

NATIONAL COMMITTEE  
FOR  
SEXUAL CIVIL LIBERTIES

Thomas F. Coleman, Esq.  
Co-Chairman

Dr. Arthur C. Warner  
Co-Chairman

1800 North Highland Avenue, Suite 106  
Los Angeles, California 90028  
(213) 464-6666

January 29, 1980

Ms. Diana Dooley  
Legislative Secretary  
Office of the Governor  
State Capitol  
Sacramento, California 95814

Re: Establishment of Sexual Privacy and Orientation Commission

Dear Ms. Dooley:

Thank you for calling me to discuss the proposal to establish a commission dealing with sexual privacy and sexual orientation. Since 1975, I have been working toward achieving that goal.

As I stated to you on the telephone, it would not be appropriate or wise to have a commission established to deal strictly with gay issues. The commission should study and make recommendations for executive and legislative changes covering a wide variety of sexual civil liberty issues, including the sexual rights of the handicapped, the elderly, youth, and unmarried individuals, as well as sexual orientation concerns.

I am enclosing an article I wrote concerning gay rights through the Executive Branch. I trust you will find this helpful.

The National Committee for Sexual Civil Liberties as an organization, and I along with a few individuals, have been working closely with Tony Kline on the issuance and implementation of the existing Executive Order dealing with sexual orientation. We see the commission as the logical extension of the existing Order. We feel that premature publicity regarding the establishment of such a commission could be very detrimental to proper and careful planning. We have been waiting years for this to happen in California, and are quite prepared to wait a few more months so that we may develop a proper proposal.

It is not our intention to exclude others from participating in the process of developing the commission and expanding the Executive Order. Quite the contrary; our policy will be one of inclusion of all persons who have expertise to offer. However, we do feel that the initial planning and development of the proposal should be left to a select group of individuals who do have the expertise, and who have been working with the Executive Branch both in California and elsewhere over the past several years.

Ms. Diana Dooley  
Legislative Secretary  
Office of the Governor  
January 29, 1980

For example, the planning team should include Mr. Tony Silvestre, who was one of the original founders of, and continues to be the Co-Chairperson of, the Pennsylvania Council on Sexual Minorities. We have much to learn from the experiences of that Council, and should take them into consideration before the Governor creates a new commission in California. Mr. Paul Hardman of San Francisco has worked closely with Mr. Kline and me in the implementation of the existing Executive Order. For example, Mr. Hardman has worked with various state officials such as Ms. Alice Lytle, Ms. Joanne Lewis, Mr. Ron Kurtz, and other members of the State Personnel Board and Executive Branch. In addition, Mr. Hardman has maintained a close working relationship with the Advocates for Gay State Employees. There are a few other individuals who should be involved, whose names I need not mention at this point.

Mr. Hardman and I spoke with Mr. Bob Moore of your office today. Mr. Moore has agreed to work closely with us in developing a plan of action for establishing a commission and expanding the Executive Order. Mr. Hardman and I would like, in the very near future, to meet with you, Mr. Moore, Tony Kline, and Gray Davis, so that our communications and intentions are unified. Up to this point in time, there has not been the need for close communication among various members of the Governor's Office concerning the establishment of a commission. However, at this stage, it is very important that all concerned parties come to a mutual understanding about the need for, purpose of, and timetable for developing a commission and expanding the existing Executive Order.

I look forward to hearing from you and from other members of the Governor's Office concerning this project.

Very truly yours,

Thomas F. Coleman

/mbo

Enclosures

cc: Bob Moore  
Paul Hardman  
Tony Kline  
Gray Davis



# State of California

GOVERNOR'S OFFICE  
SACRAMENTO 95814

EDMUND G. BROWN JR.  
GOVERNOR

916/445-3921

February 4, 1980

Mr. Alan Robertson  
1107 9th Street  
Suite 1019  
Sacramento, CA 95814

Dear Alan:

I am writing to confirm our telephone conversation of January 30 regarding a timeframe for developing an executive order which would establish a Sexual Orientation and Privacy Commission.

It is our intent to put together a draft version of the executive order during the month of February. Tony Kline, Tom Coleman, Bob Moore and yourself are to be the key people in getting a proposal drafted.

During the month of March, we will seek input from various groups and individuals interested in the establishment of such a commission. The information received from concerned parties will be considered and a final version of the executive order will be drafted and presented to the Governor in April.

