

2/7/62

Memorandum No. 10(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Fiscal Administration)

This memorandum contains preliminary drafts of statutes designed to carry out the decisions of the Commission made at the December 1961 meeting in regard to fiscal administration of tort liability.

The various proposed statute sections are set forth below together with a brief comment concerning the section.

ACTIONS ON CLAIMS

Integration of proposed legislation into code.

Section ____ Article 4 (commencing with Section 740) is added to Chapter 2 of Division 3.5 of Title 1 of the Government Code, to read:

COMMENT

The staff believes that this article may be placed in statutory form in Division 3.5 of the Government Code, which was enacted on recommendation of the Commission in 1959. This division is entitled "Claims Against the State, Local Public Entities and Officers and

Employees." Chapter 2 of this division relates to claims against local public entities. The staff recommends the addition of Article 4 to Chapter 2.

Title and definitions.

Article 4. Actions on Claims

740. As used in this article:

(a) "Fiscal year" means a year beginning on July 1 and ending on June 30 unless the local public entity has adopted a different fiscal year as authorized by law, in which case "fiscal year" means the fiscal year adopted by such local public entity.

(b) "Tort judgment" means a final judgment against the local public entity for money damages founded upon death or upon injury to person or property.

COMMENT

Many entities in the State operate on a fiscal year basis from July 1 to June 30. Some entities have the authority to adopt other fiscal years. (See, e.g., Government Code Sections 43120 et seq.) Other entities apparently do not operate on a fiscal year basis. They merely levy assessments from time to time as they need money. (See, e.g.,

the Resort Districts Act, Public Resources Code Sections 12070 et seq. and Sections 12000 et seq.) Hence, fiscal year is defined here so that the term may be applied in the body of the statutes even to those entities which do not have a fiscal year.

The term "tort judgment" is here defined to exclude judgments on contract claims so that a local public entity may not levy taxes in excess of statutory limits to pay contracts merely by the expedient of reducing the contract claims to judgment.

The term "local public entity" is defined in Section 700 of the Government Code as follows:

As used in this chapter, "local public entity" includes any county or city and any district, local authority or other political subdivision of the State but does not include the State or any office, officer, department, division, bureau, board, commission or agency thereof claims against which are paid by warrants drawn by the Controller.

The proposed new article will be added to and made a part of Chapter 2 (containing Section 700) and the above definition will thus apply to the new article.

Consent to suit.

741. A local public entity may sue or be sued.

COMMENT

The Commission did not formally approve this proposition at the December 1961 meeting. However, some such consent provision is essential if judgments are to be recovered.

Authority to pay tort judgments.

742. Subject to the limitation on use of funds provided in the Constitution, the governing body of a local public entity shall pay any tort judgment out of any funds to the credit of the local public entity that are unappropriated and unencumbered for any other purpose unless the use of such funds is restricted by law or contract to other purposes.

COMMENT

Section 742 is patterned closely after the preliminary paragraph of Education Code Section 904. Education Code Section 904 provides:

The governing board of any school district shall pay any judgment for debts, liabilities, or damages out of the school funds to the credit of the district, subject to the limitation on the use of the funds provided in the Constitution.

The term "governing body" is not defined. The term is used in a number of sections in the existing claims presentation law without being defined.

The Commission recommended the enactment of a statute providing authority for the payment of tort judgments. The Commission also recommended a mandatory requirement that taxes and assessments be levied for the purpose of paying tort judgments. However, it seems inappropriate to require the levies if there is no mandatory duty to pay the judgments for which the levies are made. You will note that the Education Code section that has been quoted imposes a mandatory duty upon the governing board of the school district to pay judgments. Accordingly, this section and the following one have also been worded in mandatory form.

743. If a local public entity does not pay a tort judgment during the fiscal year in which it is recovered and if, in the opinion of the governing body, the amount of the unpaid judgment is not too great to be paid out of revenues for the ensuing fiscal year, the governing body shall pay the judgment during the ensuing fiscal year immediately upon the obtaining of sufficient funds for that purpose.

COMMENT

Section 743, as well as Sections 742 and 744, is patterned after Education Code Section 904. Insofar as it is pertinent to this section, Education Code Section 904 provides:

If any judgment is not paid during the tax year in which it was recovered:

(a) And if, in the opinion of the board, the amount is not too great to be paid out of taxes for the ensuing tax year, the board shall include in its budget for the ensuing tax year a provision to pay the judgment, and shall pay it immediately upon the obtaining of sufficient funds for that purpose.

In drafting Section 743 from the language in the section just quoted, adjustments were made to reflect the fact that all entities do not have tax years.

Installment payment of judgments.

744. If a local public entity does not pay a tort judgment during the fiscal year in which it is recovered and if, in

the opinion of the governing body, the amount of the judgment is so great that undue hardship will arise if the entire amount is paid out of the revenues for the next ensuing fiscal year, the governing body shall provide for the payment of the judgment with interest thereon in not exceeding 10 annual installments. Each payment shall be of an equal portion of the principal of the judgment.

COMMENT

The portion of Education Code Section 904 upon which this section is patterned reads as follows:

If any judgment is not paid during the tax year in which it was recovered:

(b) If, in the opinion of the board, the amount of the judgment is so great that undue hardship will arise if the entire amount is paid out of taxes for the next ensuing tax year, the board shall provide for the payment of the judgment in not exceeding three annual installments with interest thereon, at a rate not exceeding 4 percent per annum, up to the date of each payment, and shall include provision for the payment in each budget for not exceeding three consecutive tax years next ensuing. Each payment shall be of an equal portion of the principal of the judgment.

