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Versailles Suite
Beverly Hilton Hotel
Beverly Hills
California

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Beverly Hills (State Bar Convention) September 21-22, 1962

1. Minutes of August 1962 Meeting (sent September 6, 1962)

2. Study No. 52(L) - Sovereign Immunity

(1) Organization of Government Code Division 3.6

Memorandum No. 57(1962) (enclosed)

(2) Comprehensive Liability Statute

Bring Tentative Recommendation relating to Tort Liability of Public Entities and Public Officers and Employees (sent September 6, 1962) to Meeting.

a. Memorandum No. 46(1962) (Liability for Dangerous Conditions of Public Property) (sent August 9, 1962)

Research Study - Part X (Park and Recreation Torts) (sent June 1, 1962) and other portions of research study referred to in Memorandum No. 46(1962)

Tentative Recommendation relating to Dangerous Conditions of Public Property (attached to Memorandum No. 46(1962))

First Supplement to Memorandum No. 46(1962) (sent August 12, 1962)

Second Supplement to Memorandum No. 46(1962) (sent August 11, 1962)

Third Supplement to Memorandum No. 46(1962) (enclosed)

b. Memorandum No. 55(1962) (Mob and Riot Damages) (enclosed)

c. Memorandum No. 56(1962) (Medical, Hospital and Public Health Activities (enclosed)

d. Memorandum No. 50(1962) (Indemnification Agreements) (enclosed)

(3) Counsel Fees in Actions Against Public Entities and Public Officers and Employees.

First Supplement to Memorandum No. 53(1962) (sent September 6, 1962)

Memorandum No. 53(1962) (tentative recommendation) (sent August 11, 1962)

(4) Payment of Tort Judgments by Local Public Entities

Memorandum No. 51(1962) (enclosed)

(5) General Statute Relating to Claims and Actions Against Public Entities and Public Officers and Employees.

a. Memorandum No. 38(1962) (Payment of Costs and Interest in Actions Against Public Entities and Public Officers and Employees) (sent July 14, 1962)

First Supplement to Memorandum No. 38(1962) (sent July 16, 1962)

b. Memorandum No. 44(1962) (Compromise of Claims and Actions Against the State) (sent July 16, 1962)

c. Memorandum No. 52(1962) (Venue in Actions Against the State) (sent August 9, 1962)

(6) Consideration of Letter of Transmittal and pages 1-7 of Tentative Recommendation relating to Tort Liability of Public Entities and Public Officers and Employees (sent September 6, 1962)

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MINUTES OF MEETING

of

SEPTEMBER 21 and 22, 1962

Los Angeles

A regular meeting of the Law Revision Commission was held in Los Angeles on September 21 and 22, 1962.

Present: John R. McDonough, Jr., Vice Chairman
Honorable James A. Cobey
Honorable Clark L. Bradley
James R. Edwards
Richard H. Keatinge
Sho Sato
Thomas E. Stanton, Jr.
Angus C. Morrison

Absent: Herman F. Selvin, Chairman
Joseph A. Ball

Messrs. John H. DeMoully, Joseph B. Harvey and Jon D. Smock of the Commission's staff, and Mr. Benton A. Sifford, special research consultant to the Senate Fact Finding Committee on Judiciary, were also present.

The following persons were also present:

Robert Baida, Beverly Hills City Attorney
Robert F. Carlson, Department of Public Works
Joan Gross, Office of the Attorney General
Robert Lynch, Los Angeles County Counsel
Mark C. Nosler, Department of Finance
Robert Reed, Department of Public Works

Minutes of the August Meeting. The last two lines at the bottom of page 27 were corrected to read:

"It was noted that in one case the Industrial Accident Commission upheld the action of a referee in awarding workmen's compensation to a person. . . ."

The minutes were approved as corrected.

ADMINISTRATIVE MATTERS

Financial matters. The Commission discussed the financial condition of the Law Revision Commission. The Executive Secretary was directed to advise the budget division that it would be impossible for the Commission to comply with the legislative request that a comprehensive and continuing study be made in this field unless sufficient funds are provided to make such a study. The Commission agreed that it is essential that additional research studies be made in this field and that these studies should be undertaken immediately in order that they will be available to the Commission as soon as possible.

The Commission directed the Executive Secretary to send materials considered by the Commission to all persons who can assist the Commission in its work. The Executive Secretary had indicated that lack of funds would necessitate a drastic reduction in the number of persons who receive these materials.

