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7/8/68

Memorandum 68-68

Subject: Study 52 - Sovereign Immunity (Statute of Limitations)

You will recall that at the June meeting the Commission approved in principle a statute drafted by the staff to make it clear that the general six-month statute of limitations in actions against public entities is not extended by Code of Civil Procedure Section 352 (general statute tolling statute of limitations in case of minors, insane persons, and prisoners). At the same time, the Commission directed the staff to make Section 352 inapplicable to actions against public agencies only if a notice that the section is inapplicable has been given to the claimant or the person acting on his behalf within a reasonable time after the claim has been presented.

Attached are two copies of a tentative recommendation designed to carry out the decisions of the Commission at the last meeting. Please mark your editorial changes on one copy and give them to the staff at the meeting so they can be considered when the tentative recommendation is revised and distributed after the meeting.

Respectfully submitted,

John H. DeMouly
Executive Secretary

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

STATUTE OF LIMITATIONS IN ACTIONS AGAINST
PUBLIC ENTITIES AND PUBLIC EMPLOYEES

CALIFORNIA LAW REVISION COMMISSION
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WARNING: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

TEMPERATIVE RECOMMENDATION OF THE CALIFORNIA
LAW REVISION COMMISSION

relating to
STATUTE OF LIMITATIONS IN ACTIONS AGAINST
PUBLIC ENTITIES AND PUBLIC EMPLOYEES

Section 342 of the Code of Civil Procedure and Sections 900-955.8 of the Government Code were enacted in 1963 on recommendation of the Law Revision Commission to prescribe the procedure governing claims and actions against public entities and public employees.¹ The Commission is making a continuing study to determine whether any substantive, technical, or clarifying changes are needed in the 1963 statute.² In this connection, the Commission has considered Williams v. Los Angeles Metropolitan Transit Authority, 68 Adv. Cal. 623 (May 1968), and has concluded that additional legislation is needed to deal with the tolling of the statute of limitations in actions against public entities and public employees.

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1. Cal. Stats. 1963, Ch. 1715. See Recommendation Relating to Sovereign Immunity: Number 2--Claims, Actions and Judgments Against Public Entities and Public Employees, 4 Cal. L. Revision Comm'n Reports 1001 (1963).
 2. Revisions of the 1963 statute were made in 1965 upon recommendation of the Law Revision Commission. Cal. Stats. 1965, Ch. 653. See Recommendation Relating to Sovereign Immunity: Number 8--Revisions of the Governmental Liability Act, 7 Cal. L. Revision Comm'n Reports 401 (1965). See also Cal. Stats. 1968, Ch. 134, amending Government Code Sections 901 and 945.6 (enacted upon recommendation of the Law Revision Commission although no written recommendation was submitted to the Legislature).

Section 945.6 of the Government Code states the statute of limitations applicable to actions against a public entity.³ The section requires that an action against a public entity be commenced within six months after a claim presented to the public entity has been denied or deemed rejected or within one year from the accrual of the cause of action, whichever period expires later. Although the section contains specific savings provisions in favor of persons sentenced to imprisonment in a state prison, the section contains no provision tolling the statute of limitations for a minor or other person under disability.

3. Section 945.6 provides:

945.6. (a) Except as provided in Sections 946.4 and 946.6 and subject to subdivision (b) of this section, any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced (1) within six months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division, or (2) within one year from the accrual of the cause of action, whichever period expires later.

(b) When a person is unable to commence a suit on a cause of action described in subdivision (a) within the time prescribed in that subdivision because he has been sentenced to imprisonment in a state prison, the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public entity establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (a).

(c) A person sentenced to imprisonment in a state prison may not commence a suit on a cause of action described in subdivision (a) unless he presented a claim in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division.

In Williams v. Los Angeles Metropolitan Transit Authority, supra, the Supreme Court held that the provision of Code of Civil Procedure Section 352 that tolls the statute of limitations for a minor is applicable to an action against a public entity.⁴ Hence, the special statute of limitations in Section 945.6 governing actions against public entities is tolled where the plaintiff is a minor.

The Commission has reviewed the effect of the Williams decision on the claims statute and the problems that this decision presents for claimants and public entities and makes the following recommendations:

1. Sections 350-363 of the Code of Civil Procedure are general provisions relating to the time within which actions must be commenced. Except for Section 352, the Commission has concluded that these sections should continue to apply to actions against public entities and public employees.⁵

2. Section 352 of the Code of Civil Procedure operates to toll the statute of limitations for minors, insane persons, and prisoners.⁶ The Commission recommends that the claims statute be amended to provide that

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4. The court disapproved a contrary dictum in Frost v. State, 247 Cal. App.2d 378, 55 Cal. Rptr. 652 (1966).
 5. For example, as the court points out in the Williams case, "if we are to avoid incongruous results, the procedural provisions of the Government Code must be subject to the general provisions of the Code of Civil Procedure [Section 353] permitting an additional six-month limitation period upon the death of a person entitled to bring an action. Otherwise, if a person injured by a public entity should die at a time shortly before the expiration of the limitation period of six months, the probate court might not have sufficient time to appoint the personal representatives required to bring the action." 68 Adv. Cal. at 631 n.9.
 6. Section 352 also provides that the statute of limitations does not run while the plaintiff is "a married woman and her husband be a necessary party with her in commencing such action." This vestigial remnant is of absolutely no significance since the abolition of coverture. See 1 Witkin, California Procedure 668 (1954).

