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San Jose Mercury, Tuesday, February 12, 1980

## When the bureaucrats write the laws, legislative intent loses out

**S**OME time ago in Malibu, the owner of a house near the ocean wanted to cut away the underbrush that surrounded it. But the Coastal Commission wouldn't let him; it said such trimming would despoil the environment. Not long afterward, the underbrush caught fire, and the house burned down.

In another recent episode, a bridge repair contractor got in trouble because his workers did not wear life jackets, pursuant to a state OSHA rule for all workers on bridges crossing waterways. The fact that this particular bridge was over a dry stream bed didn't cut any ice. The contractor was fined \$10,000.

San Jose Assemblyman Alister McAlister is building up a file of such incidents, all having a common characteristic: Each involves the force and effect of a "law" never enacted by the state Legislature. □

McAlister is alarmed by California's growing divergence from the traditional separation of government powers, with the Legislature making the laws, the courts interpreting them, and the executive agencies enforcing them.

One beauty of this constitutional concept is its supposed guarantee that laws will be written by elected officials who, if they foul up, can be booted out in the next election.

Today, however, Californians' lives are governed at every turn by the rules and regulations of bureaucrats in no way answerable to the voters and often unassailable behind their civil-service job protection.

This comes about because of the practical limitations of the lawmaking process. The Legislature passes a law setting broad policy, but leaves it to the enforcing agency (OSHA, FEPC, or whatever) to write the implementing rules and regulations. Such delegation of detail work is essential, because it is impossible for the Legislature, working under pressure, to foresee every eventuality. □

In theory, every rule derives its enforceability from the Legislature (or, if it implements an initiative law, from the people.) There is a wide gap between theory and reality, however. McAlister believes the rule-writers, ignoring legislative or popular intent, often run hog-wild. He does not think the Legislature, in setting up OSHA, intended that workers should have to wear life jackets over dry riverbeds. He does not think the people, when they passed the Coastal Commission Initiative, intended that anyone should be stopped from clearing away a brush hazard.

Harry  
Farrell



He therefore has proposed a state constitutional amendment, ACA 16, which would let the Legislature, by simple resolution, nullify any regulation it deemed contrary to its intent.

One might think that ACA 16, enhancing the Legislature's own power, would breeze through both houses at Sacramento.

Not so. When McAlister brought it up on the Assembly floor a few days ago, it encountered stiff opposition. It won 53 votes in the 80-member house, but as a constitutional amendment it needed 54 (two-thirds), and the 54th vote just wasn't there. The problem was, the lobbies were deeply involved on both sides.

Most business interests like McAlister's amendment. Business is heavily regulated by

state agencies ranging from the Accountancy Board to the Cemetery Board. Anything promising to curb them is obviously welcome to commercial interests.

On the other side are the regulatory agencies themselves. They want to hang onto all the power they can. So does Jerry Brown, who opposes ACA 16.

The Sierra Club, which wants stringent regulations in the environmental field, opposes ACA 16. So does the welfare lobby, which often does better dealing with the bureaucrats than with the legislators. Kevin Aslanian of San Jose, president of the Welfare Recipients League, writes, "There is danger that special interest groups like the oil companies and medical industry, which have enough money to buy whatever their hearts desire, will be the primary beneficiaries (sic) of this bill."

McAlister is plying his time. He will take up ACA 16 again whenever he thinks he can get his 54th vote.

The governor's office, he notes, sets the tone of administrative rule-making, so the battle is between those who trust the Legislature, and those who trust the governor. "I wonder how the line-up would be," McAlister muses, "if Ronald Reagan were still governor."