I trust this accurately reflects your understanding of our conversation. I believe that this is a reasonable schedule and will result in the establishment of a commission which will play a major role in advancing sexual civil liberties.

Sincerely,

DIANA S. DOOLEY  
Legislative Secretary  
to the Governor

cc Gray Davis  
J. Anthony Kline  
Robert L. Moore  
Tom Coleman, National Committee for Sexual Civil Liberties  
1800 North Highland Avenue, Suite 106  
Los Angeles, CA 90028



M E E T I N G

DATE: February 22, 1980  
TO: Participants  
PLACE: Law Offices of Thomas F. Coleman  
1800 N. Highland Avenue, Suite 106  
Los Angeles, California 90028  
RE: Commission on Sexual Privacy and Orientation

A G E N D A

- I. Introductions
- II. Background Material
- III. Pennsylvania Experience
- IV. Purpose of Meeting
- V. Issues for Discussion
  - A. Scope of Commission
  - B. Functions of Commission
  - C. Membership of Commission
  - D. Budget of Commission
  - E. Duties of Agencies vis-a-vis Commission
  - F. Name of Commission
- VI. Adjournment

Meeting Participants

February 22, 1980

J. Anthony Kline

Robert Moore

Thomas Coleman

Alan Robertson

Terry DeCrescenzo

Barbara Roberts

Richard Kaplan

Anthony Silvestre

Arthur C. Warner

Jay M. Kohorn

Law Offices

**JAY M. KOHORN**

Jay M. Kohorn

**1800 North Highland Avenue  
Suite 108  
Los Angeles, California 90028**

Thomas F. Coleman, Of Counsel

**(213) 464-6666**

April 1, 1980

J. Anthony Kline  
Governor's Office  
State Capitol Building  
Sacramento, California 95814

Dear Tony,

Enclosed please find two sets of six documents:

(1) Executive Order concerning discrimination in government, amended from Governor Brown's original Executive order, without footnotes;

(2) Footnoted version of (1);

(3) The footnotes (annotations) for (2);

(4) Executive Order establishing the Commission on Sexual Privacy and Orientation, without footnotes;

(5) Footnoted version of (4); and

(6) The footnotes (annotations) for (5).

Our offer to prepare the actual draft for Governor Brown remains open. Please excuse our kidding around regarding the right hand justification of the Order; that does not matter. However, we do have the above documents in our word processor so that changes can be made in an instant, and a finished and perfect document can be had at the push of a button, obviating the necessity for retyping. After Governor Brown makes any changes he wishes, if you would like us to prepare the draft for his signature, send us the changes and the appropriate paper.

Tom and I especially appreciate the hard work and special dedication of you and Bob Moore in bringing this project to a productive and creative realization.

Very truly yours,

Jay M. Kohorn

/mbo  
Enclosures  
cc: Bob Moore

EXECUTIVE ORDER B-54-79

As Amended  
, 1980

WHEREAS, Article I of the California Constitution specifically guarantees to every person the inalienable right to privacy; and recognizing that personal sexual conduct is a fundamental right, protected by the right to privacy because of the importance of sex to the human condition, the intimacy of the conduct, and its relationship to a person's right to control his or her own body; and

WHEREAS, the California Legislature has adopted this principle by enacting the Consenting Adults Act; and

WHEREAS, California must expand its investment in human capital by enlisting the talent and harnessing the diversity of all members of society; and recognizing that the equal protection clauses of both the United States and the California Constitutions clearly prohibit the state or any governmental entity—whether or not under the jurisdiction of the Governor—from engaging in arbitrary discrimination; and

WHEREAS, the California Legislature has prohibited arbitrary discrimination with respect to housing and public accommodations by enacting the Unruh Civil Rights Act, and with respect to delivery of services and contracting by enacting Government Code sections 11135 through 11139.5, and the California Supreme Court has adopted this principle with respect to sexual orientation discrimination in employment, public accommodations, and state licensing in its decisions over the past three decades;

NOW THEREFORE, I, Edmund G. Brown Jr., Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this Order to become effective immediately:

1. No agency, department, board, commission, or other official entity within the Executive Branch of state government under the jurisdiction of the Governor, or representative thereof, shall discriminate against any person for reason of the person's sexual orientation, or shall unreasonably infringe upon any person's right to sexual privacy, in any matter of employment, housing, credit, contracting, delivery of services, licensing, or any other matter whatsoever.

