

Date of Meeting: April 18-19, 1958

Date of Memo: April 15, 1958

Memorandum No. 10

Subject: Study #37(L) - Claims Statute

Two matters relating to this study require discussion at the April meeting:

1. Attached is a memorandum relating to certain problems which we have encountered in beginning the staff study to determine what changes in existing law will be required if the proposed new claims statute is enacted.

2. On April 11, 1958 I sent you copies of the minutes of the meetings of the Northern and Southern Sections of the State Bar Committee on Administration of Justice relating to the consideration by the Sections of Professor Van Alstyne's study and the proposed uniform claims statute which he had drafted (Professor Van Alstyne's proposed statute appears at pages 195-200 of his study). The minutes reflect various questions raised by the Sections with respect to Professor Van Alstyne's draft statute. We have, of course, departed considerably from Professor Van Alstyne's draft in the Commission's draft statute. Therefore, some of the questions raised by the Sections do not apply to the Commission's statute. However, a number do. I suggest we take up each of the questions which does have relevance to the Commission's proposed statute and consider whether any revision of our work appears to be in order.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

JRM:imh
Enclosures

Dated: April 15, 1958

MEMORANDUM

Subject: Study No. 37(L) - Claims Statute.

Pursuant to action taken by the Commission at its last meeting, the staff has undertaken a study to determine what changes in existing law will be required if the proposed new claims statute is enacted. This study was started with the expectation that it would involve the repeal of a considerable number of existing claims provisions, the amendment of others and, possibly, the enactment of a number of cross-references to the new claims statute.

We began this assignment by a study to determine what changes would be required or desirable in the existing statutes relating to claims against counties. As has not infrequently been the case in the Commission's experience when the stage is reached of revising existing statutes to effectuate a new proposal, several new problems have turned up in the course of the study. It is believed that most of them will recur in connection with the revision of existing claims statutes applicable to other public entities than counties.

As a preliminary to what follows, a brief statement about the existing law relating to the presentation and processing of claims against counties is necessary. The matter is covered generally in Chapter 4 of Division 3 of Title 3 of the Government Code. (Sections 29700 through 29749) Chapter 4 which is entitled "Claims" has two articles; Article 1 is entitled "Filing and Approval" and Article 2 is entitled "Approval of Auditor". We have reproduced Chapter 4 as an appendix to this memorandum so that you may refer to it in considering what follows. [It should be noted that not all provisions relating to claims against counties are found in Chapter 4. Thus,

claims arising under Section 53051 of the Government Code (dangerous and defective condition of public property) must

specify the name and address of the claimant, the date and place of the accident, and the extent of the injuries or damages received and must be filed with the clerk or secretary of the legislative body of the local agency within 90 days after the accident occurred. Other claims statutes which are discussed below also impose requirements in addition to those contained in Chapter 4]

The problems which we have encountered to date are discussed in the four sections of this memorandum which follow.

1. Duplication rather than elimination of existing claims statutes.

What came to me as a surprising and rather disconcerting discovery when we began to look into the county claims statute problem is that we apparently cannot repeal Chapter 4. This is because the first section of our new claims statute exempts a large number of claims against counties (and other public entities) from the statute's coverage. Chapter 4 must seemingly be retained to govern the presentation of claims falling in these exempted categories. This would not be true, of course, if there were special provisions governing the presentation of all exempted claims but this does not appear to be the case.

Thus, the new claims statute will to some degree compound existing confusion. It will not get rid of any existing law but instead will enact still another claims presentation procedure which will apply to some but not all claims against the public entities concerned. Conceivably

situations will arise in which there will be doubt as to whether a particular claim against a county falls under the new statute or under Chapter 4 and even in which courts will hold that a claim was lost because the claimant followed the wrong statute in presenting it.