The limitation on the rate of interest in Section 904 is not included in proposed Section 744. The limitation is probably unconstitutional because the Constitution specifies the rate of interest on judgments. See Welch v. Dunsmuir Jt. Un. H. S. Dist., 326 P.2d 633 (Cal. App. 1958) so holding. However, the opinion in the Welch case was vacated upon hearing granted by the California Supreme Court. The appeal was apparently dismissed because the Supreme Court did not write an opinion in the case.

Mandatory levies to pay tort judgments.

745. Each local public entity that derives revenue for its maintenance and operation from taxes or assessments or from rates and charges made for services or facilities provided by the local public entity shall in each fiscal year levy taxes or assessments or make rates and charges in an amount sufficient to pay all tort judgments against the local public entity in accordance with this article.

If all or any portion of the revenues used for the maintenance and operation of a local public entity that is a judgment debtor are derived from appropriations of another local public entity, such other local public entity shall in each fiscal year appropriate funds sufficient in amount to permit the judgment debtor entity to pay all tort judgments against it in accordance with this article. For this purpose such other local public entity shall levy taxes or assessments or make rates and charges sufficient in amount to raise the amount of the appropriation required by this section.

Any limitation on the amount of taxes, assessments or rates and charges that may be levied or collected by a local public entity and any limitation on the amount of appropriations that may be made by a local public entity contained in any other statute is inapplicable to the taxes, assessments, rates and charges or appropriations levied, collected or made pursuant to this section.

COMMENT

This section requires public entities to levy sufficient taxes, assessments or charges to pay tort judgments and requires such levies by entities that supply the funds for other public entities that are subject to judgment indebtedness. The section is worded as it is to impose a mandatory requirement upon entities that do not operate on a fiscal year basis to raise sufficient funds in each fiscal year to pay their outstanding judgments. The section also exempts levies and appropriations made to pay tort judgments from statutory restrictions on the amount of such levies and appropriations.

Judgments as investments.

746. All tort judgments against a local public entity are legal investments for all trust funds and for the funds of all insurance companies, banks, both commercial and savings, and trust companies, and for the State School Fund and for all sinking funds under the control of the State Treasurer. Whenever any money or funds may by law be invested in or loaned upon the security of bonds of a local public entity, such money or funds may be invested in or loaned upon the security of a tort judgment against such local public entity; and whenever bonds of a local public entity by law may be used as security for the faithful performance or execution of any court or private trust or of any other act, a tort judgment

against such local public entity may be so used.

All tort judgments against a local public entity, to the same extent as bonds of the local public entity, are legal for use by any state or national bank or banks in the State as security for the deposit of funds of the State or of any local public entity within the State.

COMMENT

Section 746 is designed to create a market for judgments against local public entities. It is virtually copied from Sections 26311 and 26312 of the Public Utilities Code, which are in the Transit District Law.

Attorneys fees limitation.

747. The court rendering a tort judgment for the plaintiff against a local public entity for wrongful death or personal injury may, as a part of such judgment, determine and allow reasonable attorney fees, which, if the recovery is \$500 or more, shall not exceed 20 percent of the amount recovered, to be paid out of but not in addition to the amount of the judgment, to the attorneys representing the plaintiff.

Any attorney who charges, demands, receives, or collects for services rendered in connection with the claim and litigation any amount in excess of that allowed under this section, if recovery be had, is guilty of a misdemeanor.

COMMENT

This section is patterned after the Federal Tort Claims Act, which similarly limits attorneys' fees. 28 U.S.C.A. Section 2678 provides:

The court rendering a judgment for the plaintiff pursuant to section 1346 (b) of this title, or the head of the federal agency or his designee making an award pursuant to section 2672 of this title, or the Attorney General making a disposition pursuant to section 2677 of this title, may, as a part of such judgment, award, or settlement, determine and allow reasonable attorney fees, which, if the recovery is \$500 or more, shall not exceed 10 per centum of the amount recovered under section 2672 of this title, or 20 per centum of the amount recovered under section 1346 (b) of this title, to be paid out of but not in addition to the amount of judgment, award, or settlement recovered, to the attorneys representing the claimant.

Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than \$2,000 or imprisoned not more than one year, or both.

An alternative method for limiting attorneys' fees was adopted by rule by the Appellate Division--First Department in New York. The court's rule declares that the receipt of contingent fees in personal injury or wrongful death cases in excess of the schedule set forth in the rule constitutes the exaction of unreasonable and unconscionable compensation in violation of the canons of professional ethics of the New York State Bar Association unless such fees are authorized by a written order of the court. The schedule is either:

Schedule A

(1) Fifty percent on the first one thousand dollars of the sum recovered, [sic.]

(ii) Forty percent on the next two thousand dollars of the sum recovered.

(iii) Thirty-five percent on the next twenty-two thousand dollars of the sum recovered.

(iv) Twenty-five percent on any amount over twenty-five thousand dollars of the sum recovered; or,

Schedule B

A percentage not exceeding thirty-three and a third per cent of the sum recovered, if the initial contractual arrangement between the client and the attorney so provides, in which event the procedure hereinafter provided for making application for additional compensation because of extraordinary circumstances shall not apply.

The percentages referred to are required to be

computed on the net sum recovered after deducting taxable costs and disbursements, including expenses for expert medical testimony and investigative or other services properly chargeable to the enforcement of the claim or prosecution of the action. But for the following or similar items there shall be no deduction in computing such percentages: Liens, assignments or claims in favor of hospitals, for medical care and treatment by doctors and nurses, or of self-insurers or insurance carriers.

The rule then goes on to provide that if the plaintiff's attorney believes that Schedule A does not provide adequate compensation because of special circumstances he may apply to the trial court or some other appropriate court for greater compensation. The court may allow greater compensation for extraordinary services "provided, however, that such greater amount shall not exceed the fee fixed pursuant to the contractual arrangement, if any, between the client and the attorney."

Savings clause.

