Place of Meeting

State Bar Building
601 McAllister Street
San Francisco

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco October 18, 19, 20, 1962

Thursday evening, October 18 (7:00 p.m.)

1. Minutes of September 1962 Meeting (sent 10/1/62)

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

Revised Outline of Division 3.6

Memorandum No. 74(1962)(sent 10/11/62)
This memorandum will not be discussed as a separate agenda item, but we will consider this outline in connection with various tentative recommendations--primarily in connection with Memorandum No. 69(1962) relating to claims.

Approval of Recommendations for Printing

Memorandum No. 58(1962)(Insurance)(sent 10/11/62)

Memorandum No. 60(1962)(Defense of Officers and Employees)(sent 10/11/62)

Memorandum No. 61(1962)(Workmen's Compensation)(sent 10/11/62)

First Supplement to Memorandum No. 61(1962)(sent 10/11/62)

Memorandum No. 62(1962)(Vehicle Code amendments)(sent 10/11/62)

First Supplement to Memorandum No. 62(1962)(enclosed)

3. 1963 Annual Report

Memorandum No. 70(1962)(sent 10/11/62)

Friday, October 19 (9:00 a.m.)

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

Comprehensive Liability Statute

Bring to meeting: Tentative Recommendation relating to Tort Liability of Public Entities and Public Employees, as revised.

Memorandum No. 63(1962)(Dangerous Conditions of Public Property) (enclosed)

Memorandum No. 46(1962)(Dangerous Conditions of Public Property) (sent 8/9/62)

Memorandum No. 64(1962)(General Provisions relating to Liability) (enclosed)

Memorandum No. 65(1962)(Tort Liability Under Agreements Between Public Entities)(enclosed)

Memorandum No. 66(1962)(Fire Protection)(enclosed)

Memorandum No. 67(1962)(Police and Correctional Activities)(enclosed)

Commissioner Keatinge's letter concerning Mob and Riot Damage (sent October 11, 1962)

Saturday, October 20 (9:00 a.m.) (Meeting will be held in hearing room of State Bar Building)

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

Claims, Actions and Judgments Against Public Entities and Public Employees

Bring to meeting: Tentative Recommendation relating to Claims, Actions and Judgments Against Public Entities and Public Employees (enclosed)

Pocket Part to Volume 1 of Government Code (take out of your set of West's Codes)

Memorandum No. 69(1962)(Claims, Actions and Judgments)(enclosed)

Memorandum No. 51(1962)(Payment of Tort Judgments)(sent 9/11/62)

Memorandum No. 73(1962)(Funding Tort Judgments with Bonds)(enclosed)

2. Proposed revisions in budget for 1962-63 Fiscal Year and in budget for 1963-64 Fiscal Year

Memorandum No. 71(1962)(enclosed)

meeting

MINUTES OF MEETING

of

OCTOBER 18, 19, and 20, 1962

San Francisco

A regular meeting of the Law Revision Commission was held in San Francisco October 18, 19 and 20, 1962.

Present: Herman F. Selvin, Chairman
John R. McDonough, Vice Chairman (18th and 20th )
Hon. James A. Cobey (18th and 19th )
Hon. Clark L. Bradley (20th )
Joseph A. Ball
James R. Edwards
Richard H. Keatinge (18th and 19th )
Sho Sato
Thomas E. Stanton, Jr.
Angus C. Morrison

Messrs. John H. DeMoully, Joseph B. Harvey and Jon D. Smock of the Commission's staff, Professor Arvo Van Alstyne, the Commission's research consultant on the subject of Sovereign Immunity, 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:

Jack Brady, Department of Finance (19th )
Robert F. Carlson, Department of Public Works
Robert Lynch, Los Angeles County Counsel (18 and 19th)
Mark C. Nosler, Department of Finance
Willard Shank, Attorney General
Felix Stumpf, Continuing Education of the Bar (19th)
Bernard J. Ward, Deputy City Attorney, San Francisco, representing League of California Cities, Committee on Sovereign Immunity.