This fact, taken with various problems of legislative draftsmanship, discussed below, which are encountered in trying to fit the new claims statute into the existing county claims procedure picture has led Mr. Mayer to suggest that counties should be excepted from the new statute just as the State has been. He argues that Articles 1 and 2 are relatively clear cut and easy to find and apply since the legislature has adopted a uniform claims statute for counties which purports to govern the presentation of almost all claims. He suggests that if only part of the claims against counties are to be governed by this statute in the future and other claims are to be covered by the new claims statute, with the various problems of legislative draftsmanship thus precipitated handled as proposed in later portions of this memorandum, the poor harrassed attorney who is trying to file a claim is going to be cross-referenced to death. My own reaction to this suggestion is one of resistance. It seems to me that the logic of the argument applies to all situations in which there is an existing statute. If we successively make the same determination with respect to each type of public entity studied we will end up with nothing to show for our efforts. It seems to me that we ought to be able to do a good enough job of legislative drafting to obviate the problems which will be created by enacting a new claims statute without repealing existing statutes. Accordingly, we have gone ahead with the drafting problems presented but without rejecting Mr. Mayer's suggestion, which is offered to the Commission for its consideration.

2. Problem of differentiating between existing statutes relating to claims against counties which are applicable to claims governed by the new statute and those which are not.

A considerable problem of legislative draftsmanship arises in connection with revising Chapter 4 in that some of its provisions -- i.e., those relating as to internal processing and payment of claims -- must be made applicable to claims governed by the new statute while other provisions will be superseded as to such claims by the legislation which the Commission will recommend. Thus, some device must be found to indicate which of the code sections found in Chapter 4 apply to all claims, whether presented under the new statute or under existing statutes, and which of them apply only to claims not covered by the new statute.

We have considered and tentatively rejected as too cumbersome two possibilities:

(1) Provide that the provisions of Chapter 4 do not apply to claims governed by the new statute except as expressly made applicable thereto - and then write in such express provisions where needed.

(2) Provide that the provisions of Chapter 4 apply to claims governed by the new statute unless expressly made inapplicable thereto - and then write in such express provisions where needed.

Our proposal is to enact the following two new sections of the Government Code, one in Article 1 and the other in Article 2 of Chapter 4, relating to what provisions of these articles are applicable to claims governed by the new claims statute (if these proposed new sections were enacted the sections presently having the numbers given them would have to be renumbered):

§ 29700. Except as provided in this section, the provisions of this article do not apply to claims the presentation and consideration of which is governed by [here designation of new claims statute - e.g., Division 4.5 of Title 1 of this code].

Sections 29706, 29708, 29709, 29710, 29711, 29718, and 29719 apply to claims the presentation and consideration of which is governed by [the new claims statute].

Section 29712 applies to claims the presentation and consideration of which is governed by [the new claims statute] but the failure of a person presenting such a claim to furnish information required in forms adopted by the board or to follow procedures prescribed by the board does not affect the validity of his claim if he has complied with the provisions of [the new claims statute].

§ 29740. The provisions of this article apply to claims, among others, the presentation and consideration of which is governed by [the new claims statute] but the failure of a person presenting such a claim to comply with any procedure adopted or prescribed by the board pursuant to this article does not affect the validity of his claim if he has complied with the provisions of [the new claims statute] nor is the time which the county has to consider such a claim affected by any procedure adopted or prescribed by the board pursuant to this article.

I suggest that at the April meeting the Commission consider each of the sections in Chapter 4 (see appendix attached) and determine whether it should be made applicable to claims to which the new claims statute applies. Particular attention should be given to whether proposed new Section 29700 (see above) should list in its second paragraph Sections 29707, 29716,

29720 and 29721. Special attention should also be given to whether the "but" clauses in the third paragraph of proposed new Section 29700 and in proposed new Section 29740 (see above) are necessary; arguably, the authority given to the board of supervisors by virtue of these sections relates solely to adopting internal procedures and not to governing the manner in which the claimant must present his claim.

3. Claims against counties by other public entities.

We have found that of the several statutory provisions relating to claims against counties reported by Professor Van Alstyne, the following relate to claims which other governmental entities are authorized to make against counties:

Education Code § 20947 - claims on behalf of the superintendent of the California School for the Blind or on behalf of State Department of Education in connection with assistance given blind pupils.

Health and Safety Code § 257 - claims by State Department of Public Health for services to physically handicapped children.

Health and Safety Code § 13051-52 - claims by other public entities for expenses reasonably incurred in furnishing fire fighting services.

Military and Veterans Code § 946 - claims for reimbursement of expense of burial of veteran.