748. Sections 741 to 746 apply only to all tort judgements recovered after December 31, 1963.

Section 747 applies only to causes of action which accrue after December 31, 1963.

COMMENT

Section 748 specifies the judgments and causes of action that are subject to the provisions of the proposed article.

Adjustment of existing code sections.

No attempt has been made to discover and adjust all existing code sections. One section of chapter 2 will need adjustment:

Section _____. Section 702 of the Government Code is amended to read:

702. Articles 1, 2 and 3 of this chapter [applies]
apply only to claims relating to causes of action which accrue
~~[subsequent-to-its-effective-date]~~ after September 18, 1959.

CLAIMS AND JUDGMENTS AGAINST DISSOLVED LOCAL PUBLIC ENTITIES

Integration of proposed legislation into code.

Section ____ Article 5 (commencing with Section 750) is added to Chapter 2 of Division 3.5 of Title 1 of the Government Code, to read:

COMMENT

This article, like proposed Article 4, is added to Division 3.5 of the Government Code.

Title of article and definitions.

Article 5. Claims and Judgments Against
Dissolved Local Public Entities

750. As used in this article, "board" means the board of supervisors of the county in which the whole or greater portion of a local public entity is situated at the time such local public entity dissolves.

COMMENT

"Board" is here defined to permit convenient reference to the board later in the article. Without the definition, the constant need to distinguish between the defined board and other boards of supervisors would create an impossible drafting problem.

Applicability of article.

751. Except as otherwise provided by law, this article governs the disposition of the assets and the payment of the liabilities and indebtedness of dissolved local public entities.

COMMENT

There are many provisions in the codes governing the disposition of the assets of dissolving public entities and requiring other agencies to pay any outstanding liabilities or obligations of such entities. It does not seem appropriate to upset these established procedures. Hence, proposed Section 751 is intended to indicate that the procedures set forth in this article govern these matters only to the extent that no other procedure is provided by law.

Disposition and sale of assets.

752. If a local public entity dissolves, the ownership of the assets thereof vests in the local public entity required by law to pay any liability or indebtedness of the dissolved entity. The local public entity in which such

ownership vests shall sell the assets to the extent necessary to obtain money to pay any liability or indebtedness of the dissolved entity.

COMMENT

At the December 1961 meeting, the Commission decided that if an entity is absorbed into another on dissolution, the succeeding entity should assume the liabilities of the dissolving entity. It seems appropriate therefore that the title to the dissolved entity's assets should also vest in the succeeding entity. The Commission also decided that if an entity merely dissolved without being absorbed by another entity, some appropriate governmental agency should discharge the entity's liabilities and levy taxes within its territory for the purpose. It seems appropriate that in such a case title to the dissolved entity's assets should vest in the agency with the responsibility of paying the dissolved entity's debts.

This type of a provision is common in the dissolution provisions of the various district laws. For example, Water Code Sections 32910-32914 require a sale of assets of dissolved County Water Districts and require the board of supervisors of the county in which the largest assessed value of the district was located to levy taxes in the district to discharge any remaining indebtedness. Public Utilities Code Sections 14507 and 14508, relating to dissolving Municipal Utility Districts, provide that the district property vests in the city in which the district is located if the district's boundaries are within the city's.

Otherwise, the district property vests in the county in which the largest portion of the district is located. Section 14508 requires the appropriate entity to discharge the district's debts as follows:

14508. If at the time of dissolution there is any outstanding indebtedness of the district the legislative authority of the city, where the limits of the district lie wholly within the corporate limits of a city, and in all other cases the board of supervisors of the county in which the whole or greater portion of the district is situated are ex officio the board of directors of the district for the purpose only of the levy and collection of taxes for the payment of the indebtedness of the district existing at the time of dissolution and the interest thereon. The board or legislative authority shall levy the taxes and perform such other acts as are necessary to raise the money necessary for the payment of the indebtedness and the interest thereon.

Payment of liabilities.

753. If a local public entity dissolves by reason of its inclusion within another local public entity, the succeeding local public entity shall pay any liability or indebtedness of the dissolved public entity. Claims against the dissolved entity shall be presented to the succeeding local public entity in conformity with this chapter.

754. If a local public entity dissolves for any reason other than its inclusion within another public entity, the county in which the whole or greater portion of the local public entity is situated at the time of dissolution shall receive and consider claims against and shall pay any liability or indebtedness of the dissolved local public entity. The board may levy taxes upon all the land and

improvements within the boundaries of the dissolved entity, may exercise all the powers of the governing board of the dissolved entity and perform such other acts as are necessary to raise the money necessary for the payment of the liability or indebtedness.

Territory excluded from a local public entity prior to dissolution of the entity continues to be subject to taxation for the payment of any liability or indebtedness of the entity outstanding at the time such territory was excluded, and for the purpose of discharging such liability or indebtedness such territory shall be considered a part of the local public entity the same as though not excluded.

COMMENT

Section 753 carries out the decision of the Commission in regard to entities that are absorbed into other entities. Section 754 carries out the decision of the Commission in regard to entities that are dissolved for other reasons. The statutory language is drawn from several sources. The above sections may provide adequately for the exercise of appropriate authority by the board of supervisors. However, the Municipal Utility Districts Act sets forth a useful procedure for collecting taxes from other counties where the dissolved district was included in several counties. Hence, the following sections, which are drawn from Public Utilities Code Sections 12897-12904, are included in this draft so that the Commission may consider whether it is desirable to include such a procedure in the statute.

