

12/4/68

Memorandum 69-3

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

Attached as exhibits are two letters commenting on this recommendation and a copy of the Report of the State Bar Committee on Administration of Justice on the repeal of the claims statute.

As things now stand, the Commission's recommendation directly conflicts with the position of the State Bar Committee on Administration of Justice. (See Exhibit III, attached.) Accordingly, the staff requests instructions from the Commission as to what position should be taken before the legislative committees that will consider the Commission's recommendation and other bills that are inconsistent with that recommendation.

There is considerable sentiment among lawyers generally that the claims statute should be repealed entirely. (The 1967 Conference of the California State Bar adopted a resolution recommending that the State Bar sponsor legislation to repeal all statutes requiring presentation of a claim to a public entity. The State Bar Committee on the Administration of Justice did not approve this recommendation. See Exhibit III, attached.)

The objections to the claims statute are based on the ground that it contains two significant traps that operate to defeat meritorious claims on a technical ground:

(1) The requirement that a claim ordinarily be filed within 100 days may operate as a trap to the claimant who fails to file such a claim because he is unaware of this requirement. The State Bar Committee on the Administration of Justice recommends to the State Bar Board of Governors that this problem be dealt with by extending the period for

filing the claim from 100 to 180 days. The State Bar Committee was substantially in agreement on this recommendation. Assuming that the Board of Governors accepts this recommendation rather than the Conference recommendation that the claims statute be repealed entirely, the staff suggests that the legislative committees considering the Law Revision Commission proposal be advised that our proposal has nothing to do with the time within which a claim must be filed, that whether that time should be extended from 100 to 180 days is a policy matter for decision by the legislative committee (without regard to the action the committee decides to take on the Commission's bill), and that the Commission has discussed whether the claims filing period should be extended but does not plan to make a recommendation concerning this matter.

(2) The requirement that an action ordinarily must be commenced within six months after the claim is denied or deemed to be denied also has operated to defeat meritorious claims. The State Bar Committee recommends to the Board of Governors that the normal statute of limitations applicable to private defendants be made applicable to actions against public entities. The intent of the Committee is to extend the time for bringing such actions. This recommendation was narrowly approved by the State Bar Committee. Obviously, this recommendation directly conflicts with the Commission's recommendation. The staff suggests that the position to be taken before the legislative committees is that our proposal is a better solution to the problem.

In summary, the staff recommends that the Commission make no change in its recommendation as a result of the report of the State Bar Committee (attached as Exhibit III). If we receive notice from the State Bar

Committee on Administration of Justice as to its views on our recommendation prior to the January meeting we will prepare a supplement to this memorandum. It may be that the State Bar Committee will decide that our recommendation is an acceptable alternative to the recommendation in Exhibit III.

The two letters attached to this memorandum are from representatives of public entities. The first letter suggests that the warning notice of the six-month statute of limitation not be required if the claimant is represented by an attorney. The staff believes that the notice is needed in such cases. We are aware of cases where attorneys have inadvertently permitted the six months statute to run without commencing suit. The notice to the attorney will eliminate one of the major reasons why some members of the bar are strongly of the view that the claims statute should be repealed.

The second letter does not object to the warning provisions but does object to extending the period to two years from the time the cause of action accrued if the notice is not given. You will recall that a minor claimant has one year to file a claim, the public entity has 45 days to consider the claim, and the claimant has six months to commence the action thereafter. In such a case, the sanction of extending the time for commencing the action is not very significant. Consider, for example, the effect of our recommendation on actions against school districts by injured pupils. Under existing law, the statute of limitations is tolled during the period of minority; under our recommendation, the limitation period is never more than two years and, if the required notice is given, is six months. The two-year statute seems to be a reasonable provision and I suspect, when the legislative committees consider the proposal, that the sentiment will be for extending rather than reducing the two-year period.

The first letter also suggests that the phrase "subject to certain exceptions" be deleted from the warning. You will recall that this phrase was inserted by the Commission after considerable discussion. However, there is some merit to the suggestion.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

CITY OF OAKLAND
CALIFORNIA

ASSISTANT CITY ATTORNEY
GEORGE M. CAHALAN

DEPUTY CITY ATTORNEY
WILBUR C. COLE, JR.
RALPH R. KUCHLER
WILLIAM C. SHARP
MARK B. SHRAGGE

CLAIMS INVESTIGATOR
A. G. JACKSON



EDWARD A. GOGGIN
CITY ATTORNEY

CITY HALL 94612
CRESTVIEW 3-3602

October 16, 1968

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: Mr. John H. DeMouilly, Executive Secretary

Dear Mr. DeMouilly:

Re: Tentative Recommendation Relating to Statute of
Limitations in Actions Against Public Entities
and Public Employees

This will acknowledge with thanks your letter
of October 14 regarding the above caption.

