

12/18/56

Memorandum No. 2

Subject: Study of Abolition of the Doctrine  
of Sovereign Immunity

On November 19 we received a communication from Attorney General Brown, a copy of which is attached, requesting the Commission to put on its agenda for immediate study 1955 Future Study Topic H, "A study to determine whether the doctrine of sovereign immunity should be modified." At that date our study program for 1957-58 had been fixed. I discussed the matter with the Chairman and, pursuant to that discussion, telephoned Mr. Herbert Wenig of the Attorney General's office to tell him that it was too late to include this topic in the 1957 agenda resolution because the Commission's 1957 report to the Legislature would be sent to the printer before it could consider the advisability of studying sovereign immunity at the December meeting. A copy of my letter to the Attorney General confirming my conversation with Mr. Wenig is enclosed.

About this time we learned that at its October meeting the Board of Governors of the State Bar had recommended that the Law Revision Commission consider putting on its agenda a study of sovereign immunity but that due to the pressure of work in the office of the Secretary of the State Bar, this resolution had not been communicated to the Commission. In talking to both Mr. Wenig and to Mr. Jack Hayes, the Secretary of the State Bar, mention was made of the fact that matters not recommended by the Commission for study have been placed on its agenda through resolutions introduced by members of the Legislature.

On December 6 we received a second letter from the Attorney General, a copy of which is attached, acknowledging receipt of my letter of November 30 and again requesting the Commission to include a study of sovereign immunity in its 1957 agenda resolution.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary

Suggestion No. 211

Originator: Edmund G. Brown, Attorney General

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State of California

Department of Justice

OFFICE OF THE ATTORNEY GENERAL

November 15, 1956

California Law Revision Commission  
Stanford School of Law  
Stanford University, California

Attention: John R. McDonough, Jr.,  
Executive Secretary

Dear Sir:

In your 1955 Report of Topics intended for future study (Topic H, p.38) the Commission refers to the fact that the 1953 Conference of State Bar Delegates adopted a resolution favoring the abolition of the doctrine of sovereign immunity and appointing a committee to study the problem. At this year's meeting of the Conference, a full report was made reaching a similar conclusion and proposing a form of statute. The report was adopted by the Committee and referred to the Board of Governors of the State Bar.

As Attorney General I am interested in the matter of abolition of the doctrine and the extent to which and the manner in which liability will be undertaken by the State and its political subdivisions. Therefore, I would appreciate having the Commission put this topic on its agenda for immediate study. If it is in order, I would suggest your getting in touch with my Assistant, Herbert E. Wenig, regarding my views on the scope of this study.

Very truly yours,

/s/ Edmund G. Brown

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Attorney General

EGB:t

November 30, 1956

Mr. Edmund G. Brown  
Attorney General  
State Building  
San Francisco, California

Dear Mr. Brown:

I spoke to Mr. Herbert Wenig of your office today about the request, made in your letter of November 15, 1956, that the Law Revision Commission put on its agenda for immediate study the question whether the doctrine of sovereign immunity should be abolished in this State.

As I explained to Mr. Wenig, the Commission is required by Government Code Section 10335 to obtain the approval of the Legislature before it can study any matter. The Commission's agenda of topics proposed for study to be submitted to the 1957 Session of the Legislature has been completed and its report containing descriptions of the topics it has selected is just about ready to go to the State Printer. We cannot hold up the report until the Commission will have an opportunity to consider your request because there would not be enough time after our next meeting on December 20 and 21 to have the Commission's report printed prior to the 1957 Session. Thus, it is too late for the Commission to make additions to the topics which it will submit to the 1957 Session for approval.

As I advised Mr. Wenig, however, Government Code Section 10335 provides that the Commission may be given assignments in addition to those which it proposes. This can be done by means of a concurrent resolution introduced by any member.

Very truly yours,

John R. McDonough, Jr.  
Executive Secretary

JRM:fp

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State of California  
Department of Justice  
OFFICE OF THE ATTORNEY GENERAL

December 4, 1956

California Law Revision Commission  
School of Law  
Stanford University, California

Attention: Mr. John R. McDonough, Jr.,  
Executive Secretary

Re: Sovereign Immunity

Dear Mr. McDonough:

I have your letter of November 30, 1956, concerning my request that the Commission include the study of the removal of the doctrine of sovereign immunity. You state that as the Commission will not meet until December 20 to act upon my request the topic cannot be included in the Commission's report.

I am hopeful that at least the Commission will consider the request at its December meeting and the possibility of including it as a supplemental recommendation. Even if this cannot be done, the approval of the request by the Commission would serve to support any concurrent resolution which would be introduced referring the topic for study to the Commission.

Very truly yours,

/s/ Edmund G. Brown

Attorney General

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