The Commission also directed the Executive Secretary to prepare a contract with its research consultant, Mr. Benton A. Sifford, to provide for per diem compensation for his attendance at the October, November and December meetings of the Commission.

The Executive Secretary was directed to take necessary action to obtain sufficient funds so that the Commission is not hampered by lack of funds in making its study of sovereign immunity. This may necessitate obtaining additional funds for the 1962-63 fiscal year as well as for the 1963-64 fiscal year.

STUDY NO. 52(L) - SOVEREIGN IMMUNITY

The Commission considered Memoranda Nos X38(1962)(costs and interest), X46(1962)(dangerous conditions), X50(1962)(indemnity contracts), X52(1962)(venue), X53(1962)(attorney's fees), X55(1962)(mobs and riots), X56(1962)(medical and hospital) and X57(1962)(organization), and supplements thereto.

Report on Hearing by Senate Fact Finding Committee on Judiciary.

The Executive Secretary reported on the hearings held by the Senate Fact Finding Committee on Judiciary on September 17, 18 and 19, 1962 in Los Angeles. He reported that at least one Senator expressed hostility to the idea of changing the law relating to sovereign immunity from its pre-Muskopf state. However, most of the committee seemed receptive to the Commission's tentative recommendations. Several of the representatives of the public entities that appeared approved the basic principles underlying the Commission's tentative recommendation, although there was some objection to various particulars.

Several local entity representatives expressed concern over the amount of unfounded litigation that is conducted against public entities. One county counsel urged the requirement of a bond to guarantee attorney's fees in case the litigation is unsuccessful, such a bond to be posted only on demand of the defendant, and the defendant being required to pay plaintiff's attorney's fee in case the plaintiff recovers judgment.

The League of California Cities representative presented the views of a League committee upon the Commission's proposals. The League itself has not acted. The League committee expressed particular objection to the Commission's recommendation relating to dangerous conditions. It urged that there be no

liability for such conditions in the absence of actual notice of the condition on the part of the public entity. It urged several other modifications of existing law that would also substantially curtail the existing liability to which cities are now subject. The League stated that it intends to present a liability statute to the Legislature in January.

The Department of Finance also objected to parts of the recommendation relating to dangerous conditions of public property. It indicated that the Court of Claims of New York pays out about $17,000,000 in one year; however, it was brought to the Committee's attention that this figure includes condemnation awards as well as tort claims; hence, the figure gives no idea of what the annual cost of tort liability is to the State of New York.

Several county counsels pointed out the problem small entities will have in paying tort liabilities, and one suggested that some means be provided for the State to assume the excessive liabilities.

Most of the representatives of public entities urged the Committee to recommend a statute expressing a "closed-end" approach to tort liability, i.e., a statute that would provide that immunity exists except to the extent that liability is imposed by the statute itself. This approach would leave in legislative control the ultimate limits of liability instead of leaving these limits to the judiciary to decide. One Senator indicated some interest in an "open-end" approach to liability--an approach that would leave the limits of liability to the courts to work out on a case by case basis.

Mr. Reginald Watt, the attorney for the plaintiff in the Muskopf case, questioned the constitutionality of limiting liability by statute.

Following the description of the Senate Committee hearing, the suggestion was made that the sovereign immunity bills be introduced into both houses of the Legislature and that the month of January might be used for hearings before both the Senate and Assembly. The program might be jeopardized if hearings in the second house had to be held after the bills were passed by the other.

Organization of Governmental Tort Liability Legislation

The Commission first considered Memorandum No. 57(1962), relating to the organization of the legislation to be proposed by the Commission relating to governmental tort liability.

The memorandum presented a proposed Division 3.6 to be added to Title 1 of the Government Code. Parts 3 and 4 of the proposed division would supersede the existing Division 3.5. The bill enacting Parts 3 and 4 would repeal Division 3.5. If that bill, which relates to claims, fails of passage, there would be both a Division 3.5 and a Division 3.6. The total organization of the Division 3.6 is not dependent, though, on the passage of the claims bill.

The legislation relating to vehicular torts will remain in the Vehicle Code so that other existing provisions such as those relating to the authority of emergency vehicles will remain applicable.

The staff was directed to revise the general liability recommendation to place explanatory comments under each proposed section.

The Commission approved the outline submitted, recognizing that there may be variations from the approved outline as the legislation is actually prepared.

Dangerous Conditions of Public Property

The Commission considered Memorandum No. 46(1962) and the supplements thereto. The portion of the general liability statute considered was pages 71-74.