It seems to us that the new claims statute should not apply at all to such inter-governmental claims which are presumably handled without litigation. We therefore recommend that a further exemption from the coverage of the new statute be made by adding to what is now proposed

Section 7000 of the Government Code the following:

- (1) Claims made against a public entity by the State or a department or agency thereof or by another public entity.

4. Particular provisions relating to claims against counties which should be repealed or amended.

Section 439.56 of the Agriculture Code which relates to payments out of a county fund to owners of livestock killed by dogs provides:

§ 439.56. Each such claim shall be verified by the affidavits of two disinterested witnesses who shall fix the value of the livestock, the affidavits to be executed within four days after the finding of the carcasses of each animal and to establish the fact beyond reasonable doubt that the animal was killed by a dog or dogs. Such claims shall be paid from the fund provided for in this chapter in the same manner as other claims against the county are paid. The word "livestock" as used in this article includes domestic fowls and rabbits.

The type of claim provided for in Section 439.56 would be covered by the new claims statute since it is a claim for money not falling into an exempted category. Were it not for the provision for two affidavits, Section 439.56 would not necessarily have to be repealed since it could serve as a rough kind of cross-reference to the new claims statute ("in the same manner as other claims against the county are paid") - or it might be revised to refer specifically to the new statute. If allowed to remain as

it stands, however, Section 439.56 would be something of a trap for the unwary claimant since it requires a type of proof or verification not provided for in the new claims statute. On the other hand, some people may believe that the two-affidavit requirement is important and should be retained. How, then, shall the Commission resolve this problem?

Article 2 of Chapter 5 of Division 4 of the Military and Veteran's Code provides for the burial of a veteran who dies without sufficient means to defray the cost of burial and for the upkeep of the graves of such veterans, both at county expense. Section 945 of the Code which provides for claims made in connection therewith should be revised, if the new claims statute is enacted, as follows:

§ 945. The expenses to the county of each burial or contribution shall not exceed the sum of one hundred fifty dollars (\$150). Claims therefore shall be presented and considered as provided in [the new claims statute].
~~Claims-therefor-and-the-proof-required-under-the-terms of-this-article-may-be-made-at-any-time-within-sixty-days after-the-date-of-the-death-of-the-veteran-or-widow-of-a veteran.~~

APPENDIX

Chapter 4

CLAIMS

Article 1

§ 29700.

The board of supervisors shall not consider or allow any claim in favor of any public officer or other person against the county or any county or district fund, unless it is itemized to show:

- (a) Names, dates, and particular service rendered.
- (b) Character of process and person served.
- (c) Distance traveled.
- (d) Time and place of travel.
- (e) Character of work done.
- (f) Number of days engaged.
- (g) Supplies or materials furnished, to whom, and quantity and price

paid therefor.

§29700.1.

In any claim filed by a vendor or supplier against a county or any county or district fund for groceries or household supplies furnished to a recipient of aid from any public bureau of public assistance or department of charities, the board of supervisors may accept, in lieu of the detailed itemization required by Section 29700, a general statement of the total selling price of such groceries and of such household supplies sold and delivered to the recipient named in such claim, which statement shall as to such groceries and household supplies be a sufficient itemization.

§29701.

The claim shall be verified by the signature of the claimant to be

correct, and the amount claimed justly due, and shall be filed with the clerk of the board or with the auditor, according to the procedure prescribed by the board.

§ 29702.

A claim shall be filed within a year after the last item accrued.

§ 29703.

If the board does not hear or consider any claim required to be itemized because it is not itemized, it shall cause notice to be given to the claimant or his attorney of that fact and allow time for the claim to be itemized and reverified by the signature of the claimant.

§ 29704.

Any claim against the county or any public officer in his official capacity payable out of any public fund under the control of the board, whether founded upon contract, express or implied, or upon any act or omission of the county or any county officer or employee, or of any district or public entity the funds of which are controlled by the board, or of any officer or employee of any such district or public entity, shall be presented to the board before any suit may be brought thereon. No suit shall be brought on any claim until it has been rejected in whole or in part.

§ 29705.

Any claim not founded upon contract shall be in writing signed by the claimant or someone authorized by him, stating:

- (a) Full details as to the nature of the claim.
- (b) The time and place it arose.

(c) The public property and public officers or employees alleged to be at fault.