Minutes of September Meeting. On page 2, the fifth line, the words "in this field" were deleted and the words "of governmental tort liability" were substituted. The minutes were approved as corrected.

ADMINISTRATIVE MATTERS

Revisions in Budget for 1962-63 and 1963-64 Fiscal Years. The Commission considered the proposed revisions in the budget for the 1962-63 fiscal year and in the budget for the 1963-64 fiscal year as set out in Memorandum No. 71(1962). The changes proposed in that memorandum were approved by the Commission and the staff was directed to present the proposed revisions to the budget division for approval.

Future meetings. Future meetings of the Law Revision Commission are scheduled as follows:

November meeting: November 15 (evening only), November 16 (including evening if necessary) and November 17. Meeting will be held in State Bar Building, Los Angeles

December meeting: December 15 and 16 - San Francisco (State Bar Building)

1963 ANNUAL REPORT

The Commission considered Memorandum No. 70(1962).

The Commission considered the question whether the enabling statute should be amended so that the Commission could continue its study of a topic previously authorized unless the Legislature directs the Commission to discontinue such study. The Executive Secretary reported that suggestions for changes in statutes previously recommended are often received by the Commission. Technically, the Commission would be required to request authority to make a new study of such topics for they are not listed in the previous annual report once a study is completed. The Commission adopted a motion that a bill be prepared by the staff containing the staff recommendations on this subject so that the Commission may consider whether it should suggest to Senator Cobey that he introduce legislation on this subject. It was suggested that the legislation to be drafted might provide in substance that the Commission may not study a topic not previously authorized for study without prior approval of the Legislature by concurrent resolution. This would eliminate the need to submit a concurrent resolution each session even though no new authority is requested. Of course, the legislation should also provide that the Legislature by concurrent resolution can withdraw authority previously given.

It was suggested that the third paragraph on page 13 (draft of annual report attached to Memorandum No. 70 (1962)) be revised to state in substance: "The Commission will not, however, make a recommendation to the 1963 Legislature relating to evidence in eminent domain proceedings or to moving expenses."

It was suggested that page 7 be revised to describe more fully the work engaged in by the Commission during 1962. A more complete statement of the scope of the sovereign immunity study should be included. Likewise, on page 8, where it is indicated that one recommendation will deal with sovereign immunity, it was suggested that the various recommendations included in this subject be listed.

The Commission considered the division of the annual report which constitutes a report on statutes repealed by implication or held unconstitutional. It was suggested that the discussion of the Blumenthal case include some indication of the pertinent provisions of the code section there involved.

After considerable discussion, a decision on whether the report should state the grounds on which a statute is held unconstitutional was left to the discretion of the staff. [Note: In view of the amount of Commission time consumed every year in reaching an agreement on the grounds for the decisions holding statutes unconstitutional, the staff does not plan to include in the annual report any statement of the grounds on which statutes were held unconstitutional.]

STUDY NO. 52(L) - SOVEREIGN IMMUNITY

The Commission considered Memoranda Nos. 46 and 63(1962)(dangerous conditions of property), 58(1962)(insurance), 60(1962)(defense of public employees), 61(1962)(workmen's compensation), 62(1962)(Vehicle Code amendments), and 64(1962)(general provisions relating to liability).

Insurance

The Commission considered Memorandum No. 58(1962), relating to insurance, and the tentative recommendation relating to insurance.

The title of the recommendation was changed to read "Insurance Coverage for Public Entities and Public Employees". Throughout the recommendation, public employees will be referred to instead of public officers and employees. The bill is in two parts--the first part to become effective if the general liability recommendation is not enacted, the latter part to become effective if the general liability recommendation becomes law. The first part will be renumbered so that the numbers of both the parts of the bill will be the same, thus simplifying the problem of referring to corresponding sections in the different parts of the bill.

The staff was directed to revise the cover page for the recommendation--and to make similar changes on the cover pages of the other recommendations--to indicate that this recommendation is but one of a series of recommendations of the Commission relating to sovereign immunity.