2. The Secretaries of the Health and Welfare Agency, State and Consumer Services Agency, Business and Transportation Agency, Resources Agency, and Youth and Adult Correctional Services Agency, and the Directors of the Industrial Relations Department and Military Department shall each designate a person at management level from an existing position from within their respective agencies or departments to ensure compliance with this Order. Such management personnel shall report directly to the appropriate agency Secretary or, in the case of the Industrial Relations Department and the Military Department, the Directors.



3. Compliance with this Order shall include but not be limited to:

(a) Notifying persons affected by this Order of its substance where appropriate, including available remedies;

(b) Receiving and processing complaints alleging noncompliance with this Order;

(c) Keeping records of all complaints and their dispositions, maintaining the confidentiality of complainants whenever appropriate;

(d) Working to educate state personnel and the public regarding their rights and duties concerning the subject matter of this Order; and

(e) Taking whatever measures are necessary to ensure that those local agencies and private enterprises receiving benefits from or administering state programs funded by the governmental entities subject to this Order, whether by contract, grant, or otherwise, shall not discriminate for reasons of sexual orientation or infringe upon sexual privacy in any matter described in paragraph 1., above.

4. There is established an interagency planning and operations committee (Interagency Committee) to coordinate the efforts of each agency to comply with this Order. The Interagency Committee shall be composed of the persons designated to ensure compliance as set forth in paragraph 2., above. The Chairperson of said Interagency Committee shall be the Secretary of the State and Consumer Services Agency or his or her designee.

5. The Interagency Committee shall be provided with whatever resources, facilities, and personnel are necessary to carry on its assignment from within the existing structures of state government. The Governor's Executive Secretary shall ensure that all necessary resources are made available to the Interagency Committee.

6. All state agencies, departments, boards, and commissions are hereby directed to assist and cooperate with the Interagency Committee in carrying out its responsibilities.

7. Any alleged acts of employment discrimination in state government in violation of this directive shall be reported directly to the State Personnel Board for resolution.

8. Nothing in this Order shall be construed to require any review or statistical analysis of the composition of the work force or other class of persons affected hereby.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this \_\_\_th day of \_\_\_\_\_, 1980.

EXECUTIVE ORDER B-54-79

As Amended  
    , 1980

WHEREAS, Article I of the California Constitution specifically guarantees to every person the inalienable right to privacy;<sup>1</sup> and recognizing that personal sexual conduct is a fundamental right, protected by the right to privacy because of the importance of sex to the human condition, the intimacy of the conduct, and its relationship to a person's right to control his or her own body;<sup>2</sup> and

WHEREAS, the California Legislature has adopted this principle by enacting the Consenting Adults Act;<sup>3</sup> and

WHEREAS, California must expand its investment in human capital by enlisting the talent and harnessing the diversity of all members of society;<sup>4</sup> and recognizing that the equal protection clauses of both the United States and the California Constitutions clearly prohibit the state or any governmental entity—whether or not under the jurisdiction of the Governor—from engaging in arbitrary discrimination;<sup>5</sup> and

WHEREAS, the California Legislature has prohibited arbitrary discrimination with respect to housing and public accommodations by enacting the Unruh Civil Rights Act,<sup>6</sup> and with respect to delivery of services and contracting by enacting Government Code sections 11135 through 11139.5,<sup>7</sup> and the California Supreme Court has adopted this principle with respect to sexual orientation discrimination in employment,<sup>8</sup> public accommodations,<sup>9</sup> and state licensing<sup>10</sup> in its decisions over the past three decades;

NOW THEREFORE, I, Edmund G. Brown Jr., Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this Order to become effective immediately:

1. No agency, department, board, commission, or other official entity within the Executive Branch of state government under the jurisdiction of the Governor, or representative thereof, shall discriminate against any person for reason of the person's sexual orientation, or shall unreasonably infringe upon any person's right to sexual privacy, in any matter of employment, housing, credit, contracting, delivery of services, licensing, or any other matter whatsoever.

2. The Secretaries of the Health and Welfare Agency, State and Consumer Services Agency, Business and Transportation Agency, Resources Agency, and Youth and Adult Correctional Services Agency, and the Directors of the Industrial Relations Department and Military Department shall each designate a person at management level from an existing position from within their respective agencies or departments to ensure compliance with this Order. Such management personnel shall report directly to the appropriate agency Secretary or, in the case of the Industrial Relations Department and the Military Department, the Directors.