The Executive Secretary reported that no public entity spokesman supported the existing law on dangerous conditions at the Senate Committee hearing. Some spokesmen indicated that they would like to see the existing law retained, but modified to require actual notice, to eliminate liability for conditions that are dangerous for foreseeable uses but not for intended uses of the public property, and to require the plaintiff to show freedom from contributory negligence.

The commission then turned to the portion of Professor Van Alstyne's study dealing with dangerous conditions of public recreational property.

The Commission considered whether there should be a general immunity from liability for conditions of hiking, riding, fishing, hunting or other interior access roads or trails. A motion to provide such immunity failed to carry.

A motion to require precautionary measures for known, hidden dangerous conditions of such property but to require no inspection also failed to carry.

A motion to provide special rules of inspection or liability with regard to natural conditions of public property in undeveloped areas also failed to carry.

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A motion to adopt an objective rather than a subjective standard for assumption of risk for persons using public recreational property for recreational purposes failed to carry.

The Commission did not think it necessary or desirable to write special rules relating to recreational property. The problems raised by Professor Van Alstyne will be considered again as the Commission considers the dangerous conditions statute.

The Commission then turned to the dangerous conditions statute.

Section 830. The beginning phrase, "Except as otherwise provided by statute", was deleted. The staff was directed to refer specifically to other sections which will not be superseded or controlled by the dangerous conditions statute.

The word "dangerous" was deleted from the third line of Section 830.

The State Bar Committee was concerned over the availability of equitable relief under the proposed dangerous conditions statute. This problem, though, is one of importance to the entire liability statute. The staff was directed to determine whether any revision is necessary to indicate that the statute does not preclude such forms of relief other than damages that may be appropriate. The staff was also directed to determine whether any other adjustments in the statute are necessary to indicate that the standards set forth are those that may be used in actions for specific relief instead of damages.

Section 830.2. The Commission rejected a proposal to insert the trivial defect rule--now stated in Section 830.4--in Section 830.2. The Commission felt that the statement of the rule in Section 830.4 would encourage judges to direct verdicts in appropriate cases, while the inclusion of the rule in the definition of "dangerous condition" would not do so.

A proposal to add "or defective" after "dangerous" was rejected because the proposed words would add no meaning to the statute and would create a possible ambiguity.

A proposal to add "which breaches a legal duty of care" after "public property" in the first line of subdivision (a) was rejected. It is the purpose of the statute to define the "legal duty of care" and this purpose would be frustrated if "dangerous condition" were defined in terms of an undefined duty. The proposed addition was suggested because the Department of Public Works did not feel that it should be compelled to build highways to accomodate persons who drive on the highways negligently. That is, if a bridge is built for 10 tons and is properly posted, the bridge should not be considered dangerous merely because it is foreseeable that some persons may drive on the bridge with heavier loads. To meet this problem, the Commission added "with due care" after the word "used" in the third line of subdivision (a). The staff was directed to make appropriate adjustments in other portions of the statute. The addition of these words would reach the ordinary situation where the property is being used in violation of the law, for violation of the

law is usually considered negligence per se. Thus, property is dangerous under the definition if it creates a substantial hazard to those who foresseably would use the property while observing the law or otherwise exercising due care. Where those foreseeably using the property would not be guilty of negligence in using the property improperly--as in the case of children using property commonly characterized as "attractive nuisance"--the property would still be considered dangerous under the definition.

A proposal to substitute "unreasonable risk" for "substantial risk" in the definition of "dangerous condition" was rejected. The Commission did not think it desirable to frame the definition of "dangerous condition" in terms of whether the defendant acted unreasonably in regard to the risk. The definition should be kept free of concepts other than those that go to the actual dangerousness of the condition, and questions of the reasonableness or unreasonableness of the risk should be left for resolution in the parts of the statute that impose liability for certain dangerous conditions. To include "unreasonable" in the definition would tend to place the required standard of conduct of the defendant in the definition and would confuse the meaning of "dangerous condition."

The Commission requested the Department of Public Works and other representatives of public entities to submit lists of situations where there should be immunity from liability under any of the standards of the dangerous conditions statute, such as, for example the placement of stop signs, the

design of highways and bridges, etc. These will be considered by the Commission for inclusion within the statute.