The letter of transmittal is dated January 2, 1963, at which time Commissioner Bradley, the Assembly member, will still be a member of the

Commission as his term as Assemblyman does not expire until January 7, 1963--the first Monday after the first day of January. The letter of transmittal is to appear under the letterhead of the Commission. The letter will be signed "Respectfully submitted" by the Chairman of the Commission only. The letters of transmittal for all sovereign immunity recommendations are to be in this form.

The staff was directed to remove "personal" from the references to "personal tort liability" wherever that expression occurs. The first sentence of the recommendation was revised to read:

> A number of California statutes either authorize or require public entities to insure against their own tort liability and that of their employees.

On page 3, the last sentence of the first paragraph was amended by the deletion of "thereby possibly implying that self-insurance is not permissible."

In paragraph 1, the first sentence was revised to read: "All types of public entities should be expressly authorized to insure themselves against liability."

The recommendation was then approved, subject to such changes as the staff might find are required in the light of other changes made by the Commission.

The words "negligent or wrongful" were deleted from the insurance statute wherever they limit the type of acts or omissions for which insurance is authorized to be procured. The words "negligently or wrongfully" were deleted from Section 990.5 on page 8 of the tentative recommendation; and,

because the definition in that section was drawn from the general liability statute, the definition of "injury" in the general liability statute (Section 810.8) was also modified by striking out the words "negligently or wrongfully" from the definition.

The definitions are to be conformed to the comparable definitions in the general liability statute.

The statute was then approved as amended. The statute and recommendation were both approved for printing.

Defense of Officers and Employees

The Commission considered Memorandum No. 60(1962), relating to defense of public officers and employees.

The title of the recommendation was changed to "Defense of Actions and Proceedings Brought Against Public Employees". The cover and letter of transmittal were changed to conform to the changes made in the cover and letter of transmittal relating to insurance.

The recommendation was approved for printing.

The staff was asked to revise the title of the chapter or the title of Article 2 on pages 11 and 12 so that they are not identical. The references in "officers" in the title will be deleted.

The definitions used in this statute are to be changed to pick up any changes made in the comparable definitions contained in the general liability recommendation.

The staff was asked to delete Section 992.2, defining "action or proceeding", and to provide elsewhere in the statute that, notwithstanding

Section 993.1, a public entity is not required to defend the types of actions described in subdivisions (a) and (b) of Section 992.2, criminal actions or administrative proceedings. The exact form of the provision was left to the staff.

In the second line of Section 993.1, the word "the" was changed to "a" immediately before "public entity".

In the fourth line of Section 993.1, the words "alleged negligent or wrongful" were deleted.

In Section 993.3, the words "in its discretion" were deleted so that there would be no implication from the use of those words in conjunction with "may" that the word "may" was not intended to confer discretionary authority in the other sections where it is used.

In Section 993.4, subdivision (a) was deleted, for it would preclude State agencies from defending administrative proceedings conducted against their employees that were conducted in the name of other State agencies.

Sections 993.3, 993.4. The words "without actual malice" were deleted as redundant with the requirement of "good faith." The staff was asked to tabulate the matters that must be found in order to simplify the sections.

The reference to "cross-actions" in Section 993.1 was left in the statute in contemplation of the fact that public employees may be sued in federal courts for torts arising out of their employment.

Other changes made necessary by the changes listed above are to be made in the proposed statute.

As revised, the recommendation and statute were approved for printing.

Workmen's Compensation

The Commission approved revising Sections 3365 and 3366 as set out in the First Supplement to Memorandum No. 61(1962).

The Commission approved the changes proposed in Memorandum No. 61(1962).

As thus revised, the statute and recommendation were approved for printing.

Vehicle Code Amendments

The Commission considered Memorandum No. 62(1962) and the two supplements thereto.

The Commission considered the extent to which the proposed statute should apply to acts or omissions of independent contractors. It was determined that the policy adopted under the general liability statute should be made applicable to vehicle liability. (See Second Supplement to Memorandum No. 62(1962).)

It was noted that proposed Section 17001 is necessary only because immunity is granted to employees operating emergency vehicles. Thus, Section 17001 is necessary because the general provision making the entity liable where the employee is liable would not impose liability where an employee operates an emergency vehicle in a negligent manner. This fact should be kept in mind when drafting the provisions relating to liability for acts or omissions of an independent contractor.