I am pleased to note that the commission has
seen fit to delete the provision relating to out-of-state
employees.

With respect to the notice provision, presum-
ably the commission recognizes that this is perhaps the
only instance in the law where a party is required to
furnish legal advice to his adversary or prospective
adversary and has decided that this encroachment on
traditional concepts of adversarial procedures is justi-
fied. I do wish to point out, however, that the analogy
given on the Summons is not strictly apropos, since the
Summons is issued by the Court and the notice of action
on the claim would be issued by the entity which would, of
course, be a party to any litigation arising from the claim.

Aside from these considerations, the typographi-
cal error in the "Warning" resulting from the insertion of
the word "of" in line 2 has undoubtedly been brought to
your attention. I also question whether the phrase "subject
to certain exceptions" in the beginning of the Warning is
useful. The only exception that would be pertinent is that
contained in 9546B relating to prisoners. This situation
is extremely rare and can be dealt with by appropriate
language when it does arise. Phrasing it as an exception

to the Warning would, I believe, only serve to confuse the vast majority of lay claimants to whom it could have no possible application.


Where the claimant is in fact represented by an attorney who files the claim on behalf of the claimant, the Warning of course becomes totally inappropriate and impertinent. I would suggest that the recommended language for Section 913B be changed to read as follows:

"If the claim is rejected in whole or in part, the notice required by Subdivision A shall, in all cases where the claimant is not represented by an attorney, include a warning in substantially the following form:"

Thanks again for your prompt response to my letter.

Yours very truly,

EDWARD A. GOGGIN
City Attorney

By 
William C. Sharp
Deputy City Attorney

WCS:bh

cc: League of California Cities
Hotel Claremont
Berkeley, California 94705

CITY OF
SANTA MONICA
CALIFORNIA

OFFICE OF THE CITY ATTORNEY
CITY HALL - EXbrook 3-9975

October 23, 1968

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
Stanford University, California

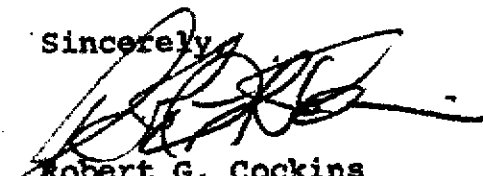
Dear Mr. DeMouilly:

I note with interest that the Law Revision Commission has come to a tentative conclusion that Section 352 of the Code of Civil Procedure (which tolls the statute of limitations when the plaintiff is a minor, etc.) should be abolished but that the public entity involved must notify the claimant when his claim is rejected in whole or in part to commence his action within six months and that failure to so warn the claimant would result in the claimant having two years from the time his cause of action accrued to commence his action.

I have no objection to the warning provision, but I object strenuously to extending the period of time within which one claiming damages for personal injury may bring his action if no warning is given. It seems to me that the claimant should be limited to the normal statute of limitations, with the one exception, that where a late claim is allowed immediately prior to the running of the normal statute, the claimant would have only the remaining amount of normal time in which to file his action.

I trust you will submit this to the Commission, as I think it is eminently fair to all concerned.

Sincerely,


Robert G. Cockins
City Attorney

RGC:rdh
cc: Mrs. Carlyn F. Reid
Staff Attorney

ANNUAL REPORT TO THE BOARD OF GOVERNORS, CALIFORNIA STATE
BAR FROM STATE BAR COMMITTEE ON ADMINISTRATION OF
JUSTICE

(Extract -- pages 755-756, September-October 1968
Journal of State Bar of California)

Govt. C. 911.2, 945.6—Claims Statutes—Repeal.

Origin: 1967 Conf. Res. 91.

The 1967 Conference resolution cited, adopted by the Conference, recommends that the State Bar sponsor legislation to repeal all statutes requiring presentation of a claim to a public entity. The arguments in favor of such repeal are stated in detail in the Conference resolution to which reference is made. In general, the case for repeal is based upon the contentions that such requirements do not promote settlements; that present exceptions impair the validity of the argument that presentation of claims is necessary for financial planning by public entities, and that claims requirements frequently work hardship on citizens by barring legitimate claims.

