

mtg

Revised - 11/7/62
9/11/62

REVISED

Memorandum No. 51(1962)

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

Attached to this memorandum is a copy of the tentative recommendation of the Commission that was distributed for comments. Attached also are two communications received by the Commission containing comments on the proposed legislation. These are:

Exhibit I (pink) - First Report of State Bar Committee to President and Board of Governors of State Bar

Exhibit II (yellow) - Letter from Los Angeles County Counsel

The suggestions made in the exhibits need little amplification, but the following matters should be considered:

§ 740.1 (now 970). The definition suggested by the State Bar is unnecessary. "Local public entity" is defined in Govt. Code § 700 for all of Chapter 2 of Division 3.5 to which this statute is proposed to be added. If the general liability statute is enacted, this statute will be a part of Division 3.6 where the term is also defined. Should "tortious" be substituted for "negligent or wrongful"?

§ 740.2 (now 970.2). The State Bar suggests that the tort judgment itself require the entity's responsible fiscal officer to comply with its terms. The staff has no objection to this addition, but the reference to a writ of mandate was included originally to indicate how governing bodies should be compelled to exercise the discretion granted in Section 740.4, now 970.6, and to levy the necessary taxes. Hence, the staff believes

that the reference should be retained.

§ 740.4 (now 970.6). The State Bar thinks the provisions for installment payment of judgments would invite entities to avoid insuring on the ground that they may always spread the payment of the excessive judgments that may be awarded. Apparently, though, there have been no complaints of abuse of this authority by cities and counties, which have this power under existing law. From the information we have received so far (the results of the questionnaire are yet to be received) from our consultants and from the public entity representatives who attend our meetings it appears that cities and counties insure their liability despite the authority to pay judgments in installments.

The State Bar believes that the authorization to pay in installments should be reduced from 10 annual installments to three annual installments. It should be noted that cities and counties (Government Code §§ 50170-50175) and county water districts (Water Code §§ 31091-31096) are now authorized to spread the payment of judgments over a period not exceeding 10 years.

§ 740.5 (now 970.8). The State Bar notes a possible ambiguity in Section 740.5 and suggests amendments to § 740.5 to take care of the problem. (See pages 2 and 3 of the pink pages.)

§ 740.6 (now 971). The State Bar suggests that the section should also exempt the taxes to be levied under this statute from debt or tax rate limitations imposed by charter or ordinance. The staff is not informed whether any charters or ordinances limit tax rates or indebtedness although it appears from pages 258-272 of the Study that there are a great many statutes that do. In response to this suggestion, however, we have added "or in any charter or ordinance" to Section 971.

§ 740.7(a) (now 971.2). The State Bar questions the making of these judgments legal investments "for all trust funds." (See Exhibit I, pp. 3-4.)

Education Code § 904. The County Counsel of Los Angeles suggests granting school districts express authority to prepay installments. (See Exhibit II.) [This suggestion has been incorporated into the Tentative Recommendation relating to Claims, Actions and Judgments Against Public Entities and Public Employees.]

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

EXHIBIT I

EXTRACT

from

STATE BAR COMMITTEE ON SOVEREIGN IMMUNITY

First Report of Committee to the President
and Board of Governors of the State Bar
of California

PAYMENT OF TORT JUDGMENTS

BY LOCAL PUBLIC ENTITIES

Section 740.1. This is the first draft statute submitted by the Commission applying to local public entities, as opposed to public entities. Accordingly, the Committee recommends a definition of the term "local public entity" in Section 740.1.

Section 740.2. Having to proceed by way of writ of mandate to secure payment of a tort judgment seems to the Committee to be laborious and it is accordingly recommended that there be added to Section 740.2 a provision to the effect that the tort judgment itself against the local public entity may direct the responsible fiscal officer of the public entity to pay such judgment in accordance with its terms.

Section 740.4 (b). The Committee recommends against permitting

a local public entity to pay judgments rendered against it in not to exceed ten annual installments, upon the ground that this statutory authority would invite a substitute for public entities insuring against liabilities or setting aside appropriate reserves for self-insurance. In this regard, attention is invited to Paragraph 6 on page 5 of the Commission's draft statute on Insurance, in which it is stated that the question of requiring mandatory insurance coverage is still under study by the Commission. Until the matter of mandatory insurance coverage is decided upon, the question of the payment of tort judgments by public entities in installments cannot be intelligently commented upon; however, the Committee is of the opinion that this subsection permitting payment in installments should be reduced from ten annual installments to three annual installments, as is presently provided in Section 904 (b) of the Education Code.

Section 740.5 (a). As drafted, this section purports to make it mandatory upon each local public entity to levy taxes or assessments or make rates and charges in an amount sufficient to pay all tort judgments. The Committee believes that as written this may conflict with Section 740.4, which authorizes payment of judgments under certain circumstances in not to exceed ten annual installments.

It is accordingly recommended that the section be revised to read:

"740.5 (a) 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, or both, in an amount sufficient to pay all tort judgments, in installments or otherwise, in accordance with this article."

Section 740.5 (b). Similarly, after the words "tort judgment" in line 9 of this subsection, there should be added "in whole or in installments as herein provided".

Section 740.6. This section purports to except taxes and assessments collected for the purpose of paying tort judgments from any debt ceiling limitations contained in any other statute. Such debt limitations on a local public entity are more apt to be found in a charter or ordinance debt limitation than in a State statute, and in the opinion of the Committee the section would have little real application unless there be added after the word "statute": "charter or ordinance". However, the Committee expresses no opinion as to whether a local municipal debt limitation contained in a municipal charter may be a municipal affair immune from State legislative interference and the subject of a necessary constitutional amendment.

Section 740.5 (a). Making tort judgments legal investments "for all trust funds" may cast some doubt upon that section of the Civil Code which applies the "prudent man rule" to the investment of trust funds and abolishes the former limitation to "legal investments".

Unless the legislative history is made clear , the Committee would question the advisability of referring to "legal investments for all trust funds".

8/16/62

EXHIBIT II

EXTRACT

from

LETTER FROM OFFICE OF THE LOS ANGELES COUNTY COUNSEL

July 20, 1962

6. Payment of Tort Judgments by Local Public Entities.

It is important to authorize public agencies to prepay any installments of judgments which are spread out over a period of more than one year in order to save the taxpayers the cost of additional interest. This has been done in Section 740.4 (b) with respect to public agencies generally but is apparently not included in Section 904 (b) relating to school districts and we believe such a provision should be included in the latter section.