

Meeting

Date of Meeting: April 17-18, 1959

Date of Memo: April 16, 1959

MEMORANDUM No. 4-F

SUBJECT: Study #37(L) - Claims

It has occurred to me that it might be helpful to our discussion of A.B. 405 to summarize various objections which have been made to the bill and suggest the form which amendments to meet these objections might take if the Commission were to accede to some or all of the views which have been expressed. Accordingly I submit the following:

Section 701

The following suggestions concerning this Section have been made:

- (a) That for purposes of clarity the word "chartered" should precede both "cities and counties" and "cities" (Assembly Judiciary Committee).
- (b) That it is unnecessary and undesirable to exempt chartered counties from the new statute inasmuch as these entities are not like chartered cities but like general law cities. (League of Cities, Van Alstyne, cf. C.A.J.).
- (c) That Section 701 is too broad insofar as it excepts claims other than contract claims against chartered entities from the new claims statute, it having been held that tort claims are a matter of state-wide concern (C.A.J.).

If the Commission were to agree with these suggestions Section 701 might be revised as follows:

701. Until the adoption by the people of an amendment to the Constitution of the State of California confirming the authority of the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against chartered counties, chartered cities and counties and chartered cities and against officers, agents and employees thereof, this chapter shall not apply to causes of action based on contract against a chartered county city and county or chartered city while it has a an applicable claims procedure prescribed by charter or pursuant thereto.

NOTE: If this were done related changes in A.C.A. 16 would have to be considered.

#### Section 703

The C.A.J. has suggested exempting certain claims provided for in the Labor Code from the general claims statute. This could be done by adding a new subsection (k) to Section 703 to read as follows:

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 of Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing at Section 1720).

NOTE: Section 1727 of the Labor Code requires a public body which has awarded a public works contract to withhold and retain all amounts which have been forfeited pursuant to any stipulation in the contract. Sections 1730 and 1731 require the awarding body to transfer all such penalties and forfeitures to the State Treasurer to become a part of

the General Fund unless a suit to recover the same is brought against the awarding body by the contractor and the awarding body is formally notified thereof within 90 days after completion of the contract and the formal acceptance of the job. Section 1733 authorizes the contractor or his assignee to sue "without permission from the State or any other authority." Section 1732 provides that the "time for action" is "limited to the 90-day period and such suit on the contract for alleged breach thereof in not making the payment is the exclusive remedy of the contractor or his assignees with reference to such penalties or forfeitures."

#### Section 704

The Northern Section has expressed considerable concern about the new claim statute's becoming effective 90 days after the 1959 session. The members doubt that this affords sufficient opportunity to educate those who will be affected by the new statute and are particularly concerned lest there be hardship in those cases where the new statute is stricter than existing law. In this connection three suggestions have been made, the last of which is immediately relevant here:

- (a) That the statute be given a delayed effective date -- e.g., January 1, 1960, January 1, 1961 or 90 days after the 1961 session. (The last has also been suggested by the League of Cities.)
- (b) That the statute not become operative unless and until the constitutional amendment is adopted. (This relates largely to their concern about the scope of Section 701.)

(c) That Section 704 remain as it is but the repealer bills (A.B. 407-410) not be enacted until 1961 (or perhaps later). The effect of this would be to permit people to proceed either under the new statute or under existing statutes for a considerable period of time.

NOTE: I believe that the C.A.J.'s concern on this matter would be considerably alleviated if a longer period for filing contract claims were adopted.

#### Section 705

The C.A.J. has expressed some concern that this Section might be interpreted to authorize an entity to adopt a local claims filing procedure by ordinance and make it a part of every contract in legal contemplation (even though nothing were said in the contract) by providing in the ordinance that its provisions should be deemed to be incorporated in every contract executed by the agency. As I understand, the members believe that the danger of this would be reduced by substituting the word "include" for "authorize the inclusion" in the first sentence of Section 705.

NOTE: The question has been raised with me by representatives of public entities whether Section 705 would permit an entity to adopt a claims filing procedure by ordinance or resolution and incorporate it by reference in contracts made by the entity. This would, of course, be advantageous to public entities in that it would make it unnecessary to incorporate in all form and other contracts fairly voluminous "boiler plate" provisions relating to the filing and processing of claims. I have said that I believe that this could be done under Section 705 so

long as each contract contained language stating that claims thereunder are governed by a specifically identified ordinance or resolution.

At the State Bar discussion yesterday this question was raised (I did not have occasion to state my interpretation) and some present took the position that this would be undesirable. The Commission should probably address itself to the question, decide what the answer should be, and revise Section 705 accordingly. If the matter is to be clarified a sentence on the order of one or the other of the following could be added after the first sentence of Section 705:

Such provisions shall be set forth at length in the written agreement and may not be incorporated therein by reference.