Though a broad policy question is thus raised for your Board's determination, this committee submits its own conclusions, for such assistance as they may give.

First, the view taken at the June, 1968, General Meeting, with slight dissent, is that the proposed legislation should not be sponsored.

To a degree this view is based upon the belief of some members that a general repeal of claims statutes would encounter problems under the 1960 amendment to the California Constitution (Art. II, Sec. 10). These provisions authorize the Legislature to prescribe procedures relating to claims against chartered counties, cities and counties and cities and against their officers, agents and employees. Statutory repeals could well reinstate the power of chartered entities to prescribe their own requirements, leading to the undesirable patchwork that existed prior to the 1960 constitutional amendment.²³ But the principal basis for recommending against the proposed repeal is that the majority believes that claims requirements serve a useful purpose and should be retained in some form.

Second, if your Board determines not to sponsor the general repeal, it is recommended that the State Bar (a) sponsor amendments to Govt. C. 911.2 which would extend the minimum period for filing claims (of certain types) from 100 to 180 days; and (b) again sponsor amendments to Govt. C. 945.6 to delete "special" statutes of limitations and permit instead, suit to be filed within the period of limitations applicable to private defendants. This latter recommendation was narrowly adopted (9 to 8), some of the minority believing that further study was needed to accomplish the meritorious objective of preventing loss of rights by reason of claims' requirements, and others opposing the proposed increased time periods. As to the proposed change in Govt. C. 911.2 there was substantial unanimity.

Space does not permit the listing of arguments in favor of these two proposals. It would appear, however, from the attached staff memorandum that both the claims' periods and the time for filing suit are substantially shorter than many earlier laws.

Addendum: Another proposal as to amendment of Sec. 945.6 (time to file suit) is the Law Revision Commission's August, 1968, study on our 1968-69 agenda. It will be covered by supplemental report.

PAGED

JJ-26

APPENDIX VII

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

Sovereign Immunity

**Number 9—Statute of Limitations in Actions
Against Public Entities and Public Employees**

September 1968

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

PAGED

JJ-27

STATE OF CALIFORNIA

RONALD REAGAN, Governor

CALIFORNIA LAW REVISION COMMISSION

SCHOOL OF LAW
STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305



SHO SATO
Chairman
SENATOR ALFRED H. SOMMERS
ASSEMBLYMAN F. JAMES BEAR
ROGER ARNEBERG
THOMAS E. STANTON, JR.
LEWIS E. DYLER
RICHARD M. WOLFORD
WILLIAM A. TALE
GEORGE N. MURPHY
in Office

September 20, 1968

To His EXCELLENCY, RONALD REAGAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed 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. Pursuant to this directive, the Commission submitted a series of recommendations to the 1963 Legislature. The major portion of these recommendations became law.

The Commission continuously reviews the experience under the legislation enacted in 1963 to determine whether any changes are needed. This is the second recommendation made as a result of this continuous review. The first was submitted in 1965. 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 Chapters 653 and 1527 of the Statutes of 1965.

Respectfully submitted,
SHO SATO
Chairman

PAGED

JJ-28

**RECOMMENDATION OF THE CALIFORNIA
LAW REVISION COMMISSION**

relating to

SOVEREIGN IMMUNITY

**Number 9—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, 68 Cal. Rptr. 297, 440 P.2d 497 (1968), and other decisions, and has concluded that changes are needed in the statutes prescribing the time within which actions against public entities and public employees must be commenced.

Section 945.6 of the Government Code provides 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

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).

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.

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. While the section contains a specific provision tolling this statute of limitations for a person sentenced to imprisonment in a state prison, it contains no provision tolling the statute for a minor or other person under a disability.

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 for the duration of the disability where the plaintiff is a minor.

In reviewing Section 945.6, the Commission has considered not only the problems for public entities that the *Williams* decision represents, but also the problems for claimants that a number of other recent decisions⁵ illustrate. In the latter cases, apparently meritorious actions have been barred by the six-month statute of limitations because the claimant was unaware that a special statute of limitations applies to actions against public entities. For the reasons indicated below, the Commission has concluded that the short statute of limitations for an action against a public entity should not be tolled for a minor or other person under a disability but that the public entity should notify each claimant of the short limitation period for commencing an action on his claim. To achieve this general objective, the Commission 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, these sections should continue to apply to actions against public entities and public employees.⁶

2. Section 352 of the Code of Civil Procedure operates to toll the statute of limitations for minors, insane persons, and prisoners.⁷ This section should be amended so that it would not apply to actions against public entities and public employees and therefore not extend the

⁴The court disapproved a contrary dictum in *Frost v. State*, 247 Cal. App.2d 378, 55 Cal. Rptr. 652 (1966).