The Commission considered the proposed new Section 17002 set out in the First Supplement to Memorandum No. 62(1962). This provision is

designed to make clear the extent to which the right of subrogation will exist where an entity is held liable under Section 17001. It was suggested that the proposed provision be revised in view of the language used in Section 17001 and in view of the language used in the subrogation provision contained in the general liability statute. The provision was approved subject to the suggested revision.

The staff recommendation that no legislation be prepared for the 1963 session relating to ownership liability for operation of other types of personal property (vessels, for example) was adopted by the Commission.

It was noted that "negligent or wrongful act or omission" is necessary in Section 17001 although as a general principle this phrase should be deleted from other provisions recommended by the Commission.

The statute and recommendation as above revised were approved for printing.

General Provisions Relating to Liability

The Commission considered Memorandum No. 64 (1962) and proposed Parts 1 and 2 of Division 3.6.

Section 810.2. The State Bar's suggestion that "employee" be broadened to include boards and commissions acting as a unit was rejected. The Commission believed that the change was unneeded to cover cases where an individual board member may be held personally liable for a board action and that it would be undesirable to impose liability for board actions where no member of the board could be held liable without considering each specific situation in which liability is sought to be imposed. Thus, in the general liability statute, liability may be imposed for the omissions of a board in certain instances where it is likely that no particular member or other public employee could be held personally liable -- such as the failure of a public entity to exercise reasonable diligence to comply with a mandatory duty. But where this type of liability is to be imposed, there should be a specific statute creating the liability.

Section 810.2 was then revised to read:

> 810.2. "Employee" includes an officer, agent or employee, but does not include an independent contractor.

Independent contractors were excluded from the definition of "employee" so that it will be clear that public entities do not have to provide a defense for actions brought against the independent contractors, that independent contractors are not entitled to be indemnified by public entities for judgments against them arising out of the performance of their public contracts, that the immunity provisions do not

give independent contractors immunity, that the insurance provisions of the statute will be inapplicable to independent contractors, etc.

In order to preserve the existing liability of public entities for the acts of independent contractors, the following new subdivision was added to Section 815.2:

> (b) A public entity is liable for injury proximately caused by a negligent or wrongful act or omission of an independent contractor of the public entity to the same extent that it would be subject to such liability if it were a private person. Nothing in this subdivision subjects a public entity to liability for the act or omission of an independent contractor if it would not have been liable had such act or omission been that of an employee of the entity.

Section 810.6. The Commission's use of the word "enactment" is confined to formal legislative or quasi-legislative action and does not include actions that may be loosely termed "regulations". Therefore, the State Bar's suggestion that "or other provision having similar effect" be added to the definition was rejected. The staff was directed to review the use of the word "enactment" throughout the statute in order to be sure that the defined meaning is intended in each instance that the term is used.

The suggestion that "including this Division 3.6" be added at the end of the section was rejected as unnecessary. The staff was asked to determine whether the word regulation may be defined in any way so that the meaning of the statute is clear.

Section 810.8. The staff was also directed to determine whether the definition of injury might be clarified by reference to "tort". In this connection, the staff was asked to report on whether the word "tort" should be used in the definition. A memorandum was previously prepared on this subject. Another method of solving the problem might

be to leave "negligent or wrongful" out of the section entirely (as was done by the Commission when it considered Memorandum No. 58) and to include another section or sentence in Part 2 of the statute indicating that nothing in that part affects the liability of public entities arising out of contract. The staff was directed to add a provision stating specifically that the statute does not affect contract liability. Whether or not language limiting Section 810.8 to tortious injuries is also to be used will be decided after the staff reports on the reason "tort" was not used in connection with the survival of actions recommendation.

See also, discussion under Section 815.2 infra.

Section 811. This section was kept in the order in which it appears to retain the alphabetical order for the definitions. "City and county" was not added to the definition because, under the Government Code, both "city" and "county" include "city and county".