(d) The nature, extent, and amount of the injury or damage claimed.

(e) All other details necessary to a full consideration of the merit and legality of the claim. In all other respects the claims shall be presented and acted upon in the same manner as claims founded upon contracts.

§ 29706.

The board shall not pass upon a claim, unless it is filed with the clerk or auditor not less than three days, or if prescribed by ordinance five days, prior to the time of the meeting of the board at which it is asked to be allowed.

§ 29707.

Claims shall be made in substantially the following form:

Clerk's memoranda, No. _____ fund.

Claim of _____, dated _____, in the sum of \$ _____ for _____.

Allowed by the board of supervisors, _____, 19____, in the sum of \$ _____.

Attest:

Clerk of the Board.

Claim of _____.

No. _____. Fund _____.

Claim on the treasury of the County of _____, State of California, for the sum of _____ dollars, being for _____

Dates

Items

Dollars

Cents

Dates	Items	Dollars	Cents
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
		\$ _____	_____

Expenditures authorized and approved by me.

The undersigned, under the penalty of perjury states: That the above claim and the items as therein set out are true and correct; that no part thereof has been heretofore paid, and that the amount therein is justly due, and that the claim is presented within one year after the last item thereof has accrued.

Allowed by the board of supervisors, _____, 19____, in the sum of \$ _____, payable out of _____ fund.

Attest:

Clerk of board of supervisors.

Countersigned:

Chairman board of supervisors.

Warrant No. _____.

Approved, _____, 19____.

County auditor.

No. _____ Registered _____, 19____.

County treasurer.

\$29708.

The claim shall be approved before filing by the officer who directed

the expenditure.

§ 29709.

If the claim is allowed by the board, the clerk of the board shall detach and file the memorandum and endorse on the claim "allowed by the board of supervisors," together with the date of the allowance, the amount of the allowance, and from what fund. The clerk shall attest the claim with his signature and, when countersigned by the chairman, shall transmit it to the auditor.

§ 29710.

If the auditor approves the claim, he shall endorse upon it "approved," date, and number of the warrant, and in attestation thereof affix his signature to the claim and deliver it to the claimant.

§ 29711.

When approved and signed by the auditor, the claim is the warrant on the treasury within the meaning of this chapter.

§ 29712.

In order to meet the needs of the particular county, the board may adopt a different form or forms for the submission and payment of claims, and may prescribe and adopt warrant forms separate from claim forms, to the end that the approved claims may be permanently retained in the auditor's office as vouchers supporting the warrants issued. It may prescribe a different procedure for the allowance and payment of claims but the form of claim so adopted shall provide:

(a) For the approval of the officer directing the expenditure. In counties having a system under which expenditures may be initiated by requisition, the approval may be omitted from claims initiated by requisition.

(b) For the approval of the purchasing agent or other officers issuing the purchase order under which the charge was incurred, or having charge of contracts or schedules of salaries under which the claim arose.

(c) For the approval of at least one member of the board. In lieu of the supervisor's approval on each claim there may be substituted duplicate lists of claims allowed, showing, as to each claim, the name of the claimant, the amount allowed, and the date of allowance. The lists shall be certified to the board by the clerk of the board or other competent officer or employee designated by it for the purpose, as being a true list of claims properly and regularly coming before the board. Upon allowance of claims each of the lists, after amendment if necessary, shall be certified to as having been allowed by the board, the date allowed, and that such lists are correct by one member of the board or by the clerk of the board and filed, one in the office of the clerk of the board and one in the office of the auditor. When filed the lists constitute respectively the "allowance book" and the "warrant book."

(d) For the certificate of the clerk of the board as to the date and amount of allowance of the claim by the board. If the duplicate lists of claims allowed are filed, the certificate may be omitted, but in its stead there shall appear on each claim a reference by date, number, or otherwise to the list on which the claim appears listed as allowed.

(e) For the certificate of the clerk of the board or of the auditor as to the correctness of the computations.

(f) For the auditor's approval.

§ 29713.

If the board finds any claim is not a proper county charge, it shall be rejected. The rejection shall be plainly endorsed on the claim. If it is a proper county charge, but greater in amount than is justly due, the board may allow the claim in part, and cause a warrant to be drawn for the portion allowed upon the claimant filing a receipt in full for his account. If the claimant is unwilling to receive the amount in full payment, the claim may again be considered only at any meeting of the board held within 90 days thereafter.