755. The board may elect to avail itself of the assessments made by the assessors of the other counties in which the territory of the dissolved local public entity is situated, and of the assessments made by the State Board of Equalization for those counties, and may have the taxes levied pursuant to Section 754 collected by the officials of those counties if the board declares its election to do so by resolution or ordinance and files a certified copy of the resolution or ordinance on or before the first day of August with the auditors of the counties in which the territory of the dissolved entity is situated. Thereafter, each year and until otherwise provided by the board, all assessments in such other counties shall be made for the board by the State Board of Equalization and the county assessors, and all taxes shall be collected for the board in such other counties by the tax collectors, of the other counties in which the territory of the dissolved entity is situated.

756. In such case each county auditor shall, on or before the third Monday in August of each year, transmit to the board a statement in writing showing the total value of all property within the district, ascertained from the assessments referred to in Section 755 as equalized.

757. If the board elects to avail itself of the assessments referred to in Section 755, the board shall, on or before the first week day in September, or if such

week day falls upon a holiday then on the first business day thereafter, fix the rate of taxes, designating the number of cents upon each hundred dollars, using as a basis the value of property transmitted to the board by the county auditors, which rate of taxation shall be sufficient to raise the amount previously fixed by the board. These acts by the board shall constitute a valid assessment of the property and a valid levy of the taxes so fixed.

758. The board shall immediately after fixing the rate of taxes transmit to the county auditors of the counties in which the dissolved entity is situated a statement of the rate of taxes fixed by the board.

759. The taxes levied by the board shall be collected at the same time and in the same manner as county taxes. When collected the net amount, ascertained as provided in this article, shall be paid to the board that levied the taxes.

760. Whenever any real property has been sold for taxes levied pursuant to this article and has been redeemed, the money paid for redemption shall be apportioned and paid to the board that levied the taxes by the county treasurers receiving it in the proportion which the tax due to the board bears to the total tax for which the property was sold.

761. The compensation to be charged by and paid to any county for the performance of services under this article shall be fixed by agreement between the board of supervisors of the county and the board. The compensation shall in

no event exceed one-half of one percent of all money collected for the board. The compensation collected by the county shall be placed to the credit of the county salary fund.

762. All taxes levied under this article are a lien on the property on which they are levied. Unless the board has by resolution otherwise provided, the enforcement of the collection of such taxes shall be, so far as applicable, in the same manner and by the same means provided by law for the enforcement of liens for county taxes.

Savings clause.

763. This article applies only to public entities dissolved after December 31, 1963.

INDEMNITY OR SAVE HARMLESS AGREEMENTS

No specific location is suggested at this time for the statute authorizing public agencies to require their contractors to indemnify or save them harmless from liabilities arising out of the performance of the contract. It might be desirable to place it in Division 5 of the Government Code, which is entitled "Public Work and Public Purchases." The suggested language for the statute is as follows:

XXX. The State, its various commissions, boards and departments and any county, city and county, city, district, authority or other public entity that has the power to enter into contracts may provide in any public contract that the contractor shall indemnify and hold harmless the public entity and its officers and employees from all liability for damages proximately resulting from the contractor's performance of or failure to perform the contract.

COMMENT

The language of the proposed section is similar to that contained in Public Utilities Code Section 6296, which requires franchise holders to "indemnify and hold harmless the municipality and its officers from all liability for damages proximately resulting from any operations under the franchise."

INSURANCE

The present authority for entities generally to insure themselves and their officers and employees is contained in Sections 1956 and 1956.5 of the Government Code. These sections provide:

1956. (a) The State, a county, city, district, or any other public agency or public corporation may insure its officers, deputies, assistants, agents, and employees against any liability, other than a liability which may be insured against under the provisions of Division 4 (commencing with Section 3201) of the Labor Code, for injuries or damages resulting from their negligence or carelessness during the course of their service or employment and for the injuries or damages resulting from the dangerous or defective condition of public property, including public property as defined in subdivision (b) of this section, and due to their alleged negligence or carelessness, and for injuries or damages resulting from false arrest or false imprisonment, either by self-insurance, or in any insurer authorized to transact such insurance in the State (except in the case of school district governing boards to the extent they are authorized to place insurance in nonadmitted insurers by Sections 1044 and 15802 of the Education Code). The premium for the insurance is a proper charge against the Treasury of the State, county, city, district, public agency or public corporation.

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

(c) "Officers" includes any deputy, assistant, agent or employee of the State, a county, city, district, or any other public agency or public corporation acting within the scope of his office, agency or employment.

1956.5. A county, city, district, or any other public agency or public corporation may insure itself against any liability, other than a liability which may be insured against pursuant to Division 4 of the Labor Code, either by self insurance or in any insurer authorized to transact such insurance in the State. The premium for such insurance is a proper charge against such county, city, district or other public agency or public corporation.

Other entities are authorized to carry insurance on themselves on

their employees (e.g., Government Code Section 54462 et seq.) and some are required to do so (e.g., Education Code Sections 1044, 1045). It seems desirable to provide for authority to insure in addition to the authority that already exists. This draft contemplates the repeal of Sections 1956 and 1956.5 of the Government Code and the enactment of new sections which would be located elsewhere in the Government Code, for it is inappropriate to include general insurance provisions in a division of the code dealing only with public officers and employees. Without Government Code section numbers assigned, the proposed statutes are:

Article X. Liability Insurance For Public
Entities, Officers and Employees

1. As used in this article:

(a) "Public entity" includes this State and any county, city, city and county, district, authority, agency or other political subdivision of this State.

(b) "Public officers and employees" includes any appointee, officer, deputy, assistant, agent or employee of a public entity.

2. Except for a liability which may be insured against under the provisions of Division 4 (commencing with Section 3201) of the Labor Code, a public entity may:

(a) Insure itself against any liability.

(b) Insure its public officers and employees against any liability arising during their discharge of the duties

of their public office or employment.

3. A public entity may insure itself, its public officers and employees, or itself and its public officers and employees by:

(a) Self-insurance.

