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Place of Meeting

State Bar Building
601 McAllister Street
San Francisco

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

December 14-15, 1962

Meeting will start at 9:00 a.m. on December 14 and 15.
Meeting will not last later than 4:00 p.m. on December 15.

1. Minutes of November 1962 Meeting (to be sent)
2. Approval of payment for study relating to rights of lessor upon abandonment by lessee

Memorandum No. 84(1962)(to be sent)

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

Report of Commission's Statistical Consultant

Written report (to be sent) (We will discuss this at meeting)

Memorandum No. 85(1962)(sent 12/5/62) (New York Court of Claims)

Recommendation relating to Tort Liability of Public Entities and Public Employees

Memorandum No. 78(1962)(sent 12/5/62)

Senate Preprint Bill No. 8 (sent 12/5/62)

Galley Proofs of Recommendation and Statute (sent 12/6/62)

Recommendation relating to Claims, Actions and Judgments Against Public Entities and Public Employees

Memorandum No. 79(1962)(sent 12/5/62)

Senate Preprint Bill No. 9 (sent 12/5/62)

Galley Proofs of Recommendation and Statute (sent 12/6/62)

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

Other Preprinted Commission Bills

Memorandum No. 80(1962)(sent 12/5/62)

Senate Preprint Bills Nos. 10, 11, 12 and 13 (sent 12/5/62)

4. Study No. 36(L) - Condemnation

Memorandum No. 81(1962)(enclosed)(Approval for printing of
recommendation relating to discovery)

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

Adjustments and Repeals of Special Statutes

Memorandum No. 82(1962)(to be sent)

Tentative Recommendation relating to Adjustments and Repeals
of Special Statutes (to be sent)

6. Program for 1965 Legislative Session

Memorandum No. 83(1962)(sent 12/5/62)

MINUTES OF MEETING

of

December 14 and 15, 1962

San Francisco

A regular meeting of the Law Revision Commission was held in San Francisco on December 14 and 15, 1962.

Present: Herman F. Selvin, Chairman
Hon. James A. Cobey (December 14)
Hon. Clark L. Bradley
Richard H. Keatinge
Sho Sato
Thomas E. Stanton, Jr.

Absent: John R. McDonough, Jr., Vice Chairman
Joseph A. Ball
James R. Edwards
Angus C. Morrison, ex officio

Messrs. John H. DeMouilly, Joseph B. Harvey and Jon D. Smock of the Commission's staff were also present.

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, in addition to the following persons:

Jack F. Brady, Department of Finance (December 14)
Robert F. Carlson, Department of Public Works
Robert Lynch, Office of Los Angeles County Counsel
Willard A. Shank, Office of the Attorney General (December 14)

Minutes of November Meeting: The minutes were corrected by changing the word "liability" to "immunity" in the second line of the paragraph headed Section 830.4 on page 10. The minutes were approved as corrected.

ADMINISTRATIVE MATTERS

Payment of Consultant on Study No. 50. Upon motion by Commissioner Sato, seconded by Commissioner Bradley, the Commission unanimously approved payment of \$600 to Professor Verrall for his study relating to the rights of a lessor of property upon abandonment by the lessee. Payment of the full contract price at this time is to be made with the understanding that Professor Verrall will cooperate with the Commission in completing his study for publication.

Payment of Consultant on Study No. 52. It was agreed that the legal research consultant should be paid the entire amount remaining to be paid on the sovereign immunity study.

Future Meetings: Future meeting dates are scheduled as follows:

February 8 and 9, 1963	Sacramento
March 15 and 16, 1963	Sacramento
April 19 and 20, 1963	Sacramento

STUDY NO. 52(L) - SOVEREIGN IMMUNITY

The Commission considered Memorandum No. 78(1962), (General Liability Statute--Senate Preprint Bill No. 8), Memorandum No. 79(1962), (Claims and Actions--Senate Preprint Bill No. 9), Memorandum No. 80(1962), (Senate Preprint Bills Nos. 10, 11, 12, and 13), Memorandum No. 82(1962) (Adjustment of special statutes), and Memorandum No. 85(1962) (Experience of New York Court of Claims).

New York Court of Claims.

