

#52

2/13/67

Memorandum 67-15

Subject: Study 52 - Sovereign Immunity

We attached a letter from the office of the Legislative Counsel and various attachments referred to in the letter. Assemblyman Earle P. Crandall wishes to have the former law relating to damage by mobs and riots reenacted. See the Legislative Counsel opinion for a statement of the prior law and the effect of the enactment of the 1963 legislation on governmental liability.

What action does the Commission wish to take on the request of Assemblyman Earle P. Crandall?

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Memo 67-15



GEORGE H. MURPHY
LEGISLATIVE COUNSEL

BERNARD CZESLA
CHIEF DEPUTY

TERRY L. BAUM
J. GOULD

OWEN K. KUNS
RAY H. WHITAKER
PRINCIPAL DEPUTIES

EDWARD F. NOWAK
DEPUTY IN CHARGE
LOS ANGELES OFFICE

STATE OF CALIFORNIA
Office of Legislative Counsel

3021 STATE CAPITOL, SACRAMENTO 95814
110 STATE BUILDING, LOS ANGELES 90012

Sacramento, California
January 31, 1967

GERALD ROSS ADAMS
EVERETT AVILA
EDWARD BERSHATSKY
LAURENCE C. BLUNT
ROBERT A. BRAVERMAN
JOHN CORZINE
KENT L. DECHANBEAU
CLINTON J. DEWITT
JEROME DIAMOND
HARVEY J. FOSTER
THOMAS H. FRANKEL
C. ROBERT JAMESON
JAMES E. KASSIS
L. DOUGLAS KINNEY
ERNEST H. KUNZI
STANLEY M. LOURIMORE
SHERWIN C. MACKENZIE, JR.
ANN M. MACKAY
PAUL J. MASON
ROSE OLIVER
TRACY O. POWELL, II
EDWARD K. PURCELL
MARGUERITE R. ROTH
CAREY W. ROYSTER
MARY SHAW
RUSSELL L. SPARLING
DAVID M. WEETMAN
DEPUTIES

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Governmental Immunity - #11022

Dear John:

I am enclosing for your consideration a letter which I have received from Assemblyman Earle P. Crandall requesting that we obtain an opinion on the subject matter of the attachments from the California Law Revision Commission.

With kindest personal regards,

George H. Murphy
George H. Murphy
Legislative Counsel

GHM:11b

Assembly
California Legislature

EARLE P. CRANDALL
ASSEMBLYMAN, TWENTY-FIFTH DISTRICT

RECEIVED

JAN 31 1967

RECEIVED

January 30, 1967

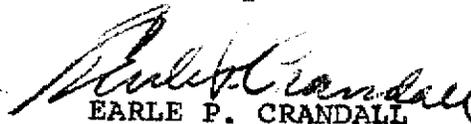
Mr. George Murphy
Legislative Counsel
Room 3021, State Capitol

Dear Mr. Murphy:

The attached is self-explanatory. Would appreciate your obtaining an opinion on this subject from the California Law Revision Commission.

Thank you.

Sincerely,


EARLE P. CRANDALL

EPC:fw
Encls.

GEORGE H. MURPHY
LEGISLATIVE COUNSEL
BERNARD CZESLA
CHIEF DEPUTY
TERRY L. BAUM
J. GOULD
OWEN K. KURS
RAY M. WHITAKER
PRINCIPAL DEPUTIES
EDWARD F. NOWAK
DEPUTY IN CHARGE
LOS ANGELES OFFICE



STATE OF CALIFORNIA
Office of Legislative Counsel

3021 STATE CAPITOL, SACRAMENTO 95814
110 STATE BUILDING, LOS ANGELES 90012

Sacramento, California
January 4, 1967

GERALD ROSS ADAMS
EVERETT AYALA
EDWARD BERSHATSKY
LAURENCE C. BLUNT
ROBERT A. BRAYERNAN
JOHN COZZINE
KENT L. DECKAMBEAU
CLINTON J. DEWITT
JEROME DIAMOND
HARVEY J. FOSTER
THOMAS H. FRANKEL
C. ROBERT JAMESON
JAMES E. KASSIS
L. DOUGLAS KINNEY
ERNEST H. KUNZI
STANLEY M. LOUMBROS
SHERWIN C. NACKENZIE
ANN M. MACKAY
PAUL J. MASON
ROSE OLIVER
TRACY O. POWELL, II
EDWARD H. PRICEL
MARGUERITE R. ROTH
CAREY W. ROTBECK
MARY SHAW
RUSSELL L. SPANING
DAVID M. WESTMAN
DEPUTIES

Honorable Earle P. Crandall
Assembly Chamber

Riot Damage - Governmental Immunity - #9222

Dear Mr. Crandall:

QUESTION

You have asked for the history of, and information relating to, Section 50140 and following of the Government Code.