Section 352 does not operate to extend the special limitations period prescribed by Government Code Section 945.6 (generally six months) for actions against public entities in any case where the public entity has given notice to the claimant or the person acting on his behalf that the short, special limitation period applies to any action on the claim.

The application of Section 352 to extend the limitation period may impose a significant and unnecessary hardship upon the public entity, for the plaintiff can defer bringing the action until the evidence has become stale and the witnesses are no longer available. Since a minor or insane person must present his claim promptly under the claims statute or he has no right of action against the public entity, no significant additional burden will be imposed on him if he is required to commence his action promptly after his claim is denied or deemed rejected.⁷ In the case of a minor or incompetent plaintiff, the suit can be brought through a guardian ad litem or other representative.

3. To safeguard the minor or incompetent from an inadvertent reliance on the general tolling provision of Section 352, the Commission recommends that the public entity be required to give notice, within the time it is otherwise required to act on the claim, of the inapplicability of Section 352 if the claim discloses the claimant's minority or incompetency.⁸ The notice

7. Although Section 352 provides for the tolling of the statute of limitations for prisoners, it is likely that this general provision is not applicable to actions by prisoners against public entities since Government Code Section 945.6 contains a special provision for the tolling of the limitation period in the case of a person who loses his civil rights through imprisonment.

8. The Commission recommends that Government Code Section 910 be amended to require that the claim indicate when the claimant is a minor or is insane. If this information is not included in the claim, the public entity would not need to give any notice.

should be a warning, phrased as simply as possible, that the claimant has generally only six months from the time the claim is acted upon or deemed denied to commence an action on the claim. The warning should also include a statement, similar to that required on a summons, that the claimant may seek the advice of an attorney and the attorney should be consulted within the six-months time limit for commencing an action on the claim. The notice should be served in the same manner as notice is given by the public entity of its action on the claim or of the need for amendment of the claim. Finally, the recommended statute should state that it is sufficient compliance with the notice requirement if the notice appears on the claim form presented by or on behalf of the claimant. This will permit the public entity to include the notice on its standard claims form and thus avoid the need to give any further notice where the claim is presented on that form. This will also eliminate the need for the public entity to screen claims presented on the entity's form to determine which are filed on behalf of minors or incompetents to comply with the special notice procedure.

4. Section 950.4 should be amended to make it clear that the limitation period is extended during any period the public employee is out of the state⁹ and in any case where he dies shortly before the expiration of the limitation period.¹⁰

9. Code of Civil Procedure Section 351 provides:

351. If, when the cause of action accrues against a person, he is out of the State, the action may be commenced within the term herein limited, after his return to the State, and if, after the cause of action accrues, he departs from the State, the time of his absence is not part of the time limited for the commencement of the action.

10. Code of Civil Procedure Section 353 provides, in part:

If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his representatives, after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

5. Government Code Section 950.6, which sets forth the limitation period for actions against public employees, should be amended to conform to the 1968 amendment to Section 945.6 and to the foregoing recommendations.

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

An act to amend Sections 910, 950.4, and 950.6 of, and to add Section 945.7 to, the Government Code, relating to actions against public entities and public employees.

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

Section 1. Section 910 of the Government Code is amended to read:

910. A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

(a) The name and post office address of the claimant and whether the claimant is under the age of majority or insane ;

(b) The post office address to which the person presenting the claim desires notices to be sent;

(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;

(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;

(e) The name or names of the public employee or employees causing the injury, damage, or loss, if known; and

(f) The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

Comment. Subdivision (a) of Section 910 is amended to require that the claim indicate whether the claimant is under the age of majority or insane. This information is needed so that the public entity may give the notice required by Section 945.7. If the claimant fails to include this information, the claim is not insufficient but the public entity need not give the claimant the notice required by Section 945.7.

Sec. 2. Section 945.7 is added to the Government Code, to read:

945.7. (a) Section 352 of the Code of Civil Procedure does not apply to a suit on a cause of action described in subdivision (a) of Section 945.6 and does not operate to extend the limitation period prescribed in that subdivision unless:

(1) The claim presented shows that the claimant is under the age of majority or is insane; and

(2) The public entity fails to give the notice required by subdivision (b) within the time prescribed by Section 912.4 for action by the board on the claim.

