

10/8/62

Memorandum No. 61(1962)

Subject: Study No. 52(L) - Sovereign Immunity
(Workmen's Compensation)

Attached is a copy of the revised tentative recommendation relating to Workmen's Compensation Benefits for Persons Required or Requested to Assist Law Enforcement or Fire Control Officers.

We propose that this recommendation and proposed legislation be printed as a separate pamphlet. We want to send it to the printer and have it printed as soon as possible. We also need to have the bill preprinted as soon as possible. Accordingly, we need to give final approval to the text of the recommendation and the proposed statute at the October meeting.

A sample of the Cover and Title Page for this publication and of the Letter of Transmittal is also attached.

The following technical changes should be made in the attached revised tentative recommendation:

(1) The second sentence of the tentative recommendation should be revised to read: "Later cases have limited this holding by suggesting that workmen's compensation benefits [no change in remainder of sentence]."

(2) Form of case citations in footnotes will be revised.

(3) On page 2, footnote 5, the first portion should be revised to read: "Labor Code Sections 3362 (enacted in 1959) and 4458.2 (enacted in 1961) extend maximum benefits of the Workmen's Compensation Act to persons registered as active members of organized volunteer police departments; . . ."

(4) The phrase "and to repeal Section 4458.2 of," should be added before "the Labor Code" in the title to the proposed legislation on page 3.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

[Cover and Title page]

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

SOVEREIGN IMMUNITY

Workmen's Compensation Benefits for Persons Required or
Requested to Assist Law Enforcement or Fire
Control Officers

January 1963

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



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[For use in printed pamphlet]

LETTER OF TRANSMITTAL

January 2, 1963

To His Excellency Edmund G. Brown
Governor of California
and to the Legislature of California

The California Law Revision Commission was authorized by Resolution Chapter 202 of the Statutes of 1957 to make a study to determine whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

The Commission herewith submits its recommendation on one portion of this subject--workmen's compensation benefits for persons required or requested to assist law enforcement or fire control officers. Recommendations covering other aspects of this subject are contained in other reports prepared for the 1963 legislative session. The Commission has also published a research study relating to sovereign immunity prepared by its research consultant, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

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52(L)

Revised September 1, 1962
June 1, 1962

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford, California

REVISED

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

Workmen's Compensation Benefits for Persons Required or Requested to Assist
Law Enforcement or Fire Control Officers

NOTE: This is a tentative recommendation prepared by the California Law Revision Commission. It is not a final recommendation and the Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature. This material is being distributed at this time for the purpose of obtaining suggestions and comments from the recipients and is not to be used for any other purpose.

REVISED

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

Workmen's Compensation Benefits for Persons Required or Requested to Assist Law Enforcement or Fire Control Officers

The California Supreme Court has held that a person impressed into law enforcement service under Penal Code Section 150 is entitled to workmen's compensation benefits as an employee of the law enforcement agency that requested his assistance.¹ Later cases have questioned this holding and have suggested that workmen's compensation benefits may not be paid if the person assisting in the enforcement of the law receives no compensation for his services² or if he has volunteered his services.³

Sections 4010 and 4160 of the Public Resources Code authorize certain public officers and employees to order a person to assist in combating a forest, brush or grass fire. Failure to comply with such an order is a misdemeanor. Labor Code Section 4458.5 provides that persons impressed into fire control service under Section 4010 are entitled to

1. County of Monterey v. I.A.C., 199 Cal. 221, 248 Pac. 912 (1926).
2. Dept. of Nat'l Resources v. I.A.C., 208 Cal. 14, 16-17, 279 Pac. 987, 989 (1929).
3. City of Long Beach v. I.A.C., 4 Cal.2d 624, 51 P.2d 1089 (1935).

workmen's compensation benefits, but no comparable provision exists to provide similar benefits to persons impressed into fire control service under Section 4160.

