

Date of Meeting: April 17-18, 1959
Date of Memo: April 13, 1959

Memorandum 4-E

Attached is a communication received from the District Attorney
of Santa Barbara County.

Office Of The
DISTRICT ATTORNEY

Santa Barbara County
Santa Barbara, California

March 25, 1959

Dr. Norman B. Scharer
Superintendent of City Schools
1235 Chapala Street
Santa Barbara, California

Dear Dr. Scharer:

There is now pending in the Legislature, Assembly Bill No. 405, which was introduced by Mr. Bradley on January 19, 1959, which seeks to add Division 3.5 to the Government Code relating to claims against state, local public entities and officers and employees.

You have previously been informed of the filing of the Petition for a Writ of Mandate in the Superior Court of Santa Barbara County Case No. 56884 entitled "Signal Oil and Gas Company v. the Board of Supervisors of Santa Barbara County," which sought to compel the Board of Supervisors to act on five claims for refund of taxes assessed against the company beginning with the fiscal year 1952 through 1956, amounting to the approximate sum of \$250,000.00, and interest. The Santa Barbara High School District and the Ellwood Elementary School District would be directly effected by the outcome of this legislation as they received most of the taxes for which refund is claimed.

The District Attorney's Office successfully defended this proceeding and an out-of-county judge, the Honorable Ben V. Curler of Lassen County, on December 23, 1959 issued his Memorandum of Opinion in favor of the Board of Supervisors. The court ruled that certain sections of the Government Code and the Revenue and Taxation Code established a statute of limitations and that the claims had been denied by operation of law on the ninetieth day following the filing of such claims (and for other legal reasons) and that the six months statute of limitations was applicable to bar such claims.

Attorneys in the District Attorney's Office, who are handling this litigation, Assistant District Attorney Frank J. McCarthy and Deputy District Attorney James R. Christiansen, have reviewed and analyzed, in detail, Assembly Bill No. 405 and have advised me of the demerits of this bill and the adverse results which may follow from its adoption. This bill, as presently drafted, would have the effect of repealing any statute of limitations applicable to Revenue and Taxation claims until a public body actually denied those claims. This would enable a claimant on a particular revenue matter, for all practical purposes, to treat a public

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entity as a bank, and the claims bearing 5 percent interest until the governing body thereof actually denied the claims.

If the present bill, as drafted, were adopted, under the canons of legislative construction it could be implied that Revenue and Taxation Code claims never fell within the scope of being subject to a statute of limitations contained in the Government Code such as the court found to exist to bar the claims involved in the case in which your school district is so vitally interested.

We believe that such implied interpretations might have an adverse effect on our pending appeal and might be a persuasive force in reversing the lower court's decision. Hence, the bill should be either opposed or amended as hereinafter indicated to overcome any adverse results from its adoption.

If an amendment of the bill is the most practicable way to meet the situation then subsection (a) of Section 703 of Article 1 should be amended to read as follows:

"Claims under the Revenue and Taxation Code or other provisions of law prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto. This paragraph shall not be deemed to allow suit or reinstate claims under the Revenue and Taxation Code that "have been previously denied or barred by the provisions of the Government Code."

(Underscored portion added.)

Or alternatively, if it is desired to continue to provide a statute of limitations for Revenue and Taxation claims, subsection (a) of Section 703 Article 1 of the proposed bill should be deleted and a Section 722 added as follows:

"722. When any claim under the Revenue and Taxation Code is presented or within eighty (80) days thereafter, the governing body and the claimant may by written agreement suspend the running of the time provided in Sections 717 and 721; provided, however, that no further interest shall accrue on the claim from the date of the agreement. At any time after the date of the agreement suspending the running of the time provided in Sections 717 and 721, the claimant may make a written demand that the governing body take immediate action on the claim and such demand shall terminate any suspension of the running of the time provided in

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Sections 717 and 721."

Should any further questions arise, or if you feel the need of any further advice, please feel free to call upon either Frank J. McCarthy or James R. Christiansen. Both of these men are familiar with this subject and will be glad to be of help to you. I, myself, will be taking a few days of vacation and have advised them that you may have need of their services.

Very truly yours,

S/ Vern B. Thomas
VERN B. THOMAS,
DISTRICT ATTORNEY

VBT:sh

Cc: Hal Caywood
Supt. County Schools