The Executive Secretary presented a brief analysis of the tort claims filed with the New York Court of Claims during the year 1959. Most claims (over 60%) relate to State highways and the operation of State vehicles. Less than 10% involved intentional torts. The experience of New York in regard to intentional torts indicates that very large claims are filed (as large as \$3 million) but not many result in judgments against the State and the amounts recovered are fairly small. (Out of 27 claims disposed of, 14 were awarded nothing and 3 were discontinued, 8 were awarded less than \$1,600, 1 was awarded \$7,000 and 1 was awarded \$10,000.) A large percentage of the claims arise in areas where public entities in California are subject to liability under the pre-Muskopf rules, and many of the remaining claims relate to matters (such as malpractice) where public entities in California provide insurance for their employees.

University of California and the Regents of the University.

The Commission directed that references in various provisions of the

proposed statutes to the University of California be deleted--reference to the Regents of the University of California was considered sufficient without the additional reference to the University of California.

General Liability Statute--Senate Preprint Bill No. 8.

The Commission considered Memorandum No. 78(1962), the galley proof of the general liability statute and recommendation and Senate Preprint Bill No. 8. The following actions were taken:

Section 810.8. A comma was added after the word "estate" in the third line of the section.

Section 811 was revised to read:

"Law" includes not only enactments but also the decisional law applicable within this State as determined and declared from time to time by the courts of this State and of the United States.

Section 811.2. The reference to "the University of California" was deleted. The words "of the State" were deleted after "political subdivision".

Section 811.8 was revised to read:

"Statute" means an act adopted by the Legislature of this State or by the Congress of the United States or a statewide initiative act.

Section 820.6. The staff was directed to delete the clause beginning "but, except as otherwise provided by statute (including Section 820), he is liable . . ." and to substitute language similar to that appearing in the second sentence of Section 820.2, which states, "Nothing in this section exonerates . . .". Similar changes are to be made in each section where a similar clause appears.

Section 820.8. The staff was directed to place the language of the "except" clause in a section at the beginning of the article so that the lead section of the article would declare that a public employee is liable

for his torts. The staff was directed to consider renumbering the entire article. The word "employee" in the third line of the section was changed to "person".

Section 821.8. This section was deleted as unnecessary because of the addition of the general employee liability section at the beginning of the article and the general immunity for the acts of others granted by Section 820.8.

Section 830. The staff was directed to add after the word "substantial" in the second line of subdivision (a) the parenthetical phrase "as distinguished from a minor, trivial or insignificant". The staff was asked to consider a cross reference to the trivial defect rule of Section 830.2.

The staff was asked to point out in the comment or recommendation that the provision requiring a showing that the property was dangerous to a person exercising due care carries out a previous recommendation of the League of California Cities.

Section 830.2. The words "as a matter of law" were added after the word "determines" in the third line of the section.

Section 830.4. The following language was added to the end of the section:

if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefor or (b) a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefor.

This language was added to meet objections raised by the Assembly Interim Committee during hearings on the bill that this section would immunize a public entity from liability for the collapse of a bridge or a building

because of negligent design. The Commission decided that the limitation on the immunity should pertain to more than structural failure, for errors in plan or design can cause injuries in other ways--as, for example, when a freeway exit is designed to look like an entrance, or a traffic signal is so designed that it constitutes a trap.

Section 830.6. The opening phrase was changed to "Notwithstanding Section 815.6". The staff was asked to delete subdivision (a) and to add a new section to the article providing:

A condition is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code.

Subdivision (b) is to be revised to exclude the signs referred to in the new section to be added in lieu of subdivision (a). The clause stating "a public entity or public employee may be liable", appearing in subdivisions (b), (c), (d) and (e) is to be revised to state that "Nothing in this subdivision exonerates".

At the end of the fourth line of subdivision (b), "the" was changed to "a", and the word "dangerous" was added before "condition" at the beginning of the sixth line of subdivision (b).

The staff was directed to make separate sections out of the subdivisions of Section 830.6.

Section 835.6. The staff was asked to draft a section making the defenses of assumption of the risk and contributory negligence available to public entities in all actions (instead of in actions based on dangerous conditions only) to the extent that such defenses are available to private persons.

Section 840.2. The word "personally" was deleted from the second line of the section.