(b) Where the claim presented shows that the claimant is under the age of majority or insane, the public entity shall give notice in boldface type to the claimant in substantially the following form:

WARNING

The California statutes provide generally that a public entity must act on a claim for damages within 45 days after it is presented to the entity or the claim is deemed to be denied. Generally, a court action may not be commenced on the claim more than six months after the claim is acted on or deemed denied. This limitation applies whether or not the claimant is a minor or is incompetent.

You may seek the advice of an attorney regarding the claims procedures and any other matters connected with your claim. Such attorney should be consulted within the six-month time limit referred to above for commencing an action on the claim.

(c) The notice shall be given by delivering it personally to the person presenting the claim or mailing it to the address, if any, stated

in the claim as the address to which the person presenting the claim desires notices to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim. No notice is required under subdivision (b) if the claim presented fails to state either an address to which the person presenting the claim desires notice to be sent or an address of the claimant.

(d) It is sufficient compliance with this section if the notice set out in subdivision (b) appears in boldface type on the claim form presented by or on behalf of the claimant.

Comment. Section 945.7 has been added so that the provisions of Code of Civil Procedure Section 352, which operate to toll the statute of limitations for minors, insane persons, and prisoners, will not apply to the causes of action described in subdivision (a) of Section 945.6. Thus, Section 352 does not extend the limitation period provided by subdivision (a) of Section 945.6 for a minor or other person under disability. The other general provisions of the Code of Civil Procedure relating to the time within which actions must be commenced--Sections 350, 351, 353-363--are applicable to actions against public entities. See Williams v. Los Angeles Metropolitan Transit Authority, 68 Adv. Cal. 623 (May 1968).

To safeguard the minor or incompetent from an inadvertent reliance on the general tolling provision of Section 352, notice in the form provided is required to be given by the public entity if the claim presented shows that the claimant is a minor or an incompetent. See Subdivision (a) of Section 910. The last two sentences of the notice are based on the language of the notice required by Code of Civil Procedure Section 407

to be included in a summons. The requirement that the notice be in boldface type is likewise based on the similar requirement of Section 407. If the public entity fails to give such notice within the prescribed time, Section 352 will be applicable.

Subdivision (d) is included to make it clear that a public entity may comply with Section 945.7 by including the warning notice on the printed claim forms that it distributes to persons who request or are provided claim forms. Including the warning notice on the printed claim form will eliminate the need for the public entity to screen claims presented on the entity's printed form to determine which are presented on behalf of minors or incompetents and will permit the entity to avoid the expense of complying with the special notice procedure specified in subdivision (c).

Sec. 3. Section 950.4 of the Government Code is amended to read:

950.4. (a) A cause of action against a public employee or former public employee is not barred by Section 950.2 if the plaintiff pleads and proves that he did not know or have reason to know, within the period for the presentation of a claim to the employing public entity as a condition to maintaining an action for such injury against the employing public entity, as that period is prescribed by Section 911.2 or by such other claims procedure as may be applicable, that the injury was caused by an act or omission of the public entity or by an act or omission of an employee of the public entity in the scope of his employment as a public employee.

(b) A cause of action against a public employee or former public employee is not barred by Section 950.2 if:

(1) The sole ground on which such cause of action would otherwise be barred is that an action was not commenced against the public entity within the time limited by Section 945.6; and

(2) The plaintiff pleads and proves that the limitation period prescribed by subdivision (b) of Section 950.6 is extended by application of Section 351 or 353 of the Code of Civil Procedure and that the action against the public employee or former public employee was commenced within the time limited for the commencement of the action as so extended.

Comment. Subdivision (b) has been added to Section 950.4 so that it will be clear that the time within which an action against a public employee or former public employee must be commenced is extended by the application of Code of Civil Procedure Section 351 or 353 in an appropriate case. See Williams v. Los Angeles Metropolitan Transit Authority, 68 Adv. Cal. 623 (May 1968).

Sec. 4. Section 950.6 of the Government Code is amended to read:

950.6. When a written claim for money or damages for injury has been presented to the employing public entity:

(a) A cause of action for such injury may not be maintained against the public employee or former public employee whose act or omission caused such injury until the claim has been rejected, or has been deemed to have been rejected, in whole or in part by the public entity.

(b) A suit against the public employee or former public employee for such injury must be commenced (1) within six months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (~~commencing with Section~~ 910) of Part 3 of this division (2) within one year from the accrual of the cause of action, whichever period expires later .

(c) Section 352 of the Code of Civil Procedure does not apply to a suit on the cause of action for such injury and does not operate to extend the limitation period prescribed in subdivision (b) unless the public entity fails to comply with Section 945.7. When a person is unable to commence the suit within the time prescribed in subdivision (b) because he has been sentenced to imprisonment in a state prison, the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be

extended if the public employee or former public employee establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (b).

Comment. The amendment of subdivision (b), Section 950.6, conforms that subdivision to the 1968 revision of subdivision (a) of Section 945.6. The effect of the additions to the first sentence to subdivision (c) is indicated in the Comment to Section 945.7.