

Min.

Date of Meeting - January 16-17, 1959

Date of Memo: January 8, 1959

Memorandum No. 1

Subject: Study #37(L) - Claims Statute

This memorandum deals with several matters:

I

At the December meeting a question was raised concerning the purpose intended to be accomplished by including the words "pursuant to law" at the end of the first sentence of proposed Section 730 of the Government Code.

On December 17 I addressed a letter on this matter to Messrs. Kleps and Van Alstyne. On December 18 and 22 Mr. Stanton wrote Mr. Kleps on the same subject. Messrs. Kleps and Van Alstyne replied to this correspondence in letters to me of December 19 and December 23 respectively. Copies of all of this correspondence are attached.

As the result of this exchange the words "pursuant to law" were deleted from Section 730 in drafting the preprint bills. I suggest that the Commission consider at the January meeting whether this action should be approved.

II

Mr. Stanton's letter of December 22 also raised a question with respect to proposed Section 701 of the Government Code. This same question was raised by Professor Van Alstyne in a letter of December 26, viz.:

In proposed Section 701, should not the phrase "city and county" appear in the clause following the last comma, so that it reads "this chapter shall not apply to a chartered county, city and county or city . . ."?

It is true that the first clause of Section 701 contains a reference to "cities and counties" and that the second clause does not contain a reference to "city and county." The omission of "city and county" from the second clause is because an earlier section of the Government Code defines "county" to include city and county. The reason for including "cities and counties" in the first clause is because our proposed constitutional amendment contains the words "cities and counties," due to the fact that the Constitution does not have a section defining "county" to include city and county. While the distinction taken is, I believe, a logical one it appears to be likely to cause confusion. I recommend, therefore, that we add the words "city and county" to the second clause of Section 701 although they are technically redundant because of the definition section of the Government Code.

### III

Professor Van Alstyne's letter of December 26 also contains the following statement:

3. I am wondering what happened to the most important of all the employee claim statutes, section 2003 of the Government Code. Sections 1980-1982 of the Government Code (here proposed to be made sections 800-802) are of only minor significance today, in view of their emasculation by the Supreme Court's decisions in Stewart v. McCollister and Porter v. Bakersfield & Kern Electric Railway Co. (both of which are discussed in the Study). But section 2003 stands as a constant threat to the unwary litigant. It would seem to me that 2003 also should be inserted into the new general statute (possibly as section 803) for the sake of completeness.

It seems to me that his suggestion is well taken and I propose that we add the following section to the Government Code:

803. A cause of action against an employee of a district, county, city, or city and county for damages resulting from any negligence upon the part of such employee while acting within the course and scope of such employment shall be barred unless a written claim for such damages has been presented to the employing district, county, city, or city and county in the manner and within the period prescribed by law as a condition to maintaining an action thereof against such governmental entity.

So far as I am now aware these are the only matters relating to the claims statute which will require attention at the January meeting.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary

JRM:imh

December 17, 1958

Mr. Ralph N. Kleps  
Professor Arvo Van Alstyne

Gentlemen:

I enclose a copy of the new general claims statute as revised and approved for printing in the Commission's recommendation and study and putting into the form of a preprint bill at the December meeting of the Law Revision Commission. At the meeting a difference of opinion developed with respect to the meaning of the words "pursuant to law" at the end of the first sentence of Government Code Section 730. The question is whether Section 730 is itself a grant of power to local public entities to prescribe by charter, ordinance or regulation a claims procedure applicable to the cases excepted by Section 703 from Articles 1 and 2 of Chapter 2. Mr. Stanton took the position that it is not, reasoning that "pursuant to law" means that the authority to prescribe the claims procedure must be found in some other statute. Others present took the position that Section 730 itself grants the power and that "pursuant to law" refers only to compliance with legal requirements as to the procedure to be followed in adopting a charter provision, ordinance or regulation.

I think that it is fair to say that Mr. Stanton's construction reflects what he would like the meaning of the language to be. He does not favor a grant of power by Section 730 to a local public entity to prescribe a claims procedure by a regulation since such regulations are, in his experience, often difficult or impossible to find (he would not have the same objection to claims procedures prescribed by charter or ordinance).

The first sentence of Section 730 does appear to be ambiguous. My own view is that the ambiguity could and should be resolved by deleting the words "pursuant to law."

It was agreed that I should address the question presented in this communication to you as the draftsmen of Section 730 and ask you for (1) your construction of the first sentence of Section 730, and (2) any suggestions you may have as to how Section 730 might be revised to reflect your construction more clearly.

Yours very truly,

John R. McDonough, Jr.  
Executive Secretary

JRM:imh  
Enclosures

## CALIFORNIA LAW REVISION COMMISSION

December 18, 1958

Ralph N. Kleps, Esq.  
Legislative Counsel  
3021 State Capitol  
Sacramento 14, California

Re: Claims against local public entities

Dear Ralph:

This will supplement John McDonough's letter to you of December 17, 1958 on the above subject.

As I read the term "pursuant to law" as used in draft Section 730 it is a part of the phrase "regulation adopted by the local public entity pursuant to law." In other words, it is my understanding that a local public entity cannot adopt regulations having an effect on private rights unless some statutory or charter provision expressly gives it such authority and that if the authority given is a limited one, any regulations adopted must be within the limits fixed by the statutory or charter provision.

