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DECISIONS BY ADMINISTRATIVE OFFICERS

strued. But if it should be, it would be nothing short of a tragedy, and instead of expediting appeals would very greatly delay them and throw the entire present appellate machinery out of gear. While the amendment, except for the possible effect of the word "retransfer" would undoubtedly be beneficial, in the opinion of its authors and of the State Bar Association, which sponsored the proposed amendment, the advantages of the amendment are not sufficient to balance the danger arising from even the slight possibility of its being construed as indicated, and it is therefore suggested that it be defeated in order that it may be properly amended at the next session of the Legislature and resubmitted to the people. A "no" vote is therefore, recommended.

CHARLES W. LYON,
Member of the Assembly, Fifty-ninth District.

ALFRED W. ROBERTSON,
Member of the Assembly, Thirty-ninth District.

16	**DECISIONS BY ADMINISTRATIVE OFFICERS. Senate Constitutional Amendment 8.** Adds section 1b to Article IV, Constitution. Legislature may empower administrative officers to decide law or facts establishing jurisdiction; forbid court annulling findings supported by substantial evidence; authorize judicial review, prescribing court's jurisdiction, Supreme Court's jurisdiction subject to section 4c, Article IV; only Supreme Court reviewing Railroad Commission's decisions, only appellate court Industrial Accident Commission's decisions. Forbids court annulling decisions of fact, supported by sufficient evidence, by administrative agencies on municipal affairs, when declared final by city or county charter or ordinance thereunder. Like powers in other cities or counties unaffected.	YES	
		NO	

(For full text of measure, see page 23, Part II)

Argument in Favor of Senate Constitutional Amendment No. 8

Administrative officers, boards and commissions make far more decisions affecting people's affairs than do the courts. It is inevitable that they, like all other human agencies, commit errors harmful to persons affected.

All students of Government agree that where it is claimed that an administrative agency has committed an error of law or a prejudicial error of procedure resort should be allowed to a court to decide whether such error has been committed. All agree that the courts should have this amount of control over administrative agencies. But there is a difference of opinion as to how far the courts should be permitted to go in retrying disputes about the facts. It is contended that many boards and commissions, because of their greater experience and expertness in the matters they deal with, are more competent than the courts in ferreting out the facts from conflicting evidence. Who is better fitted to get at the truth? Why should a judge be allowed to substitute his judgment for that of persons more experienced and more expert in the matter? Thus there is a standing controversy as to the proper role of courts in reviewing the decisions of administrative agencies. It is conceded that these agencies are not all alike, that they function in a variety of fields, that they differ in personnel and in degrees of expertness and experience. Consequently the degree of court control proper to one agency may differ from what is proper to another. This is a problem for the Legislature.

The sole purpose of this proposed constitutional amendment is to give the Legislature power to solve it. The amendment is needed because the State Supreme Court has recently expressed doubts whether the Legislature now has power to determine the relation of the courts to the administrative agencies.

Proposition No. 6 on the ballot in 1940 was intended to give the Legislature the necessary power. It was defeated by a narrow margin chiefly because it did not give the Legislature a free hand but limited court review to the superior or trial courts. Opponents contended that for the more important boards and agencies, especially those having experienced and expert personnel, the only court review should be in the appellate courts, limited to the correction of errors of law and procedure, and that the findings of fact of such boards should be accepted by the courts as final if supported by substantial evidence.

The present amendment was drafted after many conferences. It has the approval of both the advocates and opponents of the 1940 proposal, because it does not attempt to settle the controversy but throws it into the Legislature where it belongs.

It gives the Legislature the same powers, no more and no less, to regulate State administra-

tive agencies and their relations to the courts that Congress has with respect to Federal dministrative agencies.

We therefore urge a "Yes" vote on proposi-on No. 16.

ROBERT W. KENNY,
Senator, Thirty-eighth District.

T. H. DELAP,
Senator, Seventeenth District.

W. P. RICH,
Senator, Tenth District.

Argument Against Senate Constitutional Amendment No. 8

This amendment is dangerous. It gives uncontrolled power to the Legislature by removing protection which we have through our Bill of Rights and other provisions in our Constitution.

The very first words have that effect. They are: *"Nothing in this Constitution"*—that is, neither the Bill of Rights nor anything else—"shall be construed as denying to the Legislature power." Thus the Legislature wants to have all restrictions on it removed at the start!

That power which the Legislature wants is "Power to vest in administrative officers" and bureaus, "authority to decide, in the first instance, *any questions of law or fact* upon which the exercise of any function conferred upon them by law depends." That is, placing officers and bureaus complete, unrestricted, controlled power to decide.

The first sentence—second paragraph—is highly important to us who vote but have no power and must obey. Note these points:

1) "The Legislature is hereby vested with *plenary* power;" that is, *unlimited* power.

2) The next words "unlimited by any provision of this Constitution *except as provided in this section*" remove the control of our Bill of Rights and all other controls because those controls, set forth elsewhere in the Constitution, are not "provided in this section" or saved by it.

3) The words "except as provided in this section" mean nothing. The section neither forbids nor commands the Legislature to do one thing or another. So power here given to the Legislature is unrestricted.

4) The Legislature is given power to prescribe judicial review. It is not commanded or compelled to do so. It may refuse or fail to do so and leave the individual citizen without means of relief from wrongful decisions by these *unelected* "officers, boards, commissions, or agencies."