The staff was asked to redraft the definition of "local public entity", giving consideration to the question whether a detailed definition of "local public entity" is necessary. The problem involves the relationship between Section 811 and Section 811.4: several agencies are excluded from the definition of "local public entity" that are not included in the definition of "public entity". The staff was asked to consider whether a definition of "State" which includes the officers and agencies excluded from Section 811 would solve the problem.

Section 815. The Commission discussed whether this section should be amended to indicate that it does not deal with the right to specific relief. A motion to restrict the applicability of the statute to money

damages failed to carry. Several Commissioners opposing the motion were afraid that the Muskopf decision would apply to cases in which equitable relief is sought, thus creating unforeseeable liabilities in equity where the Commission's statute has created immunity. Those favoring the motion argued that the doctrine of sovereign immunity did not prevent specific relief from being granted against public entities and public officers and employees prior to the Muskopf decision and that the Muskopf decision, therefore, had no effect on the right to specific relief. A motion was adopted to include language within the statute indicating that nothing in this statute affects any right to specific relief against public entities and employees that existed under the pre-Muskopf law. A motion to extend the right to specific relief to such rights as may exist under the Commission's statute failed to carry.

The staff was directed to revise Section 815 (if necessary) to reflect the decision made in regard to independent contractors.

(See discussion under Section 810.2 supra.)

Section 815.2. The Commission discussed whether the theory of the statute that public entities should be liable for the acts or omissions of their employees for which the employees are liable should be retained.

During the discussion, it appeared that there is a difference of opinion as to the meaning of the terms "open end" and "closed end" as they are used in the recommendation pertaining to the liability of public entities. Although the Commission's scheme may be called "open end" in one sense -- that is, because Section 815.2 imposes vicarious liability, all of the specific instances in which an entity may be held liable are not specifically stated in statutory form -- the Commission's

scheme is "closed end" in another sense -- there is no indeterminate area of liability for the risk exposure of a public entity may be determined as accurately for a particular public entity as for a private corporation. The areas in which liability is imposed under the statute are areas where there is existing liability and where insurance companies may and do now evaluate liability. Because of the differing interpretations that may be placed on the words "open end" and "closed end" it was suggested that the staff revise the recommendation to omit such terms from the recommendation.

The Commission considered whether to delete "negligent or wrongful" from Sections 810.8 (defining "injury") and Section 815.2. The question was raised whether this language is broad enough to include absolute liability. The further question was raised whether public entities should be subject to absolute tort liability. The Commission concluded that Section 815.2 should be so worded as to make clear that if an employee is subject to absolute liability for acts or omissions within the scope of his employment, the public entity should be vicariously liable therefor. Subdivision (b) should also be so worded to impose absolute liability on a public entity if the entity's independent contractor is subject to such liability. The staff was asked to revise the statute in the light of the decisions made. Absolute liability is not, however, to be extended further in the absence of a study upon the subject by the Commission's consultant.

In regard to the drafting of Sections 810.8 and 815.2, the staff was asked to consider the definitions of "injury" appearing in the Code of Civil Procedure and the construction that has been given "wrongful" by

the courts.

Section 815.6. A proposal to modify this section to refer to "minimum standards of safety and performance" was rejected as an unnecessary revision that might lead to litigation.

Section 815.8. This section was deleted. (See comment under "Dangerous Conditions of Public Property - General scheme of statute, p. 18 infra.)

Section 816. The reference to "appointing power" was retained because the Commission did not want to create the possibility that the decisions of civil service commissions would be subject to review in tort actions.

Section 816.2. This section was deleted in response to the suggestion of the State Bar Committee and the Los Angeles County Counsel. The Commission concluded that the section would lead to an undue amount of unmeritorious litigation. The situations in which the section might be applicable would also be covered by other sections imposing liability, such as Section 815.2 imposing vicarious liability generally and Section 816 imposing direct liabliity for failure to exercise due care in the selection of employees.

Section 816.4. The words "actual malice, actual fraud or corruption" were substituted for "personal animosity, ill will or corruption". Conforming changes are to be made elsewhere in the statute. The former language had been used to indicate that something more than malice or fraud was required. But the difference between the two phrases is subtle and the varying phraseology would probably do more harm in generating litigation than it would do good in cutting down on the scope of this

cause of action.

