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CENTER FOR EDUCATION AND LEGAL ADVOCACY

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JAY M. KOHORN, OF COUNSEL

May 19, 1980

J. Anthony Kline
Legal Affairs Secretary
Governor's Office
Sacramento, California 95814

Dear Tony,

Enclosed please find a new version of the Executive Order on the Commission. Actually, the Executive Order without the footnotes remains exactly the same. The annotated version is different only in that footnote 7 has been changed to accommodate the concerns of the Stonewall Democratic Club, as we discussed in our telephone conversation.

As we also discussed in our telephone conversation, I would like a one-day notice before the Executive Orders are made public after being signed by the Governor. I would like an opportunity to discuss the wording of the press release with the Press Secretary before the releases go out.

I am sending a copy of the corrected annotated version of the Executive Order on the Commission to Carlotta Melon, Bob Moore, and Mary Jane Barclay so everyone has the most current version.

The new annotated version could be circulated to the commissioners at some appropriate time in the near future. This will be very helpful for them. It will assist everyone in understanding the implicit as well as the explicit meaning of the Executive Order.

I will be returning to California after June 1, 1980, and will be in touch with you at that time to discuss the distribution of the annotated version to appropriate persons.

If you need to get in touch with either Jay or me prior to our returning to California, you may do so by calling our office. They will locate us for you. In the interim, we may call you to discuss the Executive Order when it is signed.

Yours truly,

Thomas F. Coleman /ml
Thomas F. Coleman

/mbi

cc: Carlotta Melon
Mary Jane Barclay
Bob Moore

Enclosures

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.

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 privacy¹ 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;² and

WHEREAS, there exist certain stereotypes relating to sexual minorities which are held in common by many people;³ and

WHEREAS, stereotypes result in an individual being judged without regard for that individual's own qualities and merits;⁴ 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.⁵

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.⁶

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,⁷ 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.⁸

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

¹Article 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.

See also: 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, in which the Court stated that personal sexual conduct is a fundamental right, protected by the right to privacy because of the transcendental 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.

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.

²See: California Statutes, 1975, Chapter 71, Section 10 and Chapter 877, Section 2 (Consenting Adults Act); Gay Law Students Association, et al., v. Pacific Telephone and Telegraph Company, et al. (Cal., 1979) 156 Cal.Rptr. 14; Stoutman v. Reilly (1951) 234 Pac.2d 449; and In re Cox (1970) 90 Cal.Rptr.; Morrison v. Board of Education (1969) 1 Cal.3d 214.

³Among these stereotypes are those dealing with the relationship between sexual orientation and gender confusion, role models, child molestation, obsession with sex, and many others.

⁴See the report of the Oregon Task Force on Sexual Preference, 3 Sex.L.Rptr. 39, July/October 1977.

⁵The members shall include representatives from among the following disciplines, professions, and interest groups: law; post-secondary education; sex education, counseling, and therapy; psychiatry/psychology; theology; sociology/criminology; law enforcement; public administration; media/communications; public relations; youth specialist; social work; finance, tax, and credit; insurance; business; labor; and medicine.

⁶This will encourage participation of those who would donate their time but have limited resources for travel, etc. A ceiling of one hundred (\$100.00) dollars per meeting may be imposed.

⁷The parameters of the Commission's study should ultimately include but not necessarily be limited to the problems of youth and the aged, ethnic minorities, the physically or mentally disabled, people in institutions (including those in nursing homes, hospitals, prisons and jails, and youth care facilities), and sexual minorities (particularly those persons with a homosexual or bisexual orientation). The chairperson shall establish within the Commission six subject-matter committees, which committees shall include at least two members of the Commission as well as whatever other persons the chairperson deems appropriate. The committees shall each limit their study to one of the following and related areas:

The family (including custody, visitation, child care, adoption; formation, maintenance, and dissolution of nonmarital relationships; property ownership, division, and inheritance);

Employment (including labor; benefits; hiring, promotion, and termination; special problems of teachers and law enforcement personnel);

Criminal law (prohibition of certain consensual sexual activity, including teenage sexuality, prostitution, etc.; punishments and disabilities imposed, specifically sex offender registration and mandatory minimum jail terms; probation and parole; prisons and jails);

Education (including sex education, library censorship, counseling of students; teacher preparation and training);

Governmental discrimination (including licensing; contracting; housing; taxes; state funding; credit; delivery of services; government-supported institutions, including private institutions; government facilities);

Other problems of special minorities (including myths and stereotypes; handicapped; youth and the aged; sexual minorities, particularly drug and alcohol abuse; ethnic minorities).

All other problems shall be addressed by the Commission as directed by the chairperson.

⁸This cooperation should include but not be limited to use of equipment, supplies, services, and personnel; supplying of statistical, financial, procedural, and substantive information requested by the Chairperson; and providing support and cooperation in achieving the substantive goal of this Order.