In subdivisions (a) and (b), the words "funds and other" were inserted before "means" on the fourth line of each subdivision.

Sections 845.4 and 845.6. The words "except as otherwise provided by statute (including Section 820)," were deleted from both of these sections. The staff is to make any necessary revisions to preserve immunities that may be granted under the article dealing with medical and hospital activities.

Section 845.8. The words "Notwithstanding Section 815.6, neither a public entity nor a public employee is liable . . ." are to be used at the beginning of the section in lieu of the words referring only to a public employee.

Section 850.8. The "except" clause of the second paragraph was revised to conform to the form used in Sections 845.4 and 845.6. The same preliminary language as was used in Section 845.8 is to be used at the beginning of the second paragraph.

Section 855.2. This section was revised to read the same as Section 845.4.

Section 855.4 was amended to read:

(a) Notwithstanding Section 815.6, neither a public entity nor a public employee is liable for an injury resulting from the decision to perform or not to perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community if the decision whether or not 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.

(b) Neither a public entity nor a public employee is liable for an injury caused by an act or omission in carrying out with due care a decision described in subdivision (a).

Section 855.8. The staff was directed to revise the section in a manner similar to Section 845.8 so that the immunity extends to the public entity as well as to the public employee.

The Commission then substituted Sections 855.8 and 856, appearing on Exhibit III of Memorandum 78(1962), for the Section 855.8 appearing in the preprinted bill. The new Section 856 was then revised as follows: The words "Where the determination is made by a person authorized to make the determination," were stricken from the beginning of subdivision (d). The staff was then directed to delete subdivision (d) and either to incorporate its provisions in subdivision (b) or to add a subdivision immediately after subdivision (b) providing that a public employee is not liable for carrying out with due care a determination made under subdivision (b).

Amendments and Repeals. The repeal of Section 1051 of the Education Code was discussed. It was agreed that the comment to this section should be revised. No action was taken to change the decision that this section should be repealed.

Commissioner Stanton moved to delete the provisions of Senate Preprint Bill No. 8 which repeal Sections 15513, 15514, 15515 and 15516 of the Education Code from the bill so that these sections would not be repealed. The motion did not receive a second. The comments to these sections should be revised and expanded.

The following sections were deleted from the bill: Section 22 (which amended Section 941 of the Streets and Highways Code) and Section 25 (which amended Section 1806 of the Streets and Highways Code). Sections 941 and 1806 will remain unaffected by the proposed legislation.

The deleted language in Sections 42, 43 and 44 of the proposed bill was restored, but the immunity in those sections is to be immunity from criminal liability. Thus, the words "civilly or" will be deleted in Sections 43 and 44, and a consistent amendment is to be made in Section 42.

Senate Preprint Bill No. 9 (Claims, Actions and Judgments)

The Commission considered Memorandum No. 79(1962), Senate Preprint Bill No. 9, and the galley proofs for the Recommendation and Statute relating to claims, actions and judgments.

Section 905.6. The Commission approved making the claims statute not applicable to the University of California.

Section 912. A typographical error--a reference to Section "911.b"--was noted in this section.

Between lines 48 and 49, on page 9 of the preprinted bill, the following sentence was added: "The court shall make an independent determination upon the application."

Heading to Article 2 (page 11 of preprinted bill). The heading of this article was changed to read: "Article 2. Manner of presentation and of giving notice".

Comment to Section 930. The comment to this section is to be expanded. It should indicate that the section will not affect contract provisions such as those contained in contracts with the Department of Public Works which require the contractor to give notice within a short period of time of claims for extra services.

Section 950.6. This section should be revised so that it expressly provides that an action against a public employee must be commenced within the time permitted for suit against the public entity.

Section 970.6. The Commission discussed whether this section should contain a provision that any prepayment would be considered to shorten the period for payment and would not affect the time when other payments fall due. The Commission decided to make no change in the section.

Section 970.8. The Commission discussed the relationship of this section to Section 895.2 with respect to joint powers agreements. Under this section, two public entities are required to provide funds to a third entity, which is dependent upon the two entities for the payment of tort judgments; and the percentage of each judgment that each supporting entity is required to contribute is the percentage of the dependent entity's total support contributed by the supporting entity. But under Section 895.2 (Senate Preprint Bill No. 8), if entities by a joint powers agreement create an entity that is dependent on the parties to the agreement, the parties to the agreement are required to contribute to the discharge of any tort judgment an amount equal to the amount of the judgment divided by the number of parties to the agreement.