⁵See *Tubbs v. Southern Cal. Rapid Transit Dist.*, 67 Cal.2d 671, 63 Cal. Rptr. 377, 433 P.2d 169 (1967); *Isaacson v. City of Oakland*, 263 Adv. Cal. App. 453, 69 Cal. Rptr. 379 (1968); *Hunter v. County of Los Angeles*, 262 Adv. Cal. App. 911, 69 Cal. Rptr. 288 (1968); *Rogers v. Board of Educ.*, 261 Adv. Cal. App. 384, 67 Cal. Rptr. 905 (1968). See also *Williams v. Los Angeles Metropolitan Transit Authority*, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968); *Hubbard v. Southern Cal. Rapid Transit Dist.*, 68 Adv. Cal. 635, 68 Cal. Rptr. 305, 440 P.2d 505 (1968); *City of Los Angeles v. Superior Court*, 264 Adv. Cal. App. 908, 70 Cal. Rptr. 826 (1968); *Shotlow v. City of Los Angeles*, 258 Adv. Cal. App. 480, 65 Cal. Rptr. 851 (1968).

⁶For 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. 623, 631 n.9, 68 Cal. Rptr. 297, 302 n.9, 440 P.2d 497, 502 n.9 (1968).

⁷Section 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 no significance since the abolition of coverture. See 1 WITKIN, CALIFORNIA PROCEDURE ACTIONS § 159 at 668 (1954).

CORRECTION RECORD

Shift

Initial

Machine

PAGED**JJ-29**

RECOMMENDATION—SOVEREIGN IMMUNITY (STATUTE OF LIMITATIONS) 55

special limitations period prescribed by Government Code Section 945.6 (generally six months) for actions against public entities and public employees.

The application of Section 352 to extend the limitation period may impose a significant and unnecessary hardship upon the public entity, for the claimant can defer bringing the action until the evidence has become stale and the witnesses are no longer available. On the other hand, a minor or insane person must present his claim promptly under the claims statute; otherwise, he has no right of action against the public entity. Thus, no significant additional burden will be imposed on him if he is required to commence his action promptly after he has been notified that his claim has been denied.⁹ In the case of a minor or incompetent plaintiff, the suit can be brought through a guardian ad litem or other representative.

3. The public entity should be required to notify each claimant of its action or failure to act on his claim. The public entity has no obligation under existing law to act on a claim within the 45-day period allowed for acting on the claim or to notify the claimant of its failure to act. (Where the public entity fails to take any action within the 45-day period, the claim is deemed denied, and the six-month statute of limitations commences from the end of that 45-day period.) Many public entities take no action on claims as a matter of policy. This results in the claimant's receiving no communication from the public entity alerting him to the beginning of the six-month period for commencing suit on the claim. Thus, some claimants fail to file suit within the six-month period, and such failure bars an action on the claim.⁹

In case of a partial or total rejection of the claim, the notice of the entity's action on the claim should contain a warning, phrased as simply as possible, that the claimant usually has but six months from the time that notice of rejection is given 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 that the attorney should be consulted immediately.

The recommended notice would advise each claimant of the action taken on his claim and warn him of the time within which he must commence an action on his claim if it is rejected. In addition, the notice would protect a minor or incompetent claimant against inadvertent reliance on the general tolling provision of Section 352.

The public entity should give the notice in substantially the same manner as it now gives notice of its action on a claim.¹⁰

4. Government Code Section 945.6 should be amended to provide that an action must be commenced within six months after the date that

⁹ 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.

⁹ See, e.g., *Tubbs v. Southern Cal. Rapid Transit Dist.*, 67 Cal.2d 671, 63 Cal. Rptr. 377, 433 P.2d 169 (1967).

