

8/24/60

Memorandum No. 80 (1960)

Subject: Study No. 37(L) - Claims Against Public Officers  
and Employees.

The Recommendation on Presentation of Claims Against Public Officers and Employees herewith is presented to the Commission for final approval prior to printing the Recommendation and Study. The State Bar will not be able to give us a report on this recommendation until after October 1960. A copy of the Recommendation (including the proposed legislation) is attached as Exhibit I. The letter of transmittal which will be a part of the printed report is also attached as a part of Exhibit I.

Possible revisions in the recommendation previously approved by the Commission are indicated by strike-out and underscoring. The Commission may wish to revise the recommendation to incorporate some of these revisions.

The statute has been revised in form in accordance with suggestions received from the office of the Legislative Counsel.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

EXHIBIT I

LETTER OF TRANSMITTAL

The California Law Revision Commission was authorized by Resolution Chapter 35 of the Statutes of 1956 to make a study of the various provisions of law relating to the presentation of claims against public bodies and public employees to determine whether they should be made uniform and otherwise revised. Upon recommendation of the Commission, legislation was enacted in 1959 creating a uniform procedure governing the presentation of claims against local public entities. At that time the Commission reported that it had not had an opportunity to make a comprehensive study of the provisions of law relating to the presentation of claims against public officers and employees. Since then the Commission has made such a study and herewith submits its recommendation and the study prepared by its research consultant, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

RECOMMENDATION OF CALIFORNIA LAW REVISION COMMISSION

relating to

Presentation of Claims Against Public Officers and Employees

Sections 801 and 803 of the Government Code and various municipal charters and ordinances contain provisions which bar suit against a public officer or employee on his personal liability unless a claim for damages is presented within a relatively short time after the claimant's cause of action has accrued. These provisions are referred to in this Recommendation as "personnel claims statutes."

The Law Revision Commission recommends that all personnel claims statutes be repealed for the following reasons:

The effect of  
1. ~~personnel claims statutes, in effect,~~ <sup>is to</sup> ~~limit~~ the substantive liability of public officers and employees by making available to them a technical defense, which other citizens do not have, against otherwise meritorious actions. The Commission believes that these statutes, insofar as they limit substantive liability, are unfair, ineffective and unnecessary. They are unfair because they bar otherwise meritorious actions merely because the plaintiff fails to comply with a technical procedural requirement. They are ineffective because they provide no protection against substantive liability in those cases where a claim is presented within the prescribed time. They are unnecessary because other methods that are fairer and more effective can be utilized to protect public officers and employees against personally having to pay judgments arising out of their personal liability for their negligent acts or omissions in the course and scope of their employment. In his

study the Commission's research consultant refers to two such methods which the Legislature has made available to some but not all public officers and employees: defense of public personnel at public expense and personal liability insurance obtained at public expense for public officers and employees.

2. As the study prepared by the Commission's research consultant demonstrates, the arguments advanced in favor of the personnel claims statutes are not convincing.<sup>1</sup> The recognized justification for a claims statute is that it ~~[is designed to]~~ gives reasonably prompt notice of a potential liability to a defendant whose unique situation requires this preferred treatment. Thus, a claims statute is justified as applied to a public entity which, but for such protection, might frequently find itself sued on stale claims of which it had not theretofore been aware. But the liability of public officers and employees against which the personnel claims procedure affords protection is a personal liability based on the defendant's own negligence. Ordinarily, the injury involved rises directly out of an act or omission of the public officer and employee and he is immediately aware of it. There is no more justification in such case for requiring a plaintiff to present a claim as a condition of bringing suit than there would be for imposing a similar requirement when

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<sup>1</sup> For a more complete discussion of the arguments, see research consultant's study, infra at .

a plaintiff sues any other defendant. Of course, in some instances a public officer or employee may be held liable even though he did not have immediate personal knowledge of the injury. But such cases are likely to be rare and, in any event, the public officer's liability is no greater than that of his counterpart in private employment.

3. Personnel claims statutes create a procedural trap for [unwary] plaintiffs. In addition to the fact that a plaintiff is unlikely to be aware of the existence of personnel claims statutes and may not consult an attorney until it is too late, the circumstances of the particular case sometimes do not disclose that the public officer or employee was acting as such and the plaintiff and his attorney may not discover this fact until the time for presenting the claim has elapsed.

4. As the report of the Commission's research consultant shows, the existing personnel claims statutes are ambiguous, inconsistent and overlapping.<sup>2</sup> Claimants, attorneys and the courts have difficulty in determining which, if any, of the claims presentation provisions applies in a particular case.

5. Only one other state, New York, has enacted a general personnel claims statute and its statute is of limited scope.<sup>3</sup>

The Commission has noted the lack of uniformity in treatment of public officers and employees in this State where personal liability for negligent acts or omissions within the course and scope of their employment is concerned.

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<sup>2</sup> For a detailed discussion of the defects in the personnel claims statutes, see research consultant's study, infra at .

<sup>3</sup> The New York statute is discussed in the research consultant's study, infra at .