It was noted that the purpose of Section 970.8 is to provide some assurance that a plaintiff can collect his judgment in cases where an entity is established pursuant to statute (not by a joint powers agreement). In the case of a joint powers agreement, Section 895.2 provides sufficient assurance that the judgment will be paid since a joint and several judgment may be obtained against each party to the agreement under Section 895.2.

The Commission determined that subdivision (b) of Section 970.8 should not apply to entities created pursuant to an agreement described in Section 895.2.

Section 975. It was noted that subdivision (b) should read in part " . . . ad valorem taxes, or ad valorem assessments,"

Comment to Amendment to Section 904 of Education Code. The case suggesting that the four percent limit is unconstitutional should be cited in this comment.

Section 153. The Commission approved this section as drafted.

Other Preprinted Commission Bills

The Commission considered Memorandum No. 80(1962).

Senate Preprint No. 10 (Insurance). Section 970(b) of Preprint No. 9 contains a definition of local public entity which is to be added to Preprint 10. It was noted that the definition excludes the Regents of the University of California, but the regents have broad authority under the Constitution which would include authority to secure insurance.

Senate Preprint No. 12 (Vehicle Torts). The Commission made the following changes in this bill:

(1) "Employee" is to be substituted for "officer, agent or employee" and "employment" for "office, agency or employment" and the terms "employee" and "employment" are to be defined in a manner consistent with the general liability statute.

(2) The term "public entity" is to be used for "public agency" in the proposed bill and the term public entity is to be defined as in the general liability statute.

Amendments and Repeals of Special District Acts

The Commission considered Memorandum No. 82(1962) relating to this subject. It was agreed to prepare a recommendation on this subject, but--

since some Commissioners had not had an adequate opportunity to study the draft recommendation--action on the tentative recommendation was deferred until the February meeting of the Commission.

Study 36

Minutes - Regular Meeting
December 14 and 15, 1962

DISCOVERY IN EMINENT DOMAIN PROCEEDINGS

The Commission considered Memorandum No. 81(1962), relating to discovery in eminent domain proceedings, and the draft recommendation attached thereto.

The recommendation (including the statute) was approved for printing as submitted, with the following change: On page 6, at the end of the first paragraph of the paragraph designated as paragraph "2", the substance of the following additional sentence was added: "Nor should the party be permitted to call an expert witness to testify on direct examination during his case in chief unless he listed the witness on such statement."

PROGRAM FOR 1965 LEGISLATIVE SESSION

The Commission considered Memorandum No. '83(1962).

The Commission determined that the Uniform Rules of Evidence should be given top priority during the next two years. Other matters will be considered only to the extent they can be worked into the program without delaying completion of the study of the Uniform Rules of Evidence.

The objective during the next two years will be to complete the study of the Uniform Rules with a view to making a recommendation to the 1965 legislative session covering all of the rules.

It was noted that the staff recommends that evidence in eminent domain proceedings and moving expenses be the two top priority studies in the eminent domain field. In addition, one more area--to be determined later--should be undertaken, if possible, with a view to a recommendation to the 1965 Legislature.

The Commission considered what matters should be studied in connection with the study of sovereign immunity during the next two year interim. Tentatively the Commission decided to obtain additional studies upon:

Liability without fault, including liability for ultra hazardous activities.

Liability for specific or preventive relief against public entities.

Liability for injuries to reputational interests, including defamation and invasion of privacy.

In addition, the Commission tentatively decided to resolve the remaining problems involved in the liability of dissolved public entities and in determining the lines of respondeat superior responsibility for the torts

of public employees, inasmuch as the studies on these matters have been prepared.

The staff was asked to indicate in the letter of transmittal relating to sovereign immunity the additional topics that the Commission will consider.

The Commission indicated that \$5,000 would be an appropriate consideration to pay for the additional sovereign immunity studies to be prepared if funds for that purpose can be put into the budget.

It was recognized that the priorities suggested above are subject to any changes desired by the Legislature.

The Commission also considered a possible additional assignment.