(b) Insurance in any insurer authorized to transact such insurance in this State (except in the case of school district governing boards to the extent they are authorized by Sections 1044 and 15802 of the Education Code to place insurance in nonadmitted insurers).

(c) Any combination of insurance authorized by subdivisions (a) and (b) of this section.

4. The premium for the insurance authorized in this article is a proper charge against the treasury of the public entity.

5. The authority provided by this article is in addition and supplementary to any other law authorizing or requiring public utilities to insure against the liability of such entities and their officers and employees.

JOINT POWERS AGREEMENTS

Group-entity insurance.

So far as group-entity insurance is concerned, the staff believes that it is unnecessary to provide specific authority to obtain such insurance under a joint powers agreement. The broad authority to obtain liability insurance and the broad authority to enter into joint powers agreements would necessarily authorize group-entity insurance under a joint powers agreement.

However, if it is desired to make the authority explicit, Section 6502 could be amended to make the authority clear:

6502. If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, including the authority to insure against liability as conferred by Article X (commencing with Section 1) of this code, even though one or more of the contracting agencies may be located outside this State.

The danger of the above amendment is that it might be construed as limiting the broad grant of authority under Section 6502.

Liability under joint powers agreements.

6503.5. Each contracting public agency is jointly and severally liable upon any liability for damages founded upon

death or upon injury to person or property arising out of the performance of the agreement. The agreement may provide for contribution or indemnification by any or all of the contracting agencies.

Unless otherwise provided in the agreement, a contracting public agency that pays more than its pro rata share in satisfaction of such liability is entitled to contribution from the other contracting public agencies. The pro rata share of each contracting public agency shall be determined by dividing the total amount of the liability equally among the contracting public agencies.

COMMENT

Section 6503.5 is a proposed addition to the Government Code and the Joint Powers Act. Under this section, the liability of the contracting powers to the injured person is not subject to the contract; however, the allocation of the ultimate financial burden is subject to the agreement. Thus, the parties are given flexibility in arranging their financial affairs, but they are not permitted to shirk their responsibilities and a plaintiff's rights are not subject to some unknown agreement.

FUNDING TORT JUDGMENTS WITH BONDS

Government Code Section 43720 grants cities the authority to fund tort judgments with bonds. The section reads, in pertinent part, as follows:

The legislative body of any city, except a city and county, may provide for the funding or refunding of outstanding indebtedness pursuant to this article, if either of the following conditions exist:

(a) The city has an outstanding indebtedness evidenced by bonds, warrants, notes or other evidences of indebtedness, or a judgment.

An understanding of this section and the legislation to be proposed below is aided by a consideration of City of Long Beach v. Lisenby, 180 Cal. 52 (1919). The Lisenby case was a mandate action to compel the mayor and the city treasurer to sign and issue a bond providing for the payment of a municipal indebtedness. Some time prior to the action, Long Beach had constructed an auditorium, the approach to the auditorium had collapsed while a large number of people were assembled in front of the building, and many persons were killed or injured. Actions were brought against the city for damages resulting from the death or injury of these people and judgments were awarded in favor of several of the plaintiffs. One of these judgments was affirmed by the Supreme Court in Chafor v. City of Long Beach, 174 Cal. 478 (1917). In all, the judgments aggregated over \$375,000, a sum much in the excess of the income and revenue of the city provided for any single year. One Poll was one of the judgment creditors. His judgment amounted to \$563.23. A warrant was issued to him in such amount. The city then adopted an ordinance providing for the issuance of a bond in the amount of \$563.23 "to refund outstanding

indebtedness of the City of Long Beach in the sum of \$563.23, evidenced by a warrant of said city." This was the bond that the mayor and city treasurer refused to sign, which refusal prompted the filing of the mandate action.

The statute which eventually became Government Code Section 43720 provided at that time that the governing body of cities, other than cities of the first class, "having an outstanding indebtedness, evidenced by bonds or warrants thereof, is empowered, by a two-thirds vote of its number, to fund or refund the same and issue bonds of such city or town therefor, in sums of not less than one hundred dollars nor more than one thousand dollars each, and having not more than forty years to run" There was thus no explicit provision permitting the bonding of judgment debts. The mayor and treasurer grounded their refusal upon the lack of statutory authority and upon Section 18 of Article XI of the State Constitution, which then read, and still reads: "No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose"

The Supreme Court held that the constitutional limitation "refers only to an indebtedness or liability which one of the municipal bodies mentioned has itself incurred--that is, an indebtedness which the municipality has contracted, or a liability resulting, in whole or in part, from some act or conduct of such municipality." Thus, the application of this provision is confined "to those forms of indebtedness and liability which

may have been created by the voluntary actions of the officials in charge of the affairs of such city and [the provision has] no application to cases of indebtedness or liability imposed by law or arising out of torts." (180 Cal. at 56-7.) Thus, the court held that the constitutional provisions did not prevent the City of Long Beach from providing for the payment of its judgment indebtedness without regard to the state of its revenues for the year in which the liability arose and without a vote of the people of the city.

The defendants, however, urged that Government Code Section 43720's predecessor did not authorize the issuance of bonds for this purpose. The Supreme Court, though, held that the act authorized the cities to "fund or refund" any outstanding debt evidenced by "warrants". The court pointed out that the usual method of "funding" a debt is by the issuance of bonds. Hence, within this statute the term "fund" applies to those forms of indebtedness evidenced by warrants and the term "refund" refers to those forms of indebtedness which had previously been funded by bonds. As the particular debt before the court was evidenced by a warrant, the authority to fund such debt by the issuance of the bond in question was granted by the statute.

The court pointed out, though, that because of the inhibition of Section 18 of Article XI of the State Constitution, this section could not authorize the funding of contractual obligations.