OPINION AND ANALYSIS

Until 1963, absolute liability was imposed upon local entities for damages caused by mobs or riots to property within their boundaries by Article 6 (commencing with Section 50140), Chapter 1, Part 1, Division 1, Title 5 of the Government Code.

Former Article 6 (commencing with Section 50140), Chapter 1, Part 1, Division 1, Title 5 of the Government Code reads as follows:

"Article 6. Damage by Mobs and Riots

"50140. A local agency* is responsible for damage by mobs or riots to property within its boundaries."

"50141. Such actions shall be tried in the county where the property damaged is situated and shall be commenced within one year after the commission of the act complained of."

* For purposes of these provisions "local agency" meant a county, city, or city and county (Gov. C. Sec. 50001).

"50142. The plaintiff in any such action shall not recover if the damage was aided, sanctioned, or permitted by his negligence."

"50143. On the certificate of the presiding judge or clerk of the court rendering judgment against the local agency for damages by mobs or riots, the legislative body, by ordinance, shall cause a warrant to be issued on the general fund, which shall be paid in its regular order."

"50144. Within three years, at the proper times, the legislative body shall levy and cause to be collected a tax on the taxable property of the local agency for the payment of the warrant."

"50145. When the levees and other works of reclamation of a district are damaged or destroyed by mobs or riots and an action is brought for damages, it shall be prosecuted by the Attorney General in the name of the people of the State of California. The amount recovered shall be paid to the treasurer of the county, who shall credit it to the district."

These provisions were added by Chapter 81 of the Statutes of 1949, page 259. They were derived from Chapter 344 of the Statutes of 1867-1868, page 418, which was codified by Sections 4452 et seq. of the Political Code which was enacted in 1872. Section 4452 of the Political Code was amended by Chapter 290 of the Statutes of 1907, page 563.

In 1963, the Legislature repealed Article 6 (Ch. 1681, Stats. 1963) in the process of revising the statutes relating to sovereign immunity. The revisionary legislation was recommended by the California Law Revision Commission, whose recommendation as to Article 6 stated:

"Sections 50140 to 50145 are inconsistent with the legislation recommended by the Commission. Sections 50140 to 50145 impose absolute liability upon cities and counties

for property damages caused by mobs or riots within their boundaries. These sections are an anachronism in modern law. They are derived from similar English laws that date back to a time when the government relied on local townspeople to suppress riots. The risk of property loss from mob or riot activity is now spread through standard provisions of insurance policies. Sections 50140 to 50145 should, therefore, be repealed."

(Vol. 4 California Law Revision Commission Reports, Recommendations and Studies (1963), p. 876)

The 1963 Study Relating To Sovereign Immunity of the California Law Revision Commission contains the additional information on the sections in question set out below. It should be noted, however, that only the recommendation of the commission, which we have quoted above, is expressive of commission intent while the study is only intended as source material for the problems considered (Vol. 5 California Law Revision Commission Reports, Recommendations and Studies (1963), Preface p. v).

"7. Damage from mob or riot

"The earliest statutory waiver of sovereign immunity in California appears to be the mob violence act passed in 1868, which was later codified as part of the Political Code. In its present form, the same statutory policy is declared in Section 50140 of the Government Code:

"A local agency is responsible for damage by mobs or riots to property within its boundaries.

The term 'local agency' is elsewhere defined to mean 'county, city, or city and county.'

"This provision appears to be based upon the famous English Riot Act of 1714, which declared that the inhabitants of any 'Hundred'

or of any city or town in which property is damaged by three or more persons 'unlawfully, riotously and tumultuously assembled' shall be 'liable to yield damages to the Person or Persons injured.' Though as few as three persons was sufficient to impose civil liability for damage to property, the Act also made it a capital offense for riotous 'persons to the Number of twelve or more' to fail to disperse within one hour after 'reading the Riot Act.' The California statutes are silent regarding the requisite number of persons necessary to constitute a mob or riot for purposes of civil damages, although a minimum of two persons is sufficient for penal purposes. Whether this penal standard would be applied to the provisions regarding civil liability is a matter of conjecture.

