

6/12/62

Memorandum No. 28(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Payment of Tort
Judgments Against Local Public Entities)

Attached (blue pages) are two copies of a tentative recommendation and draft statute relating to payment of tort judgments against local public entities. We are hopeful that the Commission will be able to approve this tentative recommendation for distribution for comments after the June meeting. Accordingly, we suggest that you mark your revisions on one copy of the attached material so that it can be given to the staff at the June meeting. Any revisions that involve policy which the Commission should consider should, of course, be raised at the meeting.

The following matters are suggested for Commission consideration in connection with the attached tentative recommendation:

1. A section (Section 940.2) has been added in accord with the suggestion of the subcommittee at the May meeting to make clear that local public entities have a duty to pay tort judgments obtained against them.

2. The sections relating to payment of tort judgments in the fiscal year in which they become final, or in the ensuing fiscal year, or in not more than ten annual instalments beginning in the ensuing fiscal year, reflect the same policy previously approved by the Commission and are in substantially the same form as considered by the subcommittee at the May meeting. A provision has been added, however, to make clear that the authority to spread the payment of judgments over a 10-year period is in

addition to existing provisions. This was done so as not to unduly restrict the Government Code and Education Code sections permitting instalment payment of judgments, both sections being applicable to all judgments and not restricted to tort judgments.

3. The sections relating to levying taxes or assessments or making rates and charges sufficient to pay the judgments are substantially in the same form as considered by the subcommittee at the May meeting except that Section 940.6 has been revised to reflect the policy suggested by the subcommittee at the May meeting, namely, that an entity that appropriates funds for the operation and maintenance of the tort judgment debtor entity should be responsible only for its pro rata share of tort judgment liability based on the same percentage as its appropriations bear to the total expenses of the dependent entity for operation and maintenance.

4. The provisions relating to tort judgments as legal investments for private and public authorities have been divided into three separate sections since the subcommittee expressed concern over permitting such investment by public authorities.

5. Education Code Section 904 has been retained since it applies to the payment of all judgments against school districts. However, the limitation on the rate of interest has been deleted as being in conflict with the legal interest rate provided in the proposed statute (and because it is probably unconstitutional as so held in Welch v. Dunsmuir Joint Union H.S. Dist., 326 P.2d 633 (Cal. App. 1958), vacated without opinion upon hearing granted by the California Supreme Court on August 7, 1958).

Respectfully submitted,

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6/12/62

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

Payment of Tort Judgments Against Local Public Entities

A necessary condition to a successful tort action against a local public entity seems to be that the plaintiff first establish that the public entity is legally and financially capable of satisfying the judgment.¹ Existing statutes do not always ensure that local public entities have the authority and duty to pay tort judgments recovered against them. As a result some local public entities may enjoy a form of implied immunity from tort liability even though they would otherwise be liable under the rules governing their substantive tort liability. In addition, under existing law a plaintiff in some cases has no means whereby he may enforce a tort judgment against a local public entity.

To ensure that local public entities have the duty to pay tort judgments rendered against them and, at the same time, to protect public entities against the disruptive financial consequences of large tort judgments of unanticipated proportions, the Law Revision Commission recommends:

1. All local public entities should have a mandatory duty to pay tort judgments recovered against them. Judgments against public

1. See the research consultant's study at 258-60.

entities, unlike those against private persons, ordinarily cannot be satisfied by execution or other legal process against the assets of the judgment debtor, for public property and funds are generally immune from execution. However, where a statutory duty is imposed upon public entities to pay tort judgments, the judgment creditor may obtain a writ of mandate to compel the public entity to pay the judgment. Moreover, providing a mandatory duty that public entities pay tort judgments will remove any implied immunity from liability on the technical ground that a public entity does not have authority to pay a tort judgment.

2. All local public entities should be authorized in appropriate cases to pay a tort judgment in instalments over a term not exceeding 10 years. Cities, counties and school districts already have authority to spread the payment of judgments over a period of years.² However, the fiscal impact of imposing the duty to pay large tort judgments upon other local public entities should be mitigated by extending the authority to pay tort judgments in instalments to all local public entities.

Accordingly, the Commission recommends that a local public entity against which a tort judgment is obtained should be required to pay the judgment from available funds in the fiscal year in which the judgment becomes final. If this is not possible, the public entity should be

2. Cal. Govt. Code §§ 50170-50175 (authorize cities and counties to spread the payment of judgments over a period not exceeding 10 years); Cal. Educ. Code § 904 (authorizes school districts to spread the payment of judgments over a period not exceeding three years).

required to budget the unpaid amounts of any tort judgment against it for payment in the ensuing fiscal year unless this would result in undue hardship to the entity. In case of undue hardship, the public entity should be authorized to spread the payment of the judgment over a period not to exceed 10 years.

The delay in receiving payment where the public entity determines to pay the judgment in instalments would not unduly harm the judgment creditor. In the first place, since tort judgments will bear interest at the legal rate of seven percent, public entities will be motivated to spread the payment of tort judgments over a period of less than 10 years whenever this is possible. Moreover, in most cases there will be an available market for the sale or discount of tort judgments that are to be paid in instalments. However, to provide additional assurance that such judgments will be marketable, they should be made legal investments for banks and insurance companies and for certain public funds.