In 1919, the statute was amended to add the reference to "judgment" which now appears in Government Code Section 43720. (Stats. 1919, c. 306, p. 498, § 1.) In view of the Lisenby case, however, it seem likely that the 1919 amendment added nothing of substance to the section. It may have

obviated the necessity of first issuing a warrant to the judgment creditor, though.

In the sections which follow, the general statutory scheme contained in Government Code Section 43720 is followed. However, it may be necessary to limit the language in some cases in order to avoid authorizing local entities to issue bonds for contractual obligations without a vote of the citizens of the entity. Where a county, city, or school is involved, a general reference to "judgment" is sufficient, for the Constitution itself restricts the bonding authority of the entity despite the language of the statute. Where other entities are involved, though, the word "judgment" must be properly qualified in order to avoid a repeal by implication of the statutory provisions which prevent the incurring of excessive indebtednesses.

There are a very large number of special district acts containing authority to issue bonds. It was the direction of the Commission that each one of these acts should be amended. In order to avoid bringing these before you at the present time, these statutes have been grouped in particular categories so that the Commission may decide preliminarily whether there is a need for amendment or not. In those cases where the staff believes that amendment is desirable, suggested amendments are set forth. When the statutory pattern has been approved, the entire body of statutes will be presented to the Commission as finally revised.

There are several different procedures contained in the statutes for issuing bonds. Some entities are authorized to issue bonds without a vote of the electorate. Other entities are required to obtain a simple majority vote of the electorate and others are required to obtain the vote

increased percentages of the electorate. Where there is but one bond procedure provided for a particular entity, the staff proposes to provide for the issuance of bonds to fund tort judgments in accordance with the existing bonding procedure. Some statutes, though, contain more than one bonding procedure. They may authorize bonds to be issued generally upon a two-thirds vote of the electorate and also authorize the governing board to issue "refunding bonds" to refund existing bonded indebtedness with a simple majority vote of the electorate or without any vote of the electorate. Where possible, the staff proposes to provide authority to fund tort judgments through bonds by amending the statutes granting "refunding" authority. The authority to fund tort judgments is appropriately placed in these statutes for the indebtedness already exists. The entity is not seeking to incur a new indebtedness as is the usual case when bonds are issued.

The bonding statutes seem to fall into about seven different categories. These categories are as follows:

1. Statutes which grant bonding authority without limitation upon or specification of purposes for which the bonds may be issued.

Typical of these statutes is Government Code Section 61650, pertaining to community services districts. Section 61650 provides:

Whenever the board deems it necessary for the district to incur a bonded indebtedness, it shall by resolution set forth all the following:

- (a) A declaration of the necessity for the indebtedness.
- (b) The purpose for which the proposed debt is to be incurred.
- (c) The amount of the proposed debt.
- (d) The time and place for a hearing by the board on the question:
 - (1) Will the whole or a portion of the district be benefited by the accomplishment of the purpose?
 - (2) If only a portion of the district will be benefited, what portion will be so benefited?

Other statutes which apparently place no restriction upon the purposes for which bonds may be issued are:

Health and Safety Code Section 4113 (garbage disposal districts)
Health and Safety Code Section 14345 (metropolitan fire protection districts)
Public Resources Code Section 13100 (resort improvement districts)
Public Utilities Code Sections 16571 and 16572 (public utility districts)
Streets and Highways Code Section 27220 (bridge and highway districts)
Water Code Section 31370 (county water districts)
Water Code Section 60270 (water replenishment districts)
West's Water Code --Appendix--Chapter 13, Section 26a (Storm Water District Act of 1909)

The staff does not propose to amend any acts which grant a general authority to issue bonds without specification of the purposes for which

they may be issued.

2. Statutes that authorize entities to issue bonds "to carry out the purposes of the district" or "for any purpose for which the district is authorized to expend funds." A typical statute is Government Code Section 29900, which provides in part:

any county may issue funding or refunding bonds . . . for any purpose for which the board of supervisors is authorized to expend the funds of the county.

Similar language or similar authority is contained in the following statutes:

Government Code Section 61743 (community services districts-- short term borrowing provision)
Government Code Section 53821 (county, city, regional park districts, school districts, junior college districts or other municipal or public corporations or districts-- short-term borrowing section)
Harbors and Navigation Code Section 6330 (port districts)
Harbors and Navigation Code Section 6930 (river port districts)
Harbors and Navigation Code Section 7200 (small craft harbor districts-- short-term borrowing section)
Health and Safety Code Section 4186 (garbage and refuse disposal districts)
Health and Safety Code Section 33910 (redevelopment agencies)
Health and Safety Code Section 34350 (housing authorities)
Military and Veterans Code Section 1192 (memorial districts)
Water Code Section 55550 (county water works districts)
West's Water Code--Appendix--Chapter 33, Section 15 (Palo Verde Irrigation District)
West's Water Code--Appendix--Chapter 39, Section 36 (Water Conservation Act of 1931)

The staff does not propose to amend any of these sections since the authority to issue bonds for any purpose for which the funds of the district are authorized to be expended or for use in carrying out "any of the powers and purposes of the district" seems to be broad enough to permit the issuance of bonds for the purpose of funding court judgments.

3. Statutes authorizing the issuance of bonds for the purpose of "funding or refunding any outstanding indebtedness." Typical of these provisions is Harbors and Navigation Code Section 7210, relating to small craft harbor districts. Section 7210 provides in part:

Whenever the board deems it necessary for the district to incur a general obligation bonded indebtedness for (a) . . . or (b) the funding or refunding of any outstanding indebtedness of the district, including premiums, if any be payable, the board shall, by resolution so declare and call an election to be held in the district for the purpose of submitting to the qualified voters the proposition of incurring indebtedness by the issuance of bonds of the district.