Section 817.2. The staff was directed to revise this section, and to make such other changes as may be necessary to provide that a public entity is liable for failure to comply with a mandatory duty to inspect its own property but is not liable for failure to comply with a duty to inspect the property of others.

New Section. A section should be added to Article 1 (Liability of Public Entities) and also to Article 2 (Liability of Public Employees) providing that there is no liability for adopting or failing to adopt an enactment.

Section 820.4. This section was revised to read:

> 820.4. If a public employee, exercising due care, acts in good faith, without malice, and under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable, he is not liable for an injury caused thereby except to the extent that he would have been liable had the enactment been constitutional, valid and applicable.

Section 821.6. The Commission considered whether to make public employees liable for malicious prosecution, but concluded that the statutory scheme contained in the tentative statute should be retained. Under this scheme, it is discretionary with the entity whether it will seek indemnity from the employee.

Section 825.6. A proposal was rejected to change the burden of proof when the entity is seeking to recover indemnity from an employee after defending the employee under an agreement reserving its rights. If the agreement reserving the entity's rights is to be meaningful, the burden of proof should remain as stated in the section.

Dangerous Conditions of Public Property

The Commission considered Memorandum No. 63(1962) and proposed Chapter 2 of Part 2 of Division 3.6.

General scheme of statute. The Commission discussed the general plan of the dangerous conditions statute under which that statute is not the exclusive basis of liability for dangerous conditions of public property. Under the proposed draft, statutes imposing liability are cumulative. The Commission then considered whether nuisance liability under Section 815.8 should be subject to the conditions stated in the dangerous conditions statute. Section 815.8 was then deleted from the statute so that there might be no liability for nuisance as such and the staff was asked to draft a section, if necessary, stating that there is no liability for nuisance unless the nuisance complained of is brought within some other statute imposing liability. It was pointed out that the definition of "injury" is extremely broad and that this definition, together with the sections that impose liability for dangerous conditions and for other delicts, is adequate to protect persons from nuisances maintained by public bodies. Professor Van Alstyne pointed out that many of the nuisance cases under the former law placed liability upon the basis of nuisance because the entity charged with maintaining a nuisance was not liable under the Public Liability Act of 1923. Then, too, for continuing or threatened nuisances, equitable remedies may be available.

Section 830. Subdivision (a) was amended to read:

> (a) "Dangerous condition" means a condition of property that creates a substantial risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.

The reference to "public property" in the definition was deleted because the sections that impose liability make clear that public entities are liable only for dangerous conditions of public property. The reference to "adjacent property" was added so that the definition would parallel the inspection duty, which is to conduct inspections calculated "to inform the public entity whether [its] property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property." Under the new definition, the public entity is not liable for dangerous conditions of "adjacent property", it is liable only for dangerous conditions of its own property. But its own property may be considered dangerous if it creates a substantial risk of injury to adjacent property or to persons on adjacent property.

The reference to "foodstuffs, beverages, drugs or medicines" was deleted from subdivision (c); for in appropriate cases--as, for example, where there are carload lots of such materials that are in a dangerous condition--it is desirable to permit liability to be shown under the dangerous conditions statute. Since the deletion of the section that made this chapter the exclusive basis of entity liability for dangerous

conditions of public property, the reference is not necessary to preserve liability based on warranty or on any other theory that may be available.

The remainder of subdivision (c) was revised to read:

> (c) "Property of a public entity" and "public property" mean real or personal property owned or controlled by the public entity but do not include easements, encroachments and other property, not owned or controlled by the public entity, that are located on the property of the public entity.

The revision was made to make clear that "public property" is limited to property owned or controlled by a public entity. The former language did not limit the meaning of "public property", for the term was defined with the word of extension, "includes".

The last paragraph of the note, relating to the "foodstuffs" exclusion, was deleted.

Section 830.2. The staff was directed to make adjustments in the statement of the trivial defect rule to reflect the changes that were made in the definitions section.

