave this for the Legislature. Sections 4½, 4¾, 9, 12, 14, 15, 16, 19, 20, 21, 24 and 26a of present Article VI have been omitted. Under Section 18 of the proposed amendment, these sections would continue as statutes to the extent that they are consistent with the proposed new Article VI. As I have observed, statutes can be changed by the Legislature at its will.

The particular language of many sections of Article VI has been relied upon by our courts as grounds for their decisions. Without a careful review and analysis of each such decision, a repeal of Article VI, as I have said, could well result in great confusion of what is now established law. This risk is even greater with respect to those decisions in which our courts have relied upon the particular language of a section of present Article VI when called upon to decide a collateral matter. For example, a large portion of our jurisprudence on the proper method (certiorari or mandamus) and the extent (review or trial de novo) of judicial review of the decisions of many of our administrative agencies was originally based on a construction by our Supreme Court of Article VI, Section 1 (*Standard Oil Co. v. State Board of Equal* (1936) 6 Cal 2d 557). I cite that case only as an example because Section 1 would not be changed by A.C.A. 26. That there are other comparable situations where the section upon which the court has relied would be changed is illustrated by the recent opinion of our Supreme Court in *People v. Perez*, 58 A.C. 231, decided on July 24, 1962. In that case the court reversed a criminal conviction on the ground that the prosecuting attorney had engaged in misconduct. The general rule is that the defense attorney must object to such misconduct at the trial. But the court in the *Perez* case, relying in part on Section 4½ of Article VI, reversed even though defense counsel had failed to object to some of the misconduct. Section 4½ would be repealed by A.C.A. 26. Who is to say whether this would change the rule laid down in the *Perez* case.

You may justifiably conclude from what I have said that I consider A.C.A. 26 to be an undesirable proposal. There are, however, portions of A.C.A. 26 which might well be appropriate and constructive amendments to our Constitution. For example, A C A 26 would repeal the present provisions of Sections 4 and 4b of Article VI which relate to appeals to our Supreme Court in death penalty cases. Some people might consider this repeal desirable. But those same people would not necessarily agree with the elimination of the requirements in Sections 2 and 24 of Article VI that appellate courts give reasons for their decisions. I submit that it is essential and only proper that litigants and their attorneys be advised by the courts why they won or, more important, lost a case. Obviously the decision of the court will control the conduct of their business in the future. I hasten to point out that what I have just said is not to be confused with the publication of opinions of our appellate courts. This is another and entirely different matter which I am advised is presently receiving much attention.

I respectfully suggest that it would be preferable to present to the people separate proposed constitutional amendments relating to each specific subject rather than to submit them in the package form of A C A 26. Then the desirable amendments could be adopted and the undesirable rejected. Under A C A 26 it is on an all-or-none basis.

STATEMENT OF NOBLE K. GREGORY, PILLSBURY,
MADISON & SUTRO
A.C.A. 26

My name is Noble K. Gregory. I am a member of the law firm of Pillsbury, Madison & Sutro and appear before this committee on the invitation of your chairman, the Honorable Milton Marks.

On September 18, 1962, my partner, John A. Sutro, appeared before this committee to express his views on those provisions of Assembly Constitutional Amendment 26 which do not relate to the appointment and removal of judges. Due to Mr. Sutro's being in the East on business, I am appearing to present my views, which he shares, on the proposed provisions A C A 26 which do relate to judicial appointments. In my opinion, the proposed changes are desirable.

Under the proposed provisions, all superior and municipal court as well as appellate court vacancies shall be filled by the Governor, subject to the approval of a majority of the Commission on Judicial Appointments. That commission is to be constituted in the manner provided in Section 10 of A.C.A. 26. Appellate judges so appointed will run against their records in the same manner as provided in present Section 26. Section 6 contains specific provisions relating to the terms of superior and municipal court judges appointed to fill vacancies; in substance, it provides that an appointee shall stand for election at the first general election following the appointment. I do not consider the period between appointment and time at which an appointee must stand for election to be of great significance. Generally the electorate returns the incumbent appointee to office.