§29714.

If the board refuses or neglects to allow or reject a claim for 90 days after it is filed with the clerk, such refusal or neglect shall constitute final action and rejection on the ninetieth day. This section shall apply to causes of action existing when this section becomes effective. The time for commencement of existing causes of action which would be barred by this section within the first six months this section becomes effective shall be six months after the effective date of the amendments to this section enacted by the Legislature at the 1957 Regular Session.

§ 29715.

A claimant dissatisfied with the rejection of his claim or with the amount allowed him may sue the county on the claim at any time within six months after the final action of the board.

§ 29716.

If a judgment is recovered for an amount more than the board allowed, upon presentation of a certified copy of the judgment, it shall allow and pay the judgment and costs. If no more is recovered than the board allowed, it shall pay the claimant no more than was originally allowed.

§ 29717.

Any claim against the county presented by a member of the board for per diem and mileage or other service rendered by him shall be itemized, verified as other claims, and state that the service was actually rendered. Before allowance, any such claim shall be presented to the district attorney, who shall endorse upon it his written opinion as to its legality. If the district attorney declares the claim or any part thereof illegal, he shall state specifically wherein it is illegal, and the claim or such part shall be rejected by the board.

§ 29718.

Except for his own service, no county officer shall present any claim for allowance against the county, or in any way, except in the discharge of his official duty advocate the relief asked in the claim made by any other person.

§ 29719.

Any person may appear before the board and oppose the allowance of any claim made against the county.

§29720.

Any person who wilfully makes and subscribes to a claim which he does not

believe to be true and correct as to every material fact therein stated is guilty of a felony and subject to the penalties prescribed for perjury by the Penal Code.

§ 29721.

No fee or charge shall be made or collected by any officer for verifying or filing any claim against the county.

ARTICLE 2
APPROVAL OF AUDITOR

§ 29740. By resolution the board of supervisors may adopt the procedure for the approval of claims prescribed in this article.

§ 29741. The auditor shall audit and allow claims in lieu of, and with the same effect as, allowance by the board of supervisors in any of the following cases:

(a) The expenditures have been authorized by purchase orders issued by the purchasing agent or other officer authorized by the board.

(b) The expenditures have been authorized by contract, ordinance, resolution, or order of the board.

(c) Expenditures under the Welfare and Institutions Code have been ordered by the board.

§ 29742. The auditor shall issue his warrant on the county treasury for such an amount for each claim as he finds to be a correct and legal county charge. He shall not issue his warrant for any claim that has not been on file in his office for at least three days.

§ 29743. If the auditor finds that any claim presented is a proper county charge, but is greater in amount than is justly due, he may allow the claim in part and issue his warrant for the portion allowed.

§ 29744. If the claimant is unwilling to receive the amount tendered in full payment, he shall return the warrant to the auditor within 30 days after the tender together with his written refusal to accept the amount in full payment of the claim. The auditor shall immediately transmit the claim to the board, together with a statement of his action, his reasons therefor, and claimant's refusal. The board shall consider the claim within 10 days after its receipt, and may allow such an amount in payment thereof as is a proper county charge, not to exceed the amount originally claimed. The auditor shall issue his warrant therefor.

§ 29745. If the auditor finds that any claim is not a proper county charge, he shall reject it and endorse his rejection thereon.

§ 29746. At least once each week the auditor shall transmit to the board reports of all claims rejected by him and not previously reported, showing, as to each claim: Date, name of claimant, amount, and reason for rejection.

§ 29747. The auditor shall prepare duplicate lists of all claims he allows, showing as to each claim: date allowed, warrant number, name of claimant, and amount allowed. He shall certify that the lists are correct, file one copy in the office of the board and preserve the other or a photographic copy thereof in his own office. As to such claims the lists constitute, respectively, the allowance book and the warrant book.

§ 29748. The board shall prescribe, by resolution, the procedure for the filing, audit, and disposition of claims.

§ 29749. The auditor shall require the certificates of the requisitioning, inspection, or receiving officers that the articles and services have been received or furnished.