The third sentence of the note was revised to read:

> It is included in the chapter to emphasize that the courts should determine that a substantial, as opposed to a possible, risk must be involved before they may permit the jury to find that a condition is dangerous.

Section 830.4. The Commission concluded that specific immunities should be stated in the statute. Specific immunities will forestall the filing, investigation and litigation of claims in many instances. Although there might not be liability under the general language of the statute in many of these cases, nonethless, many will be litigated in the hope that

liability will be imposed. Specific immunities will eliminate this unnecessary expense.

The staff was directed to draft language granting specific immunities. The Commission considered several proposals for specific immunities and took the following actions:

1. Public entities and employees should be immune for physical plan or design of a construction of or improvement to public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the entity or by some other officer exercising discretionary authority to give such approval or where the plan or design was prepared in conformity with standards previously so approved. But there is no immunity on this ground for failure to comply with mandatory statutory or regulatory duties or if the judge finds that no reasonable official would have so planned or designed the property (the limitation on discretionary immunity declared by the New York Court of Appeals in Weiss v. Fote, 7 N.Y.2d 579 (1962)).

2. A proposal to grant immunity for the existence or nonexistence of structures appurtenances or improvements was rejected. To the extent that there should be immunity, the matter is covered by the immunity for plan or design stated above.

3. There should be immunity for the failure to install regulatory traffic signs and devices, such as, but not necessarily limited to, traffic signals, stop or yield signs, roadway markings or speed zoning signs. The immunity should be absolute--not subject to the limitation

indicated in paragraph 1 stated in Weiss v. Fote. But the immunity should not extend to failure to provide warning signs for concealed or unexpected hazards that motorists may encounter.

4. There should be an absolute immunity from liability for dangerous conditions on lands described in Public Resources Code §§ 6301 and 7301--large, undeveloped tracts of land that the State owns but has never developed or improved in any way.

5. There should be immunity for interior access roads, fishing and hiking trails in undeveloped areas unless there are concealed hazards actually known to the public entity. For such known concealed conditions, there should be liability if the remaining conditions of the dangerous conditions statute can be made out.

6. There should be immunity from liability for dangerous conditions of natural lakes, streams, rivers and beach lines, ordinarily used for water oriented activities, unless there is actual knowledge of concealed hazards. The immunity should apply only to undeveloped bodies of water and water courses. It would not apply to such developed properties as state parks.

[A quorum of the Commission not being present, a committee of the Commission took the following actions relating to dangerous conditions.]

There should be immunity for the effect on the use of highway facilities of weather conditions in and of themselves, such as, but not necessarily limited to, fog, wind, flood, rain, ice or snow, if the danger from such conditions is apparent to the highway user under the circumstances.

Sections 835 and 835.2. The staff was directed to combine the two sections and to state the differing factors in the disjunctive in one subdivision. In stating the conditions of liability for failure to remedy a condition after notice, the statute should provide that the plaintiff is required to show that sufficient time elapsed after notice for protection against the hazard to have been provided, but the entity failed to protect against the condition. Subdivision (e) of Section 835.2--the entity failed to take adequate measures to protect against the risk--will be a factor in both the cause of action for negligently created conditions and the cause of action for failure to remedy dangerous conditions.

In the note to Section 835.2, the words "for example" are to be added in the last paragraph to make clear that this is but one type of case that demonstrates how the statute operates.

Section 835.4. The Committee rejected a suggestion that the doctrine of imputed notice be stated in detail in subdivision (a) in view of the fact that the note appended to the section and the recommendation both make clear that these rules are applicable here. The sentence beginning "Thus" in the second paragraph of the note was deleted.

The staff was asked to redraft the statute so that the matters now required to be shown by the plaintiff under subdivision (b) will be required to be shown by the defendant as a matter of defense. Instead, the plaintiff will be required to show either actual notice (under subdivision (a)) or that the condition had existed for such a period

of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character. If a public entity has an adequate inspection system, that should be an absolute defense to a cause of action for failure to remedy a dangerous condition under this chapter.

Remaining sections. The staff was directed to make conforming changes in the remaining sections.