3. Compliance with this Order shall include but not be limited to:

(a) Notifying persons affected by this Order of its substance where appropriate, including available remedies;

(b) Receiving and processing complaints alleging noncompliance with this Order;

(c) Keeping records of all complaints and their dispositions, maintaining the confidentiality of complainants whenever appropriate;

(d) Working to educate state personnel and the public regarding their rights and duties concerning the subject matter of this Order; and

(e) Taking whatever measures are necessary to ensure that those local agencies and private enterprises receiving benefits from or administering state programs funded by the governmental entities subject to this Order, whether by contract, grant, or otherwise, shall not discriminate for reasons of sexual orientation or infringe upon sexual privacy in any matter described in paragraph 1., above.<sup>11</sup>

4. There is established an interagency planning and operations committee (Interagency Committee) to coordinate the efforts of each agency to comply with this Order. The Interagency Committee shall be composed of the persons designated to ensure compliance as set forth in paragraph 2., above.<sup>12</sup> The Chairperson of said Interagency Committee shall be the Secretary of the State and Consumer Services Agency or his or her designee.

5. The Interagency Committee shall be provided with whatever resources, facilities, and personnel are necessary to carry on its assignment from within the existing structures of state government.<sup>13</sup> The Governor's Executive Secretary shall ensure that all necessary resources are made available to the Interagency Committee.

6. All state agencies, departments, boards, and commissions are hereby directed to assist and cooperate with the Interagency Committee in carrying out its responsibilities.<sup>14</sup>

7. Any alleged acts of employment discrimination in state government in violation of this directive shall be reported directly to the State Personnel Board for resolution.<sup>15</sup>

8. Nothing in this Order shall be construed to require any review or statistical analysis of the composition of the work force or other class of persons affected hereby.<sup>16</sup>

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this \_\_\_th day of \_\_\_\_\_, 1980.

ANNOTATIONS TO EXECUTIVE ORDER B-54-79

AS AMENDED , 1980

<sup>1</sup>Article I, Section 1, of the California Constitution states:

All people are by nature free and independent, and have certain inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

The argument in favor of this 1972 Amendment to the State Constitution states:

The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with people we choose.

See also: White v. Davis (1975) 13 Cal.3d 757, 774-775, in which the Supreme Court acknowledged the propriety of judicial resort to such ballot arguments as an aid in construing such amendments.

This right of privacy is self executing and operates against infringements by individuals as well as the state. Porter v. University of San Francisco (1976) 64 Cal.App.3d 825.

<sup>2</sup>See: People v. Onofre, \_\_\_ N.Y.S.2d \_\_\_, Appellate Division of the New York Supreme Court, Fourth Department, Case No. 914/1979, decided January 24, 1980.

See also: H.L.A. Hart, Law, Liberty, and Morality (Stanford, California, 1963), p. 43; State v. Pilcher (Iowa, 1976) 242 N.W.2d 348; State v. Saunders (N.J., 1977) 381 A.2d 333; Buchanan v. Batchelor (N.D.Tex., 1970) 308 F.Supp. 729, 732-733 (reversed on procedural grounds only); Mindell v. U.S. Civil Service Commission (N.D.Cal., 1970) 312 F.Supp. 584, 587; Bruns v. Pomerleau (D.Md., 1970) 319 F.Supp. 58; Stanley v. Georgia (1969) 394 U.S. 557, 564-565; Atkisson v. Kern County Housing Authority (1976) 59 Cal.App.3d 89.

<sup>3</sup>California Statutes, 1975, Chapter 71, Section 10 and Chapter 877, Section 2.

<sup>4</sup>Inaugural Address, Governor Edmund G. Brown Jr., January 8, 1979; Report to the Legislature by Edmund G. Brown Jr., January 16, 1979.

<sup>5</sup>Gay Law Students Association, et al., v. Pacific Telephone and Telegraph Company, et al. (Cal., 1979) 156 Cal.Rptr. 14.

<sup>6</sup>California Civil Codes, Section 51. See also: Department of Industrial Relations, Division of Fair Employment and Housing Practices, Directive Transmittal No. 044, Revised September 25, 1979, which stated in pertinent part:

. . . The Act has also been interpreted by the California Supreme Court to prohibit arbitrary discrimination by business establishments on any basis, whether or not that basis is enumerated in the Unruh Act itself . . . . [T]he Division will accept complaints within our Unruh Act jurisdiction, i.e., complaints alleging discrimination on bases other than those enumerated in the Act or in the FEP Act or Rumford Act. This includes . . . discrimination in housing against gay people.