"Without regard to the penal aspects of riotous conduct, the policy implicit in these mob violence statutes appears to be predicated on the view that it is not unfair to spread the risk of loss from criminal disorders upon the inhabitants of the public entity vested with responsibility and legal authority to prevent and suppress them. This liability is a form of indemnification not founded on fault, for it exists without the necessity for plaintiff to establish any negligence or nonfeasance on the part of law enforcement authorities. Recovery, however, is denied if the damage was aided, permitted or sanctioned by the plaintiff's negligence, as when plaintiff, with notice of impending danger, failed to use reasonable diligence to notify the responsible authorities. The recoverable damages extend only to plaintiff's loss of or injury to property--meaning, in all likelihood, only tangible, corporeal property. Such recovery is deemed to be compensatory in nature and not punitive.

"Since liability exists solely by virtue of the statute, it would seem that

the abrogation of governmental immunity by Muskopf would have no direct effect upon the recoverability of property damage caused by mob violence. In the absence of governmental immunity, however, public entities may now be liable for personal injuries sustained as a result of a negligent or other tortious failure on the part of law enforcement personnel to control or suppress a mob or riot. The policy considerations relevant to such possibility will be discussed at a later point in this study."

(Vol. 5 California Law Revision Commission Reports, Recommendations and Studies (1963), pp. 72 and 73, footnotes omitted)

"...As already pointed out [above], Section 50140 of the California Government Code makes cities and counties liable for property damage caused by mobs or riots, without regard for fault. The underlying basis for such liability, at least in part, would seem to be that the failure of the community to prevent mob violence, when acting either through its police personnel or through private action of individual citizens, justifies distributing the risk of loss over the taxpayers at large. In the absence of such a statute, of course, entity liability for failure to protect against mob violence ordinarily has been denied. Comparable statutes in several other jurisdictions, including notably Illinois, Kansas, and New Jersey, have long accepted liability not only for property damage but also for personal injuries from mob violence, unlike the California provision. Yet the rationale which supports recovery for property damage would seem to apply equally--or, possibly, with even greater vigor in the estimation of those who value personal interests above property interests--to personal injuries and death resulting from such civil disorders. If the general policy

Honorable Earle P. Crandall - p. 6 - #9222

of Section 50140 is sound--as it is believed to be--consideration should be given to modifying its terms to include therein liability for personal injuries as well as property damage, and possibly to defining more accurately and realistically the crucial terms, 'mob' and 'riot,'"

(Vol. 5 California Law Revision Commission Reports, Recommendations and Studies (1963), pp. 451 and 452, footnotes omitted)

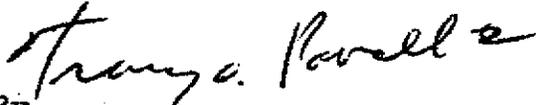
In "California Government Tort Liability" (California Continuing Education of the Bar Practice Book No. 24, 1964), Professor Arvo Van Alstyne, consultant to the Law Revision Commission, during its two-year study of sovereign immunity, stated in regard to the repeal of Article 6:

"...Repeal of this statute [the mob violence statute] does not necessarily mean that the government is no longer liable for injuries inflicted by mob or riot; but any such liability must be predicated on the general liability provisions of the California Tort Claims Act and subject to its immunities."
(p. 45)

"... These sections have not been supplanted. Liability might be imposed in certain circumstances for a public entity's failure to exercise reasonable diligence to discharge a mandatory duty, imposed by enactment, relating to the control and suppression of mob violence."
(p. 668)

Very truly yours,

George H. Murphy
Legislative Counsel


By
Tracy O. Powell, II
Deputy Legislative Counsel

TOP:AS

MORGAN, BEAUZAY, WYLIE, FERRARI & LEAHY

ATTORNEYS AT LAW
300 West Hedding St.
San Jose, California 95110

W. Robert Morgan
Victor H. Beauzay
Richard J. Wylie
Clarence J. Ferrari, Jr.
David W. Leahy

Lawrence G. Evans
Philip L. ...
John A. Hamu...schmidt
Sanford A. Berlins
John McBride
Lois P. Mitchell
Michael J. Ezger
Edward M. Alvarez

Cable Address "Trial"
Telephone 298-4608
Area Code 408

of Counsel
Marcel B. Poché

JAN 20 1967

January 17, 1967

Mr. Earle P. Grandall
State Capitol
Sacramento, California

Dear Earle:

I have read your letter of January 9, 1967, and I'll be darned if I know why you are cautious about introducing legislation about such a sensitive area. You can gather your refusal caused a sensitive reaction on my part.

Everything contained in the Legislative Counsel's opinion bolsters everything I have told you.

I repeat, if you have guts enough to enter and fight for this legislation, you will be a hero.