OR

The written agreement may incorporate by reference claim provisions set forth in a specifically identified ordinance or resolution theretofore adopted by the governing body.

#### Section 710

The Northern Section of the C.A.J. has raised strenuous objection to the claims statute insofar as it prohibits suit for 80 days after a claim has been presented. The Section's view is that this waiting period is undesirable because it delays the date of settlement or judgment and might, in particular instances, be seriously prejudicial in imposing a delay in getting discovery procedures under way. It was also suggested that it is unnecessary because (1) in those instances in which there is

a possibility of settlement the claimant would probably wait until action had been taken on his claim before filing suit, (2) it does not impose any substantial hardship on the entity to have a complaint filed, and (3) in a very large number of cases claims are not really processed by public entities anyway but simply ignored or rejected out of hand. (Interestingly enough, the City and County of San Francisco concurs in this view.)

If this view were accepted, it would require a substantial number of changes in the proposed statute, the first of which would be to delete from Section 710 the last phrase reading "and has been rejected in whole or in part." Other appropriate amendments will be suggested at a later point.

#### Section 711

There have been various suggestions here:

(a) The County Auditors Association takes the position, apparently with some vigor, that subsection (b) should require the residence of the claimant rather than that of the person presenting the claim to be given. No particular reason for this suggestion is given.

(b) The C.A.J. suggests that subsection (b) read as follows:

"The address to which the person presenting the claims desires notices to be sent." [The C.A.J. believes that "residence or business address" is unduly restrictive.]

(c) A substantial number of people representing public entities have objected to Section 711 because it does not require a claim to be verified. This objection has been made with particular vigor by the City

and County of San Francisco (See Memorandum 4-D). If it is desired to accede to this objection the language at lines 35 and 36 of page 3 of A.B. 405 could be revised to read as follows:

The claim shall be signed by the claimant or by some person on his behalf and shall either be verified or bear substantially the following statement:

I certify (or declare) under penalty of perjury that the foregoing is true and correct.  
[Form of statement is taken from Section 2015.5 of the Code of Civil Procedure.]

(d) If the Commission should accede to the view that the claimant should not have to wait to bring suit until his claim has been rejected (actually or as a matter of law) there would appear to be no reason to limit the time within which a claim might be amended to 80 days and the last paragraph of Section 711 should read:

A claim may be amended at any time. The amendment shall be considered a part of the original claim for all purposes.

#### Section 712

The C.A.J. believes that the 10 day stay of governing body action after notice of defects is given is not sufficient. It was agreed that this objection would be obviated if the times provided in Section 712 were 50 and 20 days rather than 60 and 10.

The cities of San Francisco and Los Angeles object to Sections 712 and 713 and would prefer to see them deleted from the statute (see discussion in Memorandum No. 4-D).

Section 713

If either or both of the suggestions made relating to amendment of subsection (b) of Section 711 are accepted a related change will have to be made at lines 14 and 15 of page 4 of the bill.

Section 714

The following suggestions have been made:

(a) That the requirement of "delivering the claim personally" to the clerk, etc., is unsatisfactory because it does not provide for delivery to an assistant or deputy if he has one. (C.A.J.)

(b) That the "post marked" provision is unsatisfactory because the envelope will often not have been saved and in any event it is not in the control of the claimant who must make the proof of the post marked date. (C.A.J.).

(c) That the 100 day filing provision is inadequate insofar as contract claims are concerned. (C.A.J., County Auditors Association, County Counsel of Los Angeles)

(d) That it is undesirable to define date of accrual as is done in the last paragraph and this matter should be left to the courts. (C.A.J.) [If the 80 day waiting period is deleted it would be possible and probably desirable to eliminate Section 721 thus making the ordinary statutes of limitations applicable to claims against local public entities; if this were done the deletion of the last paragraph of Section 714 would be much less objectionable.]



If the Commission desires to accede to these several suggestions it could revise Section 714 as proposed below and adopt either one or the other of the alternative forms proposed below of a new Section 714.1:

714. A claim may be presented to a local public entity (1) by delivering the claim personally to the clerk, secretary or auditor thereof or to his deputy or assistant if he has one not later than the one hundredth day after the cause of action to which the claim relates has accrued within the period of time prescribed by Section 714.1 or (2) by sending mailing the claim to such clerk, secretary or auditor or to the governing body at its principal office by mail post marked not later than such 100th day the last day of such period. A claim shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided herein if it is actually received by the clerk, secretary, auditor or governing body within the time prescribed.

~~For the purpose of computing the time limit prescribed by this section, the date of accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if the claim were being asserted against a defendant other than a local public entity.~~

Alt.  
No. 1

Section 714.1. A claim based on contract shall be presented as provided in Section 714 not later than one year after the accrual of the cause of action to which the claim relates. A claim not based on contract shall be presented as provided in Section 714 not later than the one hundredth day after the accrual of the cause of action to which the claim relates.