5) The Legislature *may* (not must) prescribe the "scope of review which the reviewing court may give." That means, when taken with the fact that the Legislature is not commanded to provide for review at all, that the Legislature may flatly provide that there shall be no review. Hence, also, the Legislature may prescribe partial review that is not effective or is practically useless.

6) The Legislature may also provide that any review which it gives, however inadequate, may be "exclusive of any review the courts are now authorized to give." So the Legislature may give an inadequate review *by some other authority than our elected judges and then forbid our courts to give any review.* Thus we citizens can be deprived of that relief which even our courts can now give us against unjust or arbitrary action of these administrative officers and bureaus.

Let us ask ourselves—Why does the Legislature request this tremendous additional power? Legislatures already are powerfully influenced, even dominated, by intrenched minority groups. What a Federal judge said recently in another connection is in point concerning these provisions:

"They smack too much of the political philosophy of subservience of the individual to the state which today threatens the world."

VOTE NO!

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DAN HADSELL,
Attorneys,
San Francisco, California.

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17 **STATE TREASURER TRUSTEE OF CERTAIN STATE MONEYS.** **Senate Constitutional Amendment 15.** Adds section 29 to Article IV, Constitution. Legislature may require State money controlled by State agencies or departments or collected under State authority be held in trust by State Treasurer before deposit in State Treasury by such agency or department as required by law. Excepts moneys controlled or collected by Regents of University of California. Money held in trust may be disbursed by Treasurer on order of agency or department or deposited in banks to same extent as money in State Treasury.

YES	
NO	

(For full text of measure, see page 24, Part II)

Argument in Favor of Senate Constitutional Amendment No. 15

This constitutional amendment is for the purpose of ratifying Section 454.5 of the Political Code (Chapter 900 of the Statutes of 1937) which will permit State agencies to place in trust with the State Treasurer, moneys which they collect during the month, pending determination at the end of each monthly period

16	**'ECISIONS BY ADMINISTRATIVE OFFICERS. Senate Constitutional Amendment 8.** Adds section 1b to Article IV, Constitution. Legislature may empower administrative officers to decide law or facts establishing jurisdiction; forbid court annulling findings supported by substantial evidence; authorize judicial review, prescribing court's jurisdiction, Supreme Court's jurisdiction subject to section 4c, Article IV; only Supreme Court reviewing Railroad Commission's decisions, only appellate court Industrial Accident Commission's decisions. Forbids court annulling decisions of fact, supported by sufficient evidence, by administrative agencies on municipal affairs, when declared final by city or county charter or ordinance thereunder. Like powers in other cities or counties unaffected.	YES	
		NO	

Senate Constitutional Amendment No. 8—A resolution to propose to the people of the State of California an amendment to the Constitution of said State by adding Section 1b to Article IV thereof, relating to the power of the Legislature or the people (1) to confer power on administrative officers, boards or commissions to make decisions, and (2) to provide for appropriate judicial review of such decisions.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California, at its Fifty-fourth Regular Session commencing on the xth day of January, 1941, two-thirds of all the members elected to each of the two houses of said Legislature voting in favor thereof, hereby proposes to the people of the State of California that Section 1b be added to Article IV of the Constitution, to read as follows:

(This proposed amendment does not expressly amend any existing section of the Constitution, but adds a new section thereto; therefore, the provisions thereof are printed in BLACK-FACED TYPE to indicate that they are NEW.)

PROPOSED AMENDMENT TO THE CONSTITUTION

Sec. 1b. Nothing in this Constitution shall be construed as denying to the Legislature power to vest in administrative officers, boards, commissions or agencies authority to decide, in the first instance, any questions of law or fact upor which the exercise of any function conferred upon them by law depends or power to provide that a finding of fact made by any administrative officer, board, commission or agency in the exercise of his or its functions shall not be set aside by any court if there is substantial evidence to support it. When any city or city and county, which has adopted or shall adopt a charter in pursuance of this Constitution, has provided or shall provide by charter, by any amendment thereof, or by ordinance, that decisions of questions of fact made by any administrative officer, board, commission or agency in respect to municipal affairs shall be final, no court of this State shall have power to set aside such finding of fact if there is substantial evidence to support it. Nothing in this section shall be construed as limiting the power of any county, city, or city and county under this Constitution to make and enforce within its limits local, police, sanitary and other regulations and, when not in conflict with general law, to provide by ordinance that decisions of questions of fact made by any administrative officer, board, commission or agency shall be final.

The Legislature is hereby vested with plenary power, unlimited by any provision of this Constitution except as provided in this section, to prescribe procedures by which judicial review of decisions of administrative officers, boards, commissions or agencies may be obtained and the scope of review which the reviewing court may give, including power to make any prescribed review either alternative to or exclusive of any review the courts are now authorized to give, and for these purposes the Legislature shall have plenary power to enlarge or restrict the jurisdiction of any court of this State; provided, however, that any enlargement of the original jurisdiction of the Supreme Court shall be subject to the power given that court by Section 4c of Article VI of this Constitution. Review by any court of any administrative decision may be reviewed in any higher court in the manner and to the extent that the Legislature may prescribe.

No court of this State except the Supreme Court shall have power to review any order or decision of the State Railroad Commission; and no court of this State except an appellate court shall have power to review any decision or award of the Industrial Accident Commission.