When a person not trained in law enforcement or fire suppression is required by law to assume the risk of death or serious injury to provide such protection to the public, or when he undertakes to do so at the request of a peace officer or fire control officer, he and his dependents should be provided with protection against the financial consequences of his death or injury. The Commission, therefore, recommends that the benefits of the Workmen's Compensation Act be extended to cover cases where a person is killed or injured while engaged in the performance of active law enforcement or fire suppression service, whether he does so because he is required by law to do so or because he does so at the request of a peace officer or fire control officer.⁴

The Legislature has previously enacted a number of statutes that carry out the policy underlying the Commission's recommendation and provide workmen's compensation benefits for persons providing unsalaried law enforcement service⁵ or

4. In some states, local entities are civilly liable, without regard to negligence, for all damages resulting from the death or injury of a person impressed into law enforcement service. The Commission believes that it is better policy to extend such persons the same benefits and protections that are provided to peace officers generally.
5. Labor Code Section 3362, enacted in 1959, extends the benefits of the Workmen's Compensation Act to members of volunteer police departments; Labor Code Section 3363, enacted in 1961, covers active members of the reserve fish and game warden program of the Department of Fish and Game; and Labor Code Section 3364, also enacted in 1961, brings volunteer, unsalaried members of a sheriff's reserve under the Workmen's Compensation Act while they are engaged in active law enforcement service.

fire suppression service.⁶

Workmen's compensation benefits for members of volunteer police departments and volunteer fire departments are computed at the maximum rates. Labor Code Section 4458.5 provides that certain persons impressed into fire control service also are to receive benefits computed at the maximum rates. The Commission recommends that this policy of providing maximum compensation benefits to citizens providing unsalaried law enforcement or fire suppression service be extended to all persons who are requested or required to assist in law enforcement or fire suppression.

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

An act to add Sections 3365 and 3366 to, and to amend Sections 4458 and 4458.2 of, the Labor Code, relating to workmen's compensation.

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

SECTION 1. Section 3365 is added to the Labor Code, to read:

3365. Each person engaged in suppressing a fire pursuant to Section 4010 or 4160 of the Public Resources Code, and each person engaged in suppressing a fire at the request of a public officer or employee charged with the duty

6. Labor Code Sections 3361 and 4458 extend the benefits of the Workmen's Compensation Act to members of volunteer fire departments and Labor Code Section 4458.5 extends the benefits of the Workmen's Compensation Act to certain persons impressed into fire control service.

of preventing or suppressing fires, is an employee of the public entity that he is serving or assisting in the suppression of the fire.

SEC. 2. Section 3366 is added to the Labor Code, to read:

3366. Each person engaged in the performance of active law enforcement service as part of the posse comitatus or power of the county, and each person engaged in assisting any peace officer in active law enforcement service at the request of such peace officer, is an employee of the public entity that he is serving or assisting in the enforcement of the law.

SEC. 3. Section 4458 of the Labor Code is amended to read:

4458. If a male member registered as an active fire fighting member of any regularly organized volunteer fire department as described in Section 3361 suffers injury or death while in the performance of his duty as fireman, or if a person engaged in fire suppression as described in Section 3365 suffers injury or death while so engaged, then, irrespective of his remuneration from this or other employment or from both, his average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum fixed for each, respectively, in Section 4453. Four times his average annual earnings in disability cases and in death cases shall be taken at the maximum limits provided in Sections 4452 and 4702 respectively.

SEC. 4. Section 4458.2 of the Labor Code is amended to

read:

4458.2. If a male member registered as an active police member of any regularly organized volunteer police department as described in Section 3362 suffers injury or death while in the performance of his duty as a policeman, or if a person engaged in the performance of active law enforcement service as described in Section 3366 suffers injury or death while in the performance of such active law enforcement service, then, irrespective of his remuneration from this or other employment or from both, his average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum fixed for each, respectively, in Section 4453. Four times his average annual earnings in disability cases and in death cases shall be taken at the maximum limits provided in Sections 4452 and 4702 respectively.

SEC. 5. Section 4458.5 of the Labor Code is repealed.

~~[4458.5--Any-miner-or-adult-impressed-or-ordered-into-fire-control-service-as-provided-by-Section-4010-of-the-Public Resources-Code-who-suffers-injury-or-the-dependents-of-such person-who-suffers-death-while-in-the-performance-of-the-impressed-or-ordered-duties-shall-receive-benefits-as-provided-for-a male-member-registered-as-an-active-fire-fighting-member-of-a regularly-organized-volunteer-fire-department-by-the-provisions of-Section-4458-of-this-code.]~~