In my opinion it would be unwise to draft 730 in such a way as to give a public entity power to adopt a regulation establishing a claims procedure where such power is not already given by some other statute or a charter provision. I can see no policy to be served by such an extension of the claims statute principle, even if it only applies to fields covered by the exceptions listed in Section 703, and I am disturbed by the possibility that in an effort to do a complete job and to be "neat" in this field, the Commission may be creating problems that do not now exist. Since I suspect this problem is not peculiar to the claims field and that you have often faced the question of weighing the advantages and disadvantages of government by local regulations, my judgment in the matter would be greatly influenced by your reaction to the point.

Yours very truly,

THOMAS E. STANTON, JR.  
Chairman

TES:hk

cc: Professor Arvo Van Alstyne  
John R. McDonough, Jr., Esq.

December 22, 1958

Ralph N. Kleps, Esq.  
Legislative Counsel  
3021 State Capitol  
Sacramento 14, California

Re: Claims against local public entities

Dear Ralph:

This will supplement my letter to you of December 18, 1958 on the above subject.

Since writing my earlier letter I have had the opportunity to review the material enclosed with John's letter to you and I have the following comments concerning this material:

1. Section 701, and the references to the subject matter of this section on pages 6 and 7 of the proposed recommendation, are ambiguous as they relate to cities and counties. It is my understanding that the difference in phraseology on this point between the first part of Section 701 and the second part of this section flows from the fact that the terms "county" and "city" as used in the Government Code include "city and county" but there is no similar provision in the Constitution. I wonder, however, whether parenthesized material or a footnote could be used to point up the reason for the difference in terminology.
2. If the point made in my letter of December 18, 1958 prevails, it would be necessary to revise the statement under subparagraph (b) on page 8 of the recommendation.

I think the second of these points, if valid, should be caught before the material gets into print, but obviously the first point is of minor significance.

Yours very truly,

THOMAS E. STANTON, JR.

TES:hk

cc: Professor Arvo Van Alstyne  
John R. McDonough, Jr., Esq.

37(L)

Sacramento, California  
December 19, 1958

Professor John R. McDonough, Jr.  
Executive Secretary  
California Law Revision Commission  
School of Law  
Stanford, California

Dear John:

I think my notes and Arvo's make it clear that a delegation of authority was intended in proposed Section 730, as a means for filling a gap.

I agree that "pursuant to law" should be eliminated.

Regards,

/s/ Ralph  
Ralph N. Kleps  
Member

cc: Mr. Thomas E. Stanton, Jr.  
Professor Arvo Van Alstyne

December 23, 1958

Office of the Dean  
School of Law  
Los Angeles 24, California

Professor John R. McDonough, Jr.  
Executive Secretary  
State of California  
Law Revision Commission  
School of Law  
Stanford University  
Stanford, California

Dear John:

It is my feeling that Section 730 was intended to delegate authority to local public entities to prescribe claims procedures with respect to claims not otherwise governed either by the new Claims Statute or by any other existing statutes or regulations.

The words "pursuant to law" were intended to mean "in the manner prescribed by law." That is they were intended to impose only a procedural requirement.

I am inclined to agree that the words "pursuant to law" could be eliminated without impairing the sense of the Section. Presumably, a charter provision, ordinance or regulation not promulgated in the manner required by law would not be effective in any event.

Although I share Mr. Stanton's concern over the possible disadvantages of government by local legislation, I believe the problem is one of very small magnitude. The new General Claims Statute covers all claims with respect to which there has been extensive litigation and justifiable criticism on the ground that claims procedure has acted as a trap for the unwary. The exceptions, for the most part, relate to claims with respect to which other statutes or regulations already adequately prescribe procedures which appear to be working well. Section 730, in my opinion, is not likely to result in a very large volume of local legislation. The word "regulation" is necessary in order to ensure that the same delegated authority is given to all types of local entities. Although cities and counties, and perhaps some districts (e.g. port districts) have authority to promulgate ordinances, most districts probably do not have such authority and hence could provide a claims procedure only through some other type of action, such as an order or resolution. The various types of action which such districts are authorized to take can, I believe, be accurately and compendiously described by the word "regulation."

December 23, 1958

I might suggest a possible change in the language of 730 to avoid the possibility that cities or counties (which, of course, could adopt ordinances) might seek to prescribe a claims procedure by a less formal and therefore less publicized (and less easily available) method. Possibly the first sentence could be amended to read:

"730. Claims against a local public entity for money or damages which are excepted by Section 703 from Articles 1 and 2 of this chapter, and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedure prescribed in any charter, or ordinance, or in the case of a local public entity not authorized to adopt ordinances, in any resolution, regulation adopted by the local public entity pursuant-to-law."

In general, I think the proposed recommendations and draft are in very good shape.

Sincerely yours,

/s/ Arvo Van Alstyne  
Arvo Van Alstyne

AVA:cz

CC - Mr. Thomas E. Stanton, Jr.  
Ralph W. Kleps, Esq.