<sup>7</sup>These code sections were enacted by the California Legislature in 1977; however, their mandate is being realized in practice in 1980.

<sup>8</sup>Gay Law Students Association v. Pacific Telephone, note 5, supra.

<sup>9</sup>Stoutman v. Reilly (1951) 234 Pac.2d 449. See also: In re Cox (1970) 90 Cal.Rptr. 24.

<sup>10</sup>Morrison v. Board of Education (1969) 1 Cal.3d 214.

<sup>11</sup>This aspect of compliance parallels the protection given by the California Legislature in Government Code Sections 11135 through 11139.5. These code sections proscribe and provide remedies for discrimination on the basis of "ethnic group identification, religion, age, sex, color, or physical or mental disability."

<sup>12</sup>One duty of the Interagency Committee shall be to ensure that Article IV, Section 16 of the California Constitution is followed, both in spirit and in letter. That section states:

Laws of a general nature shall have uniform operation.

<sup>13</sup>Secretarial services; use of office supplies, equipment, and space; telephones; postage; photocopying; and library materials should be made available to the Interagency Committee by appropriate governmental entities on both a short-term and long-range basis. In addition, funds should be made available to the Interagency Committee from existing budgets of appropriate governmental entities for such expenses as consulting fees, research costs, travel expenses, or other expenses which are necessary to carry out the mandate of this Order.

<sup>14</sup>This cooperation should include but not be limited to funding; use of equipment, supplies, services, and personnel; supplying of statistical, financial, procedural, and substantive information requested by the Interagency Committee; and providing support and cooperation in achieving the substantive goal of this Order. In addition, all governmental entities should work with the Interagency Committee in its educational projects in furtherance of this Order.

<sup>15</sup>The State Personnel Board received this grant of authority from Executive Order B-54-79, issued by Governor Edmund G. Brown Jr., on April 4, 1979. The State Personnel Board has created a position within its Public Employment and Affirmative Action Division to coordinate compliance with this aspect of the Executive Order.

<sup>16</sup>The "numerical parity" type of affirmative action is inappropriate in that it would take into account only persons who are public about their sexual lifestyles. Since a vast majority of people are private in this area and choose to remain so, this Order must take into account their right to privacy and not compel them to reveal their preference or orientation.

## EXECUTIVE ORDER

WHEREAS, California must embrace the full human potential of all its citizens as its most valuable resource; and

WHEREAS, to safeguard this human potential, it is necessary to protect the fundamental right to sexual privacy against the threat of discrimination for reasons of the individual's sexual orientation or private sexual lifestyle, which discrimination contravenes the policy of this State; and

WHEREAS, there exist certain stereotypes relating to sexual minorities which are held in common by many people; and

WHEREAS, stereotypes result in an individual being judged without regard for that individual's own qualities and merits; and

WHEREAS, a study of the problems of sexual minorities and of sexual privacy of all individuals is necessary so that legislative and administrative action and public attitudes may be based upon accurate information, thus encouraging protection of the civil rights of all Californians against arbitrary and unjust discrimination;

NOW, THEREFORE, I, Edmund G. Brown Jr., Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this Order to become effective immediately:

1. There is established the Commission on Sexual Privacy and Orientation. Said Commission shall be composed of not more than twenty-five (25) members appointed by the Governor.

2. The Commission shall have a Chairperson selected by the Governor. Members shall serve without compensation and shall be reimbursed for actual expenses incurred only with approval of the Governor's Office.

3. The Commission shall study the problems of discrimination based upon sexual orientation and invasions of sexual privacy, in both the public and private sectors, documenting the extent of such problems, exploring in what forms the problems are manifested, noting existing remedies, and making recommendations for legislative, administrative, and other action where appropriate.

4. A final report of its findings and recommendations shall be submitted by the Commission to the Governor and the Legislature within eighteen months of the date hereof. The Commission may issue such Interim Reports as it deems appropriate.

5. All state agencies, departments, boards, and commissions are hereby directed to assist and cooperate with the Commission in carrying out its responsibilities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this \_\_\_th day of \_\_\_\_\_, 1980.