Very truly yours,



ROBERT MORGAN

RM:rbw

Harvey C. Miller
Richard W. Morton
James A. Wright
Charles V. Caillat
Lui J. Venator
Conrad L. Rushung

Miller, Morton, Wright & Caillat

Attorneys at Law

500 The Swenson Building

777 North First Street

San Jose, California 95112

January 20, 1967

Telephone
2921765

JAN 25 1967

Assemblyman Earle P. Crandall
State Capitol Building
Sacramento, California

Dear Earle:

I have a copy of your letter of January 9, 1967, to Robert Morgan concerning old Government Code 50140 pertaining to the liability of a local Government for damage resulting from riot.

The subject of sovereign immunity received a lot of study from the Law Revision Commission before 1963 and resulted in the repeal of the then existing Government Code 50140.

The conclusions of the Law Revision Commission were made without the practical experience of incidents such as occurred at Watts.

I have not made a personal study of the losses resulting from racial riots but I would be of the opinion without such a study that a great loss occurred to property owners which was not covered by insurance and had to be borne individually by such property owners.

At this time I believe that recent circumstances have clearly demonstrated the error of the Law Revision Commission's conclusions and that repeal of the old Government Code 50140 has resulted in substantial losses to property owners. However, this subject is one which should have further analysis and study; possibly it should be referred back to the Law Revision Commission in view of the recent experience. I do not believe you should sponsor the re-adoption of the old code section until the problem has been restudied.

THE STATE BAR OF CALIFORNIA

A. STEVENS HALSTED, JR., *President*
JOHN M. CRANSTON, *Vice-Presidents*
RICHARD H. FUIDGE, *Vice-Presidents*
GALEN MCKNIGHT, *Vice-Presidents*
A. H. MOFFITT, JR., *Vice-President and Treasurer*
JACK A. HAYES, *Secretary*
SAN FRANCISCO
F. LAMAR FORSHEE, *General Counsel*
SAN FRANCISCO
JOHN S. MALONE, *Assistant Secretary*
LOS ANGELES
KARL E. ZELLMANN, *Assistant Secretary*
SAN FRANCISCO
GARRETT H. ELMORE, *Special Counsel*



601 McALLISTER STREET
SAN FRANCISCO 94102
TELEPHONE 922-1440
AREA CODE 415

BOARD OF GOVERNORS
LUTHER M. CARR, *Burlingame*
JOHN M. CRANSTON, *San Diego*
HUGH W. DARLING, *Los Angeles*
J. NICK DEMEO, *Santa Rosa*
ARCH E. EKDALE, *San Pedro*
JOHN H. FINGER, *San Francisco*
RICHARD H. FUIDGE, *Marysville*
A. STEVENS HALSTED, JR., *Los Angeles*
GALEN MCKNIGHT, *Fresno*
HARVEY C. MILLER, *San Jose*
A. H. MOFFITT, JR., *Alameda*
LOUIS L. PHELPS, *San Francisco*
SAMUEL O. FRUITT, JR., *Los Angeles*
JOHN B. SUBR, *San Bernardino*
GUY E. WARD, *Beverly Hills*

February 9, 1967

John H. DeMouilly, Esq.
Executive Secretary
California Law Revision Commission
Crothers Hall, Room 30
Stanford, California

Dear Mr. DeMouilly:

This is to advise you of the following action of the Board taken at its January, 1967 meeting re certain proposed measures of the Law Revision Commission:

RESOLVED upon consideration of Interim Report of Committee on Administration of Justice dated January 3, 1967, concerning proposed measures of the Law Revision Commission, that the Board takes the following action:

I Power of Trial Court to
Prescribe Additur, as
Well as Remittitur, in
New Trial Order - CCP
657 (Am.), 662.5 (New)

Approves the views of the committee and (1) instructs that the Law Revision Commission be so advised (2) instructs the Legislative Representative to oppose the measure unless it is amended to conform to the views of the committee and (3) states that it assumes that the defendant will know the amount of the additur.

John H. DeMouilly, Esq.

-2-

February 9, 1967

- II Suit by or Against
Unincorporated Association
(Including Partnership)
- (1) Approves the report of the committee insofar as it endorses the principle of permitting an incorporated association to sue and be sued as a legal entity.
- (2) Neither approves nor disapproves any of the suggestions of the committee but directs that they be called to the attention of the Commission.
- III Good Faith Improver of Land
Owned by Another
- Concurs in the views of the committee, the Commission to be advised thereof.
- IV Legal Rights Upon Abandonment or Breach of Lease of
Real Property
- Instructs that the Commission be advised that the Board takes no position concerning the merits of the committee's report but concurs in the view of the committee that said act should be prospective only.

It is my understanding that the Interim Report referred to above has been transmitted to you previously.

Very truly yours,


Karl E. Zellmann
Assistant Secretary

KEZ:meb

cc: Messrs. Halsted and Elmore