The suggestion of the State Bar Committee, that a definition of "public property" be added to Section 830.2, was approved. Under the definition that was approved, "public property" includes real and personal property but does not include foodstuffs, beverages, drugs or medicines. This excludes from the dangerous conditions statute any liability arising from dangerous conditions of these materials. Liability, if any, for dangerous conditions of foodstuffs, etc. must be grounded upon another statute.

The definition of "public property" is also to exclude private encroachments, utility easements and other private property located on public property that is not within the jurisdiction or control of the public entity. This is to make clear that public entities do not have to inspect utility easements lying in public rights of way. Responsibility for such inspection will remain with the owner of the easement. If a condition of such property, though, makes the public property dangerous, the public entity will have an obligation to act reasonably in regard to the dangerous condition of its own property in order to avoid liability.

Section 830.4. The suggestion of the Southern Section of the State Bar Committee that "viewing the evidence most favorably to the plaintiff" be deleted and that "to a person exercising reasonable care" be added after "condition" in the fourth line was not approved. The Commission added "with due care" after "used" in the third line from the bottom of the section

in order to conform it to the change made in Section 830.2(a).

A suggestion to delete "or appellate court" was not approved. This section constitutes a direction to both trial and appellate courts. It merely states the existing law.

A proposal to make a reference to Section 830.4 or the rule it states in front of the jury a ground for mistrial was rejected. The Commission felt it unwise to specify but one item that it is improper to mention in front of the jury. It is better to leave this matter to the general rules on grounds for mistrial.

Section 830.6. A suggestion that this section be deleted and that its provisions be consolidated with Section 830.8 was rejected. Sections 830.6 and 830.8 articulate two bases of liability that now exist under the Public Liability Act of 1923. Liability will exist under Section 830.6 because of the improper performance of some function, while liability will exist under Section 830.8 because of the failure to remedy some condition that was not created by the public entity.

The question arose as to the liability of an entity under Section 830.6 when the condition was created by the careless work of a contractor. This question relates to the entire liability statute, not merely to the dangerous conditions chapter. The staff was asked to report on the extent to which a person may be held liable for acts of an independent contractor and, if necessary, to suggest appropriate amendments to the general liability statute.

A suggestion that "facts showing that" be added after "pleads and proves" was rejected. Instead, the Commission substituted "establishes that" for "pleads and proves all of the following". This substitution avoids any implication that the plaintiff's complaint is sufficient if it restates the terms of the statute and also avoids any implication that the rules of pleading in these cases are any different from the rules of pleading in any other case. Conforming changes are to be made in other portions of the statute.

In subdivision (a), "at the time of the injury" was added at the end of the sentence, thus expressing more fully the intended meaning of the subdivision.

The State Bar Committee's suggestion that Section 830.6 be made subject to the defenses of Section 831.2 was discussed at length. A proposal to include the balancing test stated in Section 831.2 in a definition of negligence to be included in Section 830.6 was rejected. A motion was then made to strike "negligent or wrongful act of an employee of" out of Section 830.6(¢) so that the plaintiff would have to show only that the public property was in a dangerous condition as a result of the action of the entity and that, as a result, he was hurt. Section 831.2 should be modified so that the burden would then shift to the entity to show that under all the circumstances, considering the risks created and the cost of doing things in another manner, it did not act unreasonably when it created the condition. This proposal was made so that the burden of proof on the respective

parties in an 830.6 (created condition) case would be comparable to the burden that is on the respective parties in an 830.8 (notice and failure to repair) case. The motion carried, Commissioners Bradley, Edwards and Stanton voting "No." [Note that this action was reconsidered later and the motion was defeated] Commissioner Sato pointed out that usually negligence is determined by weighing the risk of conduct against the utility thereof and the cost of doing something else without considering the financial exigencies of the particular defendant. The discussion of the Commission had been equating the community or society standard of reasonable conduct, which usually must be shown by the plaintiff to make out a prima facie case, with the practicability and cost to the particular public entity defendant. Although it is not improper to permit the public entity defendant to show considerations pertinent only to itself in defense, the plaintiff should be expected to show at least that the defendant had violated some community or society standard of conduct in establishing a prima facie case. Commissioner Sato suggested that both Sections 830.6 and 830.8 should be modified to require a showing that the entity defendant failed to meet some objective standard of conduct before it is put to the burden of justifying its conduct on the ground its own peculiar problems prevented it from meeting the standard of conduct that would ordinarily be expected.

The Commission then reconsidered its action deleting "negligent or wrongful act of an employee of" from Section 830.6(c). The motion to delete these words from 830.6(c) and to modify 831.2 was defeated.