¹⁰ To provide a uniform procedure for giving the notices required by Government Code Sections 910.8 (notice of insufficiency of claim), 911.8 (notice of action on application to file late claim), and 913 (notice of action on claim), a new Section 915.4 should be added to the Government Code, and existing Sections 910.8, 911.8, and 913 should be amended to conform to this new section. The manner of giving notice should remain in substance the same.

notice of the rejection of the claim and of the six-month limitation period is given. If the required notice is not given, the claimant should be permitted to file suit within two years from the accrual of his cause of action. Under existing law, the action ordinarily must be commenced within six months from the time the claim is acted upon or is deemed to be denied, and the entity's failure to give notice of its action or inaction on the claim has no effect on the limitation period.

The six-month limitation period would insure that any suit against a public entity will be brought within a reasonably short period after the entity has notified the claimant of its action on the claim and of his option to pursue the matter promptly in the courts. The two-year period would serve as a sanction for the entity's failure to give notice and would provide a definite limitation period for all claims where the required notice is not given.

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

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

An act to amend Section 352 of the Code of Civil Procedure and to amend Sections 910.8, 911.8, 913, 945.6, and 950.6 of, and to add Section 915.4 to, the Government Code, relating to claims against public entities and public employees.

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

SECTION 1. Section 352 of the Code of Civil Procedure is amended to read:

352. (a) If a person entitled to bring an action, mentioned in chapter three of this title, be, at the time the cause of action accrued, either:

1. Under the age of majority; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life; or,
4. A married woman, and her husband be a necessary party with her in commencing such action;

the time of such disability is not a part of the time limited for the commencement of the action.

(b) *This section does not apply to an action against a public entity or public employee upon a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900), Chapter 2 (commencing with Section 910), or Chapter 3 (commencing with Section 950), of Part 3 of Division 3.6 of Title 1 of the Government Code.*

of Part 3,

or

4. Comment. Subdivision (b) has been added so that Section 352, which operates to toll the statute of limitations for minors, insane persons, and prisoners, will not apply to the causes of action against a public entity or public employee described in this subdivision. Such actions

CORRECTION RECORD

Shift

Initial

Machine

PAGED**JJ-30**

RECOMMENDATION—SOVEREIGN IMMUNITY (STATUTE OF LIMITATIONS) 57

are governed by the period of limitations specified in subdivision (a) of Section 945.6 of the Government Code. To safeguard the minor or incompetent from an inadvertent reliance on the tolling provision of Section 352, notice of rejection of his claim in the form provided in Government Code Section 913 is required to be given by the public entity. If notice is not given, the claimant has two years from the accrual of his cause of action in which to sue. See Government Code Section 945.6(a).

Special exceptions for prisoners exist in both subdivision (b) of Section 945.6 and subdivision (c) of Section 950.6 of the Government Code, which toll the statute of limitations during the period of their civil 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 and public employees. See *Williams v. Los Angeles Metropolitan Transit Authority*, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968). See also Government Code Sections 950.2 and 950.4.

SEC. 2. Section 910.8 of the Government Code is amended to read:

910.8. ~~(a)~~ If in the opinion of the board or the person designated by it a claim as presented fails to comply substantially with the requirements of Sections 910 and 910.2, or with the requirements of a form provided under Section 910.4 if a claim is presented pursuant thereto, the board or such person may, at any time within 20 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. ~~(b)~~ Such notice may shall be given in the manner prescribed by Section 915.4, personally to the person presenting the claim or by 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. ~~(c)~~ The board may not take action on the claim for a period of 15 days after such notice is given.

Comment. See the Comment to Section 915.4.

SEC. 3. Section 911.8 of the Government Code is amended to read:

911.8. Written notice of the board's action upon the application shall be given in the manner prescribed by Section 915.4, to the claimant personally or by mailing it to the address, if any, stated in the proposed claim as the address to which the person making the application desires notices to be sent. If no such address is stated in the claim, the notice shall be mailed to the address, if any, of the claimant as stated in the claim. No notice need be given when the proposed claim fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

Comment. See the Comment to Section 915.4.

SEC. 4. Section 913 of the Government Code is amended to read:

913. (a) Written notice of any the action taken under Section 912.6 or 912.8 or the inaction which is deemed rejection under Section 912.4 rejecting a claim in whole or in part shall be given in the manner prescribed by Section 915.4. Such notice may be in substantially the following form:

to the person who presented the claim. Such notice may be given by mailing it to the address, if any, stated in the claim as the address to which the person presenting the claim desires notice 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 need be given when the claim fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

"Notice is hereby given that the claim which you presented to the (insert title of board or officer) on (indicate date) was (indicate whether rejected, allowed, allowed in the amount of \$----- and rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable) on (indicate date of action or rejection by operation of law)."