The authority to pay tort judgments over a period not exceeding 10 years should be in addition to and not in lieu of established procedures presently permitting extended payment of judgments. To avoid unnecessary conflict, however, and to stimulate a ready market for such judgments, Education Code Section 904 should be amended to remove the four percent limit on the rate of interest there provided. It may be noted that this limit is probably unconstitutional.³

3. See *Welch v. Dunsmuir Joint Union H.S. Dist.*, 326 P.2d 633 (Cal. App. 1958) (holding the 4 percent interest rate on judgments unconstitutional in light of Section 22 of Article 20 of the State Constitution), vacated without opinion upon hearing granted by the California Supreme Court.

3. A few types of public entities appear to be independent for functional purposes but are nevertheless financially dependent upon some other larger entity from whom they derive their funds. The inability of such entities to raise their own funds by the exercise of the taxing power should not be permitted to shield them from tort liability where, under applicable rules determining substantive liability, they would otherwise be liable. Accordingly, the contributing entity should be required to include in its appropriations of funds to the dependent entity sufficient moneys to bear its pro rata share of the tort judgments obtained against the dependent public entity. In the absence of such a provision, the plaintiff might not be able to secure payment of his judgment.

4. The statutory restrictions upon the incurring of debts or liabilities and the statutory limitations upon the maximum permissible rate of property taxation by local public entities should not operate to confer for practical purposes an immunity from tort liability. Accordingly, an express statutory provision that these limitations do not apply to tort judgments should be enacted.

Such a provision should not impose undue hardship upon local public entities in view of the other recommendations of the Commission. For example, instalment payments over a period of 10 years will, in most cases, mitigate the fiscal impact of the requirement that tort judgments be paid. Other tentative recommendations of the Commission will also permit local public entities to mitigate the adverse financial consequences of unanticipated tort judgments. For example, the Commission

has recommended that public entities be authorized to purchase insurance.⁴ This will permit the substitution of a known annual payment for potential tort liability. Moreover, the Commission's tentative recommendation relating to the bonding of tort judgments⁵ will have the effect of permitting payment of such judgments to be spread over a period of many years.

The Commission's recommendation would be effectuated by the enactment of the following measure:

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4. See Tentative Recommendation of the Law Revision Commission relating to Insurance Coverage for Public Entities and Public Officers and Employees (May 1, 1962).
 5. This Tentative Recommendation is now under consideration by the Commission and has not been distributed for comments and suggestions.

An act to amend Section 904 of the Education Code, and to add Article 4 (commencing with Section 740.1) to Chapter 2 of Division 3.5 of Title 1 of the Government Code, relating to payment of tort judgments.

The people of the State of California do enact as follows:

SECTION 1. Article 4 (commencing with Section 740.1) is added to Chapter 2 of Division 3.5 of Title 1 of the Government Code, to read:

Article 4. Payment of Tort Judgments

740.1. 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 injury to persons or property arising out of a negligent or wrongful act or omission.

740.2. A local public entity shall pay any tort judgment against it in the manner provided in this article.

740.3. The governing body of a local public entity shall pay, to the extent funds are available in the fiscal year in which it becomes final, any tort judgment out of any funds to the credit of the local public entity that are:

(a) Unappropriated for any other purpose unless the use of such funds is restricted by law or contract to other purposes; or

(b) Appropriated for the current fiscal year for the payment of tort judgments and not previously encumbered.

740.4. (a) If a local public entity does not pay in full a tort judgment during the fiscal year in which it becomes final and if, in the opinion of the governing body, the unpaid amount of the tort 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.

(b) If a local public entity does not pay in full a tort judgment during the fiscal year in which it becomes final and if, in the opinion of the governing body, the unpaid amount of the tort judgment is so great that undue hardship will arise if the entire amount is paid out of the revenues for the ensuing fiscal year, the governing body shall provide for the payment of the judgment with interest thereon in not exceeding ten annual instalments. Each payment shall be of an equal portion of the principal of the unpaid amount of the tort judgment.

(c) The authority to pay a tort judgment in instalments as provided in this section is in addition to and not in lieu of any other law providing for the payment in instalments of tort judgments against local public entities.

740.5. 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 in accordance with this article all tort judgments against the local public entity.

740.6. If all or any portion of the revenue used for the maintenance and operation of a local public entity that is a tort judgment debtor is

derived from appropriations of another local public entity, such other local public entity shall in each fiscal year appropriate funds equal to its pro rata share of an amount sufficient to permit the tort judgment debtor entity to pay in accordance with this article all tort judgments against it. Such amount shall be paid to the judgment debtor entity and shall be used to satisfy the judgment. For this purpose, the pro rata share of such other local public entity for each tort judgment is an amount bearing the same proportion to the total amount of the tort judgment as the revenue derived from such other local public entity for maintenance and operation during the fiscal year in which the cause of action on such judgment accrued bears to the total revenues used for maintenance and operation of the judgment debtor entity during such fiscal year. Such other local public entity shall levy taxes or assessments, make rates and charges, or otherwise provide funds, sufficient in amount to raise the amount of the appropriation and payment required by this section.

740.7. Except as provided in Article 5 of this chapter, 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 and payments that may be made by a local public entity, and any limitation on the amount of liability or indebtedness that may be incurred 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 article.

740.8. 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 to the same extent

as bonds of the particular local public entity against which the judgment is recovered.

740.9. All tort judgments against a local public entity are legal investments for the State and for every local public entity within the State to the same extent as bonds of the particular local public entity against which the judgment is recovered.

740.10. All tort judgments against a local public entity, to the same extent as bonds of the particular local public entity against which the judgment is recovered, 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.

SEC. 2. Section 904 of the Education Code is amended to read:

904. 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. 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.

(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.