In the second line of subdivision (c) of Section 830.6, "or omission" was added after "act" and "within" was substituted for "acting in". A motion to delete "of an employee" from the same subdivision was defeated. Subdivision (c) was then recast to read:

(c) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition.

The words "and the public entity did not take adequate measures to protect against that risk" were deleted from subdivision (d). The remainder of (d) was revised to read:

(d) The dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred.

A proposal to require the plaintiff to establish that the property was being used carefully at the time of the injury was rejected.

In the preliminary language of Section 830.6, a cross reference to 831.2 is to be added so that the entity may show justification for its conduct under the standards described in Section 831.2.

The Commission then considered the suggestion of the State Bar Committee that a discretionary immunity be added to Section 830.6. It also considered certain specific immunities suggested by the Department of Public Works as follows: No liability for failure to provide regulatory traffic devices such as traffic signals, stop or yield signs, traffic strips and speed

restriction signs. No liability for highway design standards such as capacity, width, horizontal or vertical curvature, grade and similar conditions apparent to a highway user under normal conditions. No liability for weather conditions such as fog, wind, flood, rain, ice of snow conditions.

The Department explained that they should not be required to put up signs, warnings, etc. about conditions that are obvious. A driver should be as able to see the fog as he is a sign saying "Fog."

During the discussion, it developed that the Commission has never decided whether or not the general discretionary immunity should apply to dangerous conditions of public property; although the statute was drafted upon the assumption that the general immunity was not applicable.

The Commission deferred a decision on whether there should be a general discretionary immunity or a series of specific immunities such as those suggested by the Department of Public Works. The staff was directed to request interested public entities to submit suggestions as to specific immunities. The Attorney General's representative, Mrs. Joan Gross, indicated that the Attorney General would submit such a list at the earliest possible date. The staff was also directed to research the nature and extent of the discretionary immunity so far as it pertains to the condition of property under the Federal Tort Claims Act as well as under existing California law.

Consideration of the remainder of the statute was deferred because it was drafted on the theory that the discretionary immunity was not applicable.

Mob and Riot Damage

The Commission considered Memorandum No. 55(1962) relating to tort liability for damages from mobs and riots. It was noted that the State Bar Committee recommended against the enactment of any special statute relating to liability for mob and riot damage. The Committee expressed concern over the probability of substantial litigation, particularly if liability were extended to include personal injury.

It was noted also that the imposition of liability for mob and riot damage would create a substantial exception to the general rule approved by the Commission regarding law enforcement activities -- i.e., that there should be no liability for failure to enforce the law. Mr. Sifford reported that standard insurance policies carried by retail merchants, as well as homeowner's policies, provide coverage for glass breakage as well as other property damage caused by mobs and riots, thus permitting property owners to spread the loss due to property damage from mobs and riots.

Upon motion by Commissioner Sato, seconded by Commissioner Edwards, the Commission approved the deletion of proposed Chapter 4 of the comprehensive liability statute and approved the repeal of the existing law relating to liability for mob and riot damage. Commissioners Keatinge and Stanton voted against this motion. The effect of this action is to provide no liability for mob and riot damage, consistent with the recommended general rule of immunity for failure to enforce the law.

Medical, Hospital and Public Health Activities

The Commission considered Memorandum No. 56(1962) relating to medical, hospital and public health activities.

The Commission approved the suggestion that proposed Section 855(a) should be revised to conform with proposed Section 815.6 so that liability for failure to comply with extablished minimum standards for equipment, facilities and personnel would be based upon a reasonable diligence standard.

In accord with the suggestion made by the Department of Public Health, the Commission approved the addition of "or the State Department of Mental Hygiene" immediately following every reference in the statute to the Department of Public Health so that the appropriate regulatory agency governing the conduct of mental institutions would be included in the statute.

Proposed Section 855.2 was revised to conform with the language used in proposed Section 840.4, which deals with the identical problem of interference with legal rights. Accordingly, this section was revised to substitute "intentional and unjustifiable interference with any right of" in place of "negligent or wrongful interference with any attempt by" an inmate seeking judicial review of the legality of confinement.

The Commission approved the insertion of the word "any" preceding the references to regulations in proposed Section 855 to clarify the distinction between state statutes and regulations promulgated by state agencies.