For the purpose of computing the time limit prescribed by this section, the date of accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if the claim were being asserted against a defendant other than a local public entity.

NOTE: The last paragraph would have to be changed and could be omitted if the regular statutes of limitations were made applicable to entities.

Alt.  
No. 2

Section 714.1. A claim relating to a cause of action for physical injury to the person or death shall be presented as provided in Section 714 not later than the one hundredth day after the accrual of cause of action. A claim relating to any other cause of action shall be presented as provided in Section 714 not later than one year after the accrual of the cause of action.

[Same second paragraph as above]

Section 715

The C.A.J. has raised a question, not apparently vigorously pressed, as to whether "during all of such time" in subsections (a) and (b) should be changed to read "during a substantial portion of such time."

Section 716

(a) If the Commission should accede to the C.A.J. view that the 80 day waiting period should be eliminated, I do not believe that this section would be necessary. In any event, the phrase "within eighty (80) days" should be deleted.

(b) The County of Los Angeles would like to change line 22 on page 5 of A. B. 405 to read: "Notice of any action rejecting a claim in whole or in part shall be given."

Section 717

(a) This Section would, I should think, be eliminated from the statute if the 80 day waiting period were eliminated.

(b) Assuming that Section 717 is to remain in the statute, the County Counsel of Los Angeles, acting on the advice of the County Auditor, has taken the position that 80 days is not enough time to pass on a claim in the case of some complicated contract claims. He has, therefore, recommended that we substitute for Section 717 provisions based on Sections 29714 and 29714.1 of the Government Code. (These are provisions relating to the presentation of claims against counties which were enacted at the 1958 Extraordinary Session.) The relevant portions of these two sections are set

forth in Memorandum 4-C. The following are drafts of equivalent sections, so modified as to conform to the proposals made above (see Section 714) with respect to different time limits for presenting different claims:

717. If the governing body of the local public entity fails or refuses to act on a claim based on contract within the period of time specified in Section 716 the claimant may, at his option, treat such failure or refusal to act as rejection of the claim on the last day thereof. If the governing body of the local public entity fails or refuses to act on a claim not based on contract within the period specified in Section 716, the claim shall be deemed to have been rejected on the last day thereof.

OR

717. If the governing body of the local public entity fails or refuses to act on a claim relating to a cause of action for physical injury to the person or death within the time specified in Section 716, the claim shall be deemed to have been rejected on the last day thereof. If the governing body of the local public entity fails or refuses to act on a claim relating to any other cause of action within the period specified in Section 716 the claimant may, at his option, treat the failure or refusal to act as rejection of the claim on the last day thereof.

Section 718

The C.A.J. suggests that the words "against such entity" be inserted after "maintained" on lines 45 and 46 of page 5 of A. B. 405.

### Sections 719 and 720

The C.A.J. has raised no objection to either of these sections. On the other hand, vehement opposition has been expressed to both, and particularly to Section 720, by a number of people representing public entities. It seems clear to me at this point that Section 720 will eventually have to be deleted from the bill and that this probably applies also to Section 719. If these sections eventually are eliminated it would be desirable, I think, for the Commission's legislative history of A.B. 405 to show that this was done on the theory that it would be better to leave these matters to the courts. In the absence of such a statement the inference certainly could be drawn that their deletion from the bill reflected a deliberate decision by the Commission or the Legislature or both to reject the principles they express. If the Commission should delete these sections from the bill at the April meeting it could, of course, confidently and accurately state the reason for that action in the legislative history which it will prepare. If Sections 719 and 720 were deleted at a later time, however, while the bill is under consideration by a committee or subcommittee in the Legislature it may not be at all clear (and thus not possible to say in our legislative history) whether this was done because it was thought desirable to leave these matters to the courts or because the principles expressed in Sections 719 and 720 were rejected on the merits.

### Section 721

The City and County of San Francisco is more strongly opposed to this provision than any other in A.B. 405. Its argument that a

public entity is put at a disadvantage viz-a-viz a non-entity co-defendant in personal injury cases is not easy to answer.

If the 80 day waiting period is eliminated there would not appear to be any particularly strong reason why the ordinary statutes of limitation should not apply to public entities. If this view were taken, Section 721 could simply be eliminated. Indeed, this could be done even if the 80 day waiting period is retained. In this event, however, it would be necessary or at least desirable to substitute for Section 721 some such provision as the following:

Nothing in this chapter shall affect the accrual of causes of action against local public entities or the time within which suit must be brought on such causes of action.

Such a provision should be considered because the courts have held that claims statutes which require a waiting period before suit may be brought toll the statute of limitations during such period.

Respectfully submitted,

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Executive Secretary