(b) If the claim is rejected in whole or in part, the notice required by subdivision (a) shall include a warning in substantially the following form:

"WARNING

"Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

"You may seek the advice of an attorney of your choice in connection with this matter. Your attorney should be consulted immediately."

Comment. Subdivision (a) of Section 913 is amended to require that written notice of either acceptance or rejection be given by the public entity in every case in which a claim is required to be presented under Chapters 1 and 2 of Part 3 of Division 3.6. The notice serves to keep each claimant aware of the status of his claim and guards against an inadvertent failure to sue on a rejected claim within the applicable time limit. The notice must be given in compliance with the uniform procedure prescribed by Section 915.4. An optional form of notice is set forth in subdivision (a).

If the claim is rejected either in whole or in part, subdivision (b) requires the public entity to include with the notice a warning concerning the applicable statute of limitations and advice to secure the services of an attorney. The notice and warning will alert the claimant, at the time of rejection, of the time allowed to pursue his claim in the courts and will protect a minor or incompetent against an inadvertent reliance on the general tolling provisions of Code of Civil Procedure Section 352. See Code of Civil Procedure Section 352 and Government

PAGED

JJ-31

RECOMMENDATION—SOVEREIGN IMMUNITY (STATUTE OF LIMITATIONS) 59

Code Section 945.6(a). 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.

SEC. 5. Section 915.4 is added to the Government Code, to read:

915.4. (a) The notices provided for in Sections 910.8, 911.8, and 913 shall be given by:

(1) Personally delivering the notice to the person presenting the claim or making the application; or

(2) Mailing the notice to the address, if any, stated in the claim or application as the address to which the person presenting the claim or making the application desires notices to be sent or, if no such address is stated in the claim or application, by mailing the notice to the address, if any, of the claimant as stated in the claim or application.

(b) No notice need be given where the claim or application fails to state either an address to which the person presenting the claim or making the application desires notices to be sent or an address of the claimant.

Comment. Section 915.4 is new, but it incorporates the substance of former Sections 910.8(b), 911.8, and 913. It makes uniform the manner of giving all notices under this chapter. Where notice is given by mail, Section 915.2 is applicable.

SEC. 6. Section 945.6 of the Government Code is amended to read:

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) *If written notice is given in accordance with Section 913, within not later than 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 such notice is personally delivered or deposited in the mail.*

(2) *If written notice is not given in accordance with Section 913, within one year two years from the accrual of the cause of action, whichever period expires later. If the period within which the public entity is required to act is extended pursuant to subdivision (b) of Section 912.4, the period of such extension is not part of the time limited for the commencement of the action under this paragraph.*

(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.

Comment. Subdivision (a) of Section 945.6 is amended to require that an action be commenced within six months after notice of rejection (by action or nonaction) is given pursuant to Section 913. If such notice is not given, the claimant has two years from the accrual of his cause of action in which to file suit. If the period within which the public entity is required to act is extended pursuant to subdivision (b) of Section 912.4, the period of such extension is added to the two years allowed.

The triggering date generally will be the date the notice is deposited in the mail or personally delivered to the claimant, at which time the claimant will receive a warning that he has a limited time within which to sue and a suggestion that he consult an attorney of his choice. See Government Code Section 913. No time limit is prescribed within which the public entity must give the notice, but the claimant is permitted six months from the date that the notice is given to file suit.

If notice is not given, the two-year period allows ample time within which the claimant may file a court action.

Section 945.6 does not, of course, preclude the claimant from filing an action at an earlier date after his claim is deemed to have been rejected pursuant to Sections 912.4 and 945.4.

Section 352 of the Code of Civil Procedure does not apply to actions described in Section 945.6. See Code of Civil Procedure Section 352(b). However, 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. See *Williams v. Los Angeles Metropolitan Transit Authority*, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968).

SEC. 7. 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 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 the time prescribed in Section 945.6 for bringing an action against the public entity.

PAGED

JJ-32

RECOMMENDATION—SOVEREIGN IMMUNITY (STATUTE OF LIMITATIONS) 61

(e) 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) of Section 950.6 conforms that subdivision to subdivision (a) of Section 945.6. The effect of this amendment is indicated in the Comment to Section 945.6.