The Commission approved the suggestion made by the Department of Mental

Hygiene to broaden the scope of immunity granted in Section 855.6(a) to include (in addition to "mentally ill" persons) habit forming drug addicts, narcotic drug addicts, inebriates, sexual psychopaths and mentally deficient persons. Providing immunity for diagnosis and treatment of these persons picks up the full range of activities of state mental institutions.

To make it entirely clear that neither the public entity nor the public employee is to be liable for carefully executing prescribed treatment, it was agreed to add at the end of proposed Section 855.6(b) substantially the following language: "but neither the public entity nor the public employee is liable for executing with due care the prescribed treatment."

Proposed Section 855.8(a) was revised to make reference to the public entity as well as the public employee since discretionary authority may be vested in either. The form of the section was revised to conform with the language used in proposed Section 815.4. As revised, the proposed section reads substantially as follows:

> (a) Neither a public entity nor a public employee is liable for an injury resulting from the performance or failure to perform any act relating to the prevention or control of disease if the decision whether the act was or was not to be performed was the result of the exercise of discretion vested in the public entity or the public employee, whether or not such discretion be abused.

Because the problem regarding the liability of a principal for the tortious acts of independent contractors is a general one that pervades the entire statutory scheme, the Commission deferred consideration of the agency problem as it relates to medical and hospital activities pending a report by the staff.

It was noted that the statute was to be revised to make explicit in the statute that nothing contained therein grants nor is it intended to grant authority to regulatory agencies to promulgate regulations which they would not have the authority to promulgate under their enabling statutes.

Indemnity and Save Harmless Agreements

The Commission considered Memorandum No. 50(1962) relating to indemnity and save harmless agreements. It was noted that several public agencies objected to the proposed statute because it may be unduly restrictive of existing authority, which was believed to be entirely adequate. On the other hand, public contractors expressed the view that the proposed statute was too broad in that it would permit a public entity to shift liability for its own negligence to another person, thus resulting in increased costs of public projects--particularly because of the improbability of obtaining insurance protection against this type of liability. With respect to the objections made by public contractors, it was noted that the existing law permits the same shifting of liability to which objection was made.

The Commission agreed not to include this subject in its statutory recommendations relating to tort liability. It was agreed, however, that the subject should be mentioned in the Commission's recommendations by noting that the use of indemnity agreements is one means of reducing liability by shifting the loss to another party.

Counsel Fees

The Commission considered Memorandum No. 53(1962) relating to the limitation of counsel fees in tort actions against public entities. Upon

motion by Commissioner Sato, seconded by Commissioner Edwards, the Commission agreed to make no recommendation on this subject to the 1963 Legislature, but to defer consideration of this problem until the Commission considers its 1965 legislative program, at which time a decision on this subject should be made on the merits. Commissioners McDonough, Bradley, Edwards, Sato and Stanton voted for the motion. Commissioner Keatinge voted against the motion. Commissioners Selvin, Cobey and Ball were absent.

Venue in Actions Against the State.

The Commission considered Memorandum No. 52(1962) relating to venue in tort actions against the State. The Commission approved the principle of dealing with the venue problem in its recommendations to the 1963 Legislature. It was generally agreed that tort actions against the State should be commenced and tried in the county where the injury occurred.

Payment of Costs and Interest

The Commission considered Memorandum No. 38(1962) and the First Supplement thereto. It was agreed that public entities should be liable for costs to the same extent as private litigants. Similarly, it was agreed that public entities should be liable for interest at the legal rate on the same basis as private litigants. Generally, this will be from the date judgment was rendered. The staff was requested to report to the Commission as to the present status of law regarding those cases in which a private litigant is entitled to interest from an earlier date.

It was noted that in approving the policy of requiring a minimum $100 undertaking at the request of the public entity, with a minimum recovery of $50

for costs in cases where the plaintiff loses, the Commission intended that such amounts be posted and collected from each plaintiff in any tort action. It was noted that the expense of posting a bond is an allowable cost. [Code of Civil Procedure Section 1035.]

The staff was requested to research the question whether a public entity may be sued in a small claims court and to present a recommendation for consideration by the Commission as to whether public entities should be subject to suit in small claims courts. Also, the staff was directed to revise the statutory language to clear up the procedural problem of a nonparty (the public entity) having the ability to request an undertaking in cases where the public entity furnishes the defense for an employee sued alone. Where the statute refers to suits against the employee alone, the phrase "if a public entity furnishes the defense" is to be substituted for the present language to make clear that the undertaking may be required where the entity employs counsel to defend the employee.