Similar authority is contained in the following statutes:

Health and Safety Code Section 4764 (county sanitation districts)
Health and Safety Code Section 6523.1 (sanitary districts--short-term borrowing)
Health and Safety Code Section 13918 (fire protection districts)
Health and Safety Code Section 32300.2 (hospital districts)
Water Code Section 45100 (water storage districts)
Water Code Section 52201 (reclamation districts)
West's Water Code--Appendix--Chapter 21, Section 9 (Knights Landing Ridge Drainage District)
West's Water Code--Appendix--Chapter 44, Section 104 (California Water Conservation District)

The staff recommends that no amendment be made in these sections because, under the authority of City of Long Beach v. Lisenby, the authority to issue bonds to pay or fund "any indebtedness" seems broad enough to authorize the issuance of bonds to pay an indebtedness upon a tort judgment.

4. Statutes authorizing "funding or refunding of any outstanding indebtedness evidenced by bonds or warrants" of the entity. Government Code Section 43720, discussed in connection with the Lisenby case, is typical of this type of statute. Government Code Section 43720, however, has already been appropriately amended to authorize the issuance of

bonds in order to pay judgments. None of the other statutes listed below specifically mentions judgments. They merely authorize the issuance of bonds to fund or refund "any outstanding indebtedness evidenced by bonds or warrants." Authority of this nature is contained in the following statutes:

Education Code Section 21701 (school districts)
Education Code Section 27651 (library districts in unincorporated towns)
Education Code Section 27951 (library districts)
Education Code Section 28401 (union high school library districts)
Public Utilities Code Section 22702 (airport districts)
Public Utilities Code Section 29210 (Bay Area Rapid Transit District)
Water Code Section 25035 (irrigation districts)
West's Water Code--Appendix--Chapter 8, Section 32 (Drainage District Act of 1903)
West's Water Code--Appendix--Chapter 11, Section 31 (Protection District Act)

Under the authority of City of Long Beach v. Lisenby, entities covered by this type of statute probably have the authority to issue bonds to fund their tort judgments. However, the staff believes that it is desirable to amend these sections so that the authority is made explicit. Some of the statutes to be amended merely authorize the entity to "refund" its outstanding indebtedness. Since the Supreme Court indicated that this language might grant authority to issue bonds only when bonds have previously been issued, statutes of this sort will be amended so that the authority is to "fund or refund" outstanding indebtedness.

In those cases where the bonding authority which is being amended is contained in a statute authorizing the entity to "refund" outstanding indebtedness without a vote of the citizens of the entity or upon a bare majority vote, the staff proposes to qualify the authority to issue

bonds to fund judgments so that the authority will cover only judgments upon obligations that were not voluntarily incurred by the entity.

Typical of the amendments which will be made is the one suggested below to Education Code § 21701:

Except as otherwise provided by law, the governing board of any school district may, when in its judgment it is advisable, and shall, upon a petition of the majority of the qualified electors residing in the school district, call an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the following purposes:

- (a) The purchasing of school lots.
- (b) The building or purchasing of school buildings.
- (c) The making of alterations or additions to the school building or buildings other than such as may be necessary for current maintenance, operation, or repairs.
- (d) The repairing, restoring, or rebuilding of any school building damaged, injured, or destroyed by fire or other public calamity.
- (e) The supplying of school buildings and grounds with furniture, equipment or necessary apparatus of a permanent nature.
- (f) The permanent improvement of the school grounds.
- (g) The funding or refunding of any outstanding valid indebtedness of the district, evidenced by bonds, or a judgment, or of state school building aid loans.
- (h) The carrying out of the projects or purposes authorized in Section 15811.

Any one or more of the purposes enumerated, except that of refunding any outstanding valid indebtedness of the district evidenced by bonds, may, by order of the governing board entered in its minutes be united and voted upon as one single proposition,

The type of amendment which will be made to code sections authorizing

the issuance of refunding bonds upon simple majority vote or without a vote of the electors of the entity is exemplified by the following amendment to Water Code Section 25035, pertaining to irrigation districts:

Any district may issue refunding bonds for the purpose of refunding any or all of the any outstanding valid indebtedness of the district evidenced by bonds and or warrants of the district or a judgment against the district for wrongful death or injury to persons or property.

5. Statutes authorizing the issuance of bonds for certain specified purposes. A typical statute of this type is Harbors and Navigation Code Section 5900.5, pertaining to harbor improvement districts:

The board may borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness in the manner and to the extent deemed necessary by the board for further improvement and development of the harbor. The board may also do any other acts, and exercise any other powers, which may be necessary or convenient for the full exercise of the powers specifically granted by this part.

Similar authority is contained in the following statutes:

Harbors & Navigation Code Section 6077 (harbor districts)
Health and Safety Code Section 6641 (sanitary districts)
Health and Safety Code Section 14166 (local fire districts)
Health and Safety Code Section 14495 (county fire protection districts)
Health and Safety Code Section 32130 (hospital districts--short-term borrowing)
Health and Safety Code Section 32300 (hospital districts)
Public Resources Code Section 5568 (regional park districts)
Public Resources Code Section 5784.23 (recreation and park districts)
Public Utilities Code Section 13201 (municipal utility districts)
Public Utilities Code Section 26201 (transit districts)
Los Angeles Metropolitan Transit Authority Act, Section 5.1.
Fresno Metropolitan Transit District Act, Section 7.1
Streets & Highways Code Section 33101.5 (parking authorities)
Water Code Section 35951 (California water districts)

West's Water Code--Appendix--Chapter 20, Section 15 (Municipal
District Act
of 1911)

Metropolitan Water District Act, Section 7
County Water Authority Act, Section 7
Ventura County Flood Control Act, Section 35
Humboldt County Flood Control District Act, Section 15

The foregoing list is not exhaustive but is adequate to demonstrate the great number of statutes of this type. The staff proposes to amend these sections by adding to the list of specified purposes for which bonds may be issued the funding of judgments. A typical amendment would be as here proposed for Harbors and Navigation Code Section 5900.5:

The board may borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness in the manner and to the extent deemed necessary by the board for further improvement and development of the harbor or to fund any judgment against the district. The board may also do any other acts, and exercise any other powers, which may be necessary or convenient for the full exercise of the powers specifically granted by this part.

