Memo to prof

9/10/62

Third Supplement to Memorandum No. 46(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Dangerous Conditions of Public Property)

Attached is a letter received from the office of the Los Angeles County Counsel. This letter is in answer to an inquiry I sent to the Los Angeles County Counsel: Should the Public Liability Act of 1923 be retained as is but be made applicable to all public entities?

It should be noted in connection with this matter that the League of California Cities Committee on Governmental Immunity has (by a letter sent to each of you) now stated that it does not recommend that the 1923 Act be retained as is. Instead the League Committee recommends some substantial revisions of the 1923 Act that would result in a significant reduction of liability under that Act.

You will note that none of the persons commenting on this proposal--to leave the 1923 Act as is but to make it applicable to all public entities -- believe that the proposal is sound. All persons (including the League Committee) recognize that changes are necessary in the 1923 Act.

Respectfully submitted,

John H. DeMoully
Executive Secretary

HAROLD W. KENNEDY
COUNTY COUNSEL

MADISON 5-3611

OFFICE OF THE COUNTY COUNSEL

648 HALL OF ADMINISTRATION
LOS ANGELES 12, CALIFORNIA

August 27, 1962

California Law Revision Commission
School of Law
Stanford University
Stanford, California

Attention: Mr. John H. DeMoully
Executive Secretary

Re: TENTATIVE RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION RELATING TO LIABILITY FOR DANGEROUS CONDITIONS OF PUBLIC PROPERTY

Gentlemen:

In your letter of July 26, 1962, you requested our comments concerning a proposal submitted by the Chairman of the League of California Cities Committee on Governmental Immunity. This proposal states that in view of the very substantial case law that had been built up, it would be advisable to leave the 1923 Public Liability Act as it is but make it applicable to all public agencies.

This proposal has the merit of simplicity. However, it is our opinion that the courts have already so liberally construed the existing Public Liability Act that it is in need of revision because of the unreasonable burden that has been placed upon public agencies, and we would therefore suggest that public agencies be relieved of the liability imposed by this act or that such liability be strictly limited.

It has been our experience in investigating claims and in defending actions brought under the Public Liability Act that in virtually every case the accident could have been avoided if the injured party had exercised some care for his own safety. It would seem that the

liability of a public agencies should be no greater than that of an owner of land toward a licensee who is assumed to accept the risks of using the property in the condition in which it exists in the absence of some hidden trap or active negligence.

To impose a greater liability upon a public agency than this is quite unrealistic and relieves the user of such public property of his duty to look out for his own safety. We therefore believe that a provision should be made in any Public Liability Act that the plaintiff establish that the public property was being used in its normal, lawful, and intended manner and that the injured party have the burden of establishing that he was using the property with reasonable care for his own safety such as is required under Section 1953 of the Government Code with reference to the liability of public officers.

Very truly yours,

HAROLD W. KENNEDY
County Counsel

By Lloyd S. Davis
Lloyd S. Davis
Deputy County Counsel

LSD:tah