In some instances the State<sup>4</sup> or other employing public entity<sup>5</sup> is made legally responsible for judgments rendered against ~~their~~<sup>its</sup> officers or employees ~~[for such acts or omissions]~~. In other instances the public entity is required to insure or self-insure the personal liability of its officers or employees ~~[in such cases]~~<sup>6</sup>, and in still other instances, such insurance or self-insurance is made permissive rather than mandatory.<sup>7</sup> In most instances the public entity is required to provide legal counsel for the defense of the negligent officer or employee at public expense.<sup>8</sup> At the other end of the spectrum, in at least one instance the State or other public entity is given an express right of subrogation against its officer, agent or employee when it has been held liable by reason of ~~the~~<sup>his</sup> negligence ~~[of such officer, agent or employee]~~.<sup>9</sup>

The Commission appreciates that to the extent that these ~~[divergent]~~ statutory provisions impose liability upon a public entity to pay a judgment rendered against its officer or employee or require the public entity to provide ~~legal~~<sup>insurance or</sup> representation for such officer or employee at public expense, the repeal of the personnel claims statutes will negate the protection given the public entity by the General Claims Statute enacted in 1959. The

<sup>4</sup> Cal. Govt. Code § 2002.5.

<sup>5</sup> E.g., Cal. Govt. Code § 61633; Cal. Water Code §§ 22730, 31090, 35755.

<sup>6</sup> E.g., Cal. Education Code §§ 1044, 1045.

<sup>7</sup> E.g., Cal. Govt. Code §§ 1956, 1959; Cal. Water Code §§ 22732, 35757.

<sup>8</sup> E.g., Cal. Govt. Code, §§ 2000, 2001, 2002, 2002.5; Cal. Education Code § 1043.

<sup>9</sup> Cal. Veh. Code § 17002.

Commission believes, however, that the fact that the public entity is thus involved in the suit against its officer or employee is no reason to limit <sup>his</sup> ~~the~~ personal liability ~~[of the officer or employee]~~. It may be in the interest of good employee relations and hence sound public policy to require or authorize a public entity to assume all or part of the burden of such personal liability as its officers and employees may incur in the course of their public employment. But it is quite unfair to transfer this burden to the injured plaintiff. The plaintiff should have an adequate right of redress against every individual who harms him, without regard to whether that individual is a public officer or employee or any other citizen. The fact that ~~a~~ <sup>the Legislature or the</sup> public entity chooses <sup>have the entity</sup> ~~[for its own reasons or is required by statute]~~ to assume all or a part of this liability in some instances does not justify legislation which, in effect, limits the liability in order to reduce the public expense involved. The cost of the public policy should be borne by the public, not by the individual who has been injured.

The Commission has not undertaken to recommend revisions of the law designed to secure uniformity of treatment of public officers or employees in this State insofar as protection against personal liability for official acts or omissions is concerned, since it considers that any such recommendations would go beyond the scope of its assignment <sup>which is</sup> ~~[, namely,]~~ to study and recommend needed revisions of the law relating to the presentation of claims against public officers and employees.

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The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend Section 313 of the Code of Civil Procedure, to repeal Sections 800, 801, 802 and 803 of the Government Code and to add Sections 800 and 801 to Chapter 3 of Division 3.5 of Title 1 of the Government Code, relating to claims against public officers, agents and employees.

The people of the State of California do enact as follows:

SECTION 1. Section 800 of the Government Code is repealed.

~~800.--As-used-in-this-chapter:~~

~~(a)--"Person"-includes-any-pupil-attending-the-public-schools-of any-school-or-high-school-district.~~

~~(b)--In-addition-to-the-definition-of-public-property-as-contained in-Section-1951,"public-property"-includes-any-vehicle,-implement-or machinery-whether-owned-by-the-State,-a-school-district,-county,-or municipality,-or-operated-by-or-under-the-direction,-authority-or-at the-request-of-any-public-officer.~~

~~(c)--"Officer"-or-"officers"-includes-any-deputy,-assistant,-agent or-employee-of-the-State,-a-school-district,-county-or-municipality acting-within-the-scope-of-his-office,-agency-or-employment.~~

SEC. 2. Section 801 of the Government Code is repealed.

~~801.--Whenever-it-is-claimed-that-any-person-has-been-injured or-any-property-damaged-as-a-result-of-the-negligence-or-carelessness of-any-public-officer-or-employee-occurring-during-the-course-of-his service-or-employment-or-as-a-result-of-the-dangerous-or-defective condition-of-any-public-property,-alleged-to-be-due-to-the-negligence~~



~~or carelessness of any officer or employee, within 90 days after the accident has occurred a verified claim for damages shall be presented in writing and filed with the officer or employee and the clerk or secretary of the legislative body of the school district, county, or municipality, as the case may be. In the case of a state officer the claim shall be filed with the officer and the Governor.~~

SEC. 3. Section 802 of the Government Code is repealed.

~~802. The claim shall specify the name and address of the claimant, the date and place of the accident and the extent of the injuries or damages received.~~

SEC. 4. Section 803 of the Government Code is repealed.

~~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 therefor against such governmental entity.~~

SEC. 5. Section 800 is added to Chapter 3 of Division 3.5 of Title 1 of the Government Code, to read:

800. A claim need not be presented as a prerequisite to the commencement of an action against a public officer, agent or employee to enforce his personal liability.

SEC. 6. Section 801 is added to Chapter 3 of Division 3.5 of Title 1 of the Government Code, to read:

801. Any provision of a charter, ordinance or regulation heretofore or hereafter adopted by a local public entity, as defined in Section 700 of this code, which requires the presentation of a claim as a prerequisite to the commencement of an action against a public officer, agent or employee to enforce his personal liability is invalid.

SEC. 7. Section 313 of the Code of Civil Procedure is amended to read:

313. The general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the State, ~~and against the officers and employees thereof,~~ is prescribed by Division 3.5 (commencing with Section 600) of Title 1 of the Government Code.

SEC. 8. This act applies only to causes of action heretofore or hereafter accruing that are not barred on the effective date of this act. Nothing in this act shall be deemed to allow an action on, or to permit reinstatement of, a cause of action that is barred on the effective date of this act.