

Meeting

5/8/62

Memorandum No. 24(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Fire Fighting and Fire Protection)

Attached is a copy of the portion of the Sovereign Immunity Study that relates to Fire Fighting and Fire Protection.

Pages 630 to 641 merit careful study. The consultant there summarizes the existing law in California and other jurisdictions and points out and evaluates the pertinent general policy considerations that bear on whether liability should exist for injuries resulting from fire prevention and protection activities.

The following are the problems of tort liability that are peculiar to the rendition of fire services. Page references are to the attached portion of the Sovereign Immunity Study.

(1) Failure to provide a system of fire protection. (Pages 641-42.)

The consultant concludes that no tort liability should be imposed under any circumstances for the failure of a public entity to provide a fire protection system, whether or not it has a duty to do so.

(2) Failure to take adequate precautions to prevent or suppress fire. (Pages 642-44.) We are here concerned with some inherent

deficiency in the public entity's fire fighting program, such as mere insufficiency of fire regulations, equipment, facilities or personnel.

The consultant concludes that no tort liability should be imposed for failure to take adequate precautions to prevent or suppress fire. He believes that the inherent sufficiency and adequacy of a public fire

protection program is a reflection of basic planning and administrative discretion at the policy-making level of government.

(3) Negligent maintenance of fire fighting equipment or water supply system. (Pages 644-52.) We are here concerned with a negligent failure at the operational level (as distinguished from the planning or policy-making level), such as negligent failure to maintain fire fighting equipment and facilities in good working order. Distinguish this from negligent conduct in the course of fire fighting or fire prevention. The consultant reaches the following conclusions:

a. Liability should be imposed for death and personal injuries resulting from negligent failure to repair and maintain fire fighting equipment and facilities (including water systems designed for fire suppression purposes). The consultant points out that different policy considerations apply here than apply in property damage cases.

b. Limited liability might be imposed for property damage resulting from negligent failure to maintain and repair fire fighting equipment and facilities. The consultant suggests that the public entity might be exposed to tort liability for property damage solely to the extent such damage is in fact not covered by fire insurance, such liability being conditioned upon satisfactory proof that the negligent failure was the proximate cause of the loss.

(4) Negligent conduct in course of fire fighting and fire prevention activities. (Pages 652-60.) We are here concerned with the problem of active negligence in the course of actually suppressing a fire or performing some other fire service duty. Since liability for negligence in the operation of fire trucks while going to or coming

from fire calls is already imposed by statute, consideration here is limited to nonvehicular torts. The consultant concludes that an expansion of public entity tort liability to cover negligence in the performance of fire service duties would not be inconsistent with existing legislative policy although it would extend that policy more generally. He recommends that:

(a) A distinction between death and personal injury claims and property damage claims be made here as in item (3) above. He recommends that the same rules set out in item (3) apply here.

(b) A statutory provision be included to define in some detail the kinds of functions and activities which are to be deemed to be fire duties (see provision set out in footnote 2073).

(5) Extraterritorial and mutual aid fire service. (Pages 660-67.)

The consultant recommends that whatever rules of governmental tort liability are adopted for fire service torts committed in home territory should apply equally to public entities while engaged in extraterritorial fire protection and suppression activities.

(6) Destruction of property to avert a conflagration. (Pages 667-69.) The consultant recommends that the owner of private property destroyed for the public good be compensated for such damages as accrued to the owner from such act and which would not otherwise have been sustained. Should such a provision be limited to property destroyed in an effort to prevent the spread of a fire?

Respectfully submitted,

John H. DeMouilly  
Executive Secretary