Another type of statute which falls within this category and which requires amendment is Health and Safety Code Section 14166, pertaining to local fire districts:

If a structure or structures, or the acquisition of real or personal property, necessary for district purposes or if a judgment against the district reasonably requires an expenditure in excess of available funds of the district derived from ordinary taxation, the district board may adopt a resolution calling an election within the district upon the issuance of bonds. The amount of the bonds to be issued shall not exceed the amount specified in the resolution calling the election, nor shall the district incur a bonded indebtedness exceeding 10 percent of the assessed valuation of all the taxable property in the district.

6. Statutes authorizing the issuance of bonds when there are unpaid assessments against the land of the district. These statutes

commonly appear in the statutes relating to entities which raise their funds by assessments rather than by taxation. A typical statute is Public Resources Code Section 11700, pertaining to resort districts. The fiscal statutes previously proposed may be adequate to provide these entities with the authority to bond their tort judgments, for the Commission has approved the enactment of statutes authorizing entities which raise their funds by assessments to levy assessments to pay tort judgments. Accordingly, such an entity would have the authority to levy an assessment to pay a tort judgment and, if the assessment were not paid in full, issue bonds to pay the judgment. Nevertheless, the staff believes it is desirable to provide explicit authority in these statutes to issue bonds to fund tort judgments. Public Resources Code Section 11700 would, accordingly, be amended to read:

If any assessment levied and assessed upon land, or if any judgment against the district, remains wholly or partially unpaid, and the board deems it to be in the best interest of the district or the landowners in the district to issue bonds to obtain money to pay for the project, the indebtedness of the district, or any other lawful charge shall order a bond election to be held in the district. At the bond election the board shall submit to the owners of the assessed land in the district the question of whether district bonds shall be issued in an amount equal to the amount of the assessment or judgment, or the part of the assessment or judgment remaining unpaid.

Similar bonding authority is contained in the following statutes:

Water Code Section 9260 (Sacramento and San Joaquin Drainage District)
Water Code Section 47100 (water storage districts)
Water Code Section 52201 (reclamation districts)
Knights Landing Ridge Drainage District Act, Section 9

7. Statutes authorizing the issuance of bonds for specified purposes where the purposes for which the bonds may be issued are so integrated into the statutory procedure that it is impossible to authorize the issuance of bonds to fund tort judgments by adding a reference to judgments to the sections. In these statutes, it is necessary to add entire new sections setting up a procedure analogous to, but not identical with, the existing bond issuance procedure. For example, in the Separation of Grade District Act (Streets and Highways Code Sections 8100 et seq.) the authority to issue bonds is contained in Chapter 7, entitled "Approval of Construction Plans". In this chapter the following sections appear:

8190. At any time after the adoption of a plan for a project or the letting of a contract for the construction for the whole or any portion of the project, the commission may, by order entered in its minutes, call an election for the purpose of determining whether bonds should be issued for the acquisition of rights-of-way for and the construction of such project and for the payment of such contract.

8191. The order shall fix the day of the election, shall describe the exact location of each project for which bonds are to be issued, shall specify the amount of the bond issue for each project, and shall state in general terms that the money raised from the sale of the bonds for each project shall be used only for the acquisition of rights-of-way for and the construction of, the project for which bonds shall have been issued. If the election is called for the payment of a contract entered into by the commission the order shall state the terms of the contract in such manner as will advise the electors of its contents. Any money raised by means of a bond issue which remains on hand after the acquisition of rights-of-way and the construction have been completed, shall be expended in the maintenance of the project for which the bonds have been voted.

Another example of bonding statutes which are not readily adaptable to amendment is exemplified by Water Code Section 56070, pertaining to

county drainage districts:

After the approval and adoption of an engineer's report and before ordering the engineer to prepare precise plans and specifications as provided in Chapter 5, the district board may submit to the voters of the district the proposition of incurring a bonded indebtedness to obtain funds with which to acquire the property and to do the work in whole or in part set forth in the report. For that purpose a special election shall be called by resolution.

In the acts pertaining to these districts the staff believes that entire new sections authorizing the issuance of bonds must be enacted. Accordingly, somewhere in the Separation of Grade District Act, but not in the chapter entitled "Approval of Construction Plans", the following section must be added:

At any time after the formation of the district, the commission may, by order entered in its minutes, call an election for the purpose of determining whether bonds should be issued for the funding of a judgment against the district.

The order shall fix the day of the election, shall describe the purpose for which the bonds are to be issued, shall specify the amount of the bond issue, and shall state in general terms that the money raised from the sale of the bonds shall be used only for the purpose for which the bonds are issued.

In regard to the type of statutes exemplified by Water Code Section 56070, the authority may be granted by adding a new section such as the following proposed Water Code Section 56070.5:

The district board may, by resolution, call a special election in accordance with the provisions of this chapter to submit to the voters of the district the proposition of incurring bonded indebtedness to obtain funds with which to pay a judgment against the district.

The remainder of the chapter on bonds in the County Drainage District Act would be consistent with this proposed addition.

The lists of districts acts which are set forth above under each category are not exhaustive. Moreover, the language of some of the statutes does not clearly place the statutes within one category or another. Some of the statutes contain language appropriate to more than one category. However, the foregoing material suggests the manner in which these statutes will be amended.