Although I realize that such a statewide commission would have a difficult task in determining the capabilities of proposed trial judges, I believe that there is no preferable alternative and that a committee

constituted in the manner set forth in Section 10 of A.C.A. 26 would be the best body to perform the function of screening proposed gubernatorial appointments to the superior and municipal courts. I believe that requiring proposed judicial appointments to be submitted to either or both houses of the State Legislature is an undesirable alternative. Such an alternative would tend to overemphasize political considerations in the selection of superior and municipal court judges. Likewise, I do not believe it advisable merely to submit the gubernatorial appointments to the electorate. History has demonstrated that the electorate generally re-elects the incumbent judge even in those instances where a judicial election is contested.

The trial court is the foundation upon which the entire judicial system rests. It has often been pointed out, for example, that the municipal court is the only court with which most citizens of the State of California ever come in contact. High quality in these appointments is therefore essential. To this end it is essential that a Commission on Judicial Appointments consist of persons of the highest caliber.

A Commission on Judicial Appointments as provided in proposed Section 10 would be a most appropriate body to act on proposed superior and municipal court judges as well as appellate judges. The commission should have the power to veto appointments proposed by the Governor. The question has been raised as to whether that veto power should be a substitute for the present practice of informal review of proposed appointments by the State Bar. I do not see any inconsistency between a commission as would be constituted under proposed A.C.A. 26 and informal consultation with the State Bar or even local bar associations. A commission or the Governor or both could seek the advice of the State Bar and particularly with respect to proposed trial judges, the appropriate local bar association. I do not, however, believe there should be a constitutional or statutory requirement for such consultation. I am sure that any commission made up of persons designated in Section 10 of A.C.A. 26 would have the wisdom and foresight to adopt appropriate internal procedures for determining the qualifications of the proposed appointees and would, wherever possible, seek information from the local bar associations and any other relevant source.

It is my opinion that both the investigations of the Commission on Judicial Appointments and its records should be confidential. I believe that all proposed appointees should be given the opportunity to respond to any charges received by the commission in the course of its investigation and should be allowed to present material to explain or rebut any adverse inferences. It would, however, in my opinion, as I have said, be desirable to keep the investigation confidential. Any other course would seriously impair the ability of the commission to collect all relevant information.

In this connection, there is a substantial distinction between the proceedings of the proposed Commission on Judicial Appointments and the status of the proceedings of the current Commission on Judicial Qualifications. Under the provisions of Section 10b of present Article VI of the Constitution (which are the same as proposed Section 16 of A.C.A. 26), the proceedings of the Commission on Judicial Qualifications are confidential unless it is necessary for that commission to file its report with the Supreme Court. An incumbent judge who will

lose an office he has been holding is in a different position from a prospective appointee who may be dissatisfied with the determination of the Commission on Appointments. For this reason, I would not recommend that any prospective appointee be entitled to require the proposed Commission on Appointments to make public its records and proceedings.

I have not commented upon Sections 15 and 16 of A C A. 26 which are the same as Sections 1b and 10b of Article VI of the State Constitution. These provisions continue the Commission on Judicial Qualifications and the established procedure for the removal or retirement of judges. That commission has been very successful and I do not recommend any changes in those provisions.

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Final Report of the
SUBCOMMITTEE ON LEGISLATIVE INTENT
of the
ASSEMBLY COMMITTEE ON RULES

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LETTER OF TRANSMITTAL

June 20, 1963

HON. TOM BANE, *Chairman,*
and Members, Assembly Rules Committee:

GENTLEMEN:

The Subcommittee on Legislative Intent of the Assembly Committee on Rules submits herewith its report on means of defining and preserving the intent of the Legislature with respect to legislative enactments, a study conducted by the subcommittee during the 1961-63 interim in accordance with House Resolution No. 24 of the 1962 Second Extraordinary Session.

This report contains the findings, conclusions, and recommendations of the subcommittee on this subject. The subcommittee wishes to take this opportunity to express its appreciation to Mr. Carl Baar, who performed extensive and worthwhile research into the subject of legislative intent, organized the hearings of the subcommittee, and drafted this report.

Respectfully submitted,

JOHN T. KNOX, *Chairman*
TOM BANE
CHARLES J. CONRAD