

#52

12/13/68

First Supplement to Memorandum 69-3

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

Attached as Exhibit I is an attachment that was included with the Report of the State Bar Committee on Administration of Justice (Exhibit III, attached to Memorandum 69-3) when it was transmitted to the Board of Governors but was not included with the Report printed in the State Bar Journal and reproduced in Exhibit III (attached to Memorandum 69-3).

The attached exhibit states the State Bar Committee's case for (1) increasing the claims filing period from 100 days to 180 days and (2) providing that the normal statute of limitations applicable to private defendants apply to public entities.

Respectfully submitted,

John H. DeMouly
Executive Secretary

Re: Proposed Amendment of Govt. Code 911.2 and 945.6.

Sec. 911.2 - Lengthening the Normal Claim Period. Presently Sec. 911.2 provides a normal 100 day period for certain types of claims. As to other claims, the normal period is one year.

An increase in the 100 day period to 180 days is supportable on the following grounds: 1 - In many cases the public entity has actual notice of the matter which may give rise to a claim of liability through accident and other reports. 2 - It is not unfair to require public entities, like large corporations, to impose a duty of reporting on their employees. 3 - While the 100 day period may serve the interests of the public entity (and the insurer), the comparatively short period can result in the loss of rights by injured persons, heirs of a decedent and other claimants. A "balancing" seems in order. 4 - The relief provisions in the present law, while of value, may be expensive to invoke. Also, they do not necessarily result in "saving" the late claim (depending upon the facts averred).

When a predecessor statute (relating to "local entity" claims) was before the Legislature in 1959, the Southern Section of this committee and the Board objected to the 100 day period as too short. At that time the Law Revision Commission's original proposal was for a 100 day period on all claims. See (1959) A.B. 405 in original form, (1959) Govt. C. 714; Cal. Law Rev. Comm., Studies, Reports and Recommendations (1959), Presentation of Claims, p. A-9. The State Bar was successful in obtaining an amendment to the pending bill limiting the 100 day period to a claim for physical injury to the person or death. Other claims were to be presented within one year. See (1959) A.B. 405, as amended April 24, 1959. However, later amendments added claims for physical injury to personal property and to growing crops to the 100 day group. See (1959) A.B. 405, as amended May 8 and June 3, 1959.

It is said in the 1959 Annual Report of this committee:

"As to time periods, certain amendments in favor of a greater period were made. However, A.B. 405 in final form did not grant as long time periods as the Board thought were proper. Thus, it was the view of the Southern Section, concurred in by the Board, that the minimum period should be six months in any type of claim." 34 S. B. Jnl., p. 478-9. Emp. added.

It is to be noted that for many years prior to 1959, with the exception of "dangerous and defective condition" claims, which were required to be presented within 90 days, requirements gave comparatively long periods. The general requirement in case of a claim against the State based upon imputed liability under the Vehicle Code was one year. So also the general period was one year for claims against counties. City requirements often fixed 90 days as to "dangerous and defective" condition claims and ordinary negligence claims for personal injury or property damage. But as to the latter a substantial number of cities and districts provided a 6 months or longer period. See 2 Calif. Law Rev. Comm. Reports, Recommendations and Studies (1959), Presentation of Claims, pp. A-49-56 (study by Professor Arvo Van Alstyne).

An increase to 180 days would not be out of line with a substantial body of law as it existed prior to 1959, except in the case of "dangerous and defective condition" claims. Here, the short period was imposed by 1931 Stats. p. 2475 as an adjunct to the Public Liability Act of 1923. Since those times the concept of sovereign immunity has undergone changes. Also, mobility and numbers of government personnel have greatly increased.

Sec. 945.6 - Enlarging the Time to Bring Suit. Presently Sec. 945.6 prescribes the normal period for claimant to bring suit as 6 months after the claim has been acted upon by the Board or is "deemed" to have been rejected by the Board (under the pertinent Government Code sections). Current amendments, which will take effect in November, add the alternative: "or... within one year from the accrual of the cause of action." (1968) A.B. 73, 1968 Stats. Ch. 134.

It is proposed that Sec. 945.6 be amended to provide that the statutes of limitations applicable to suits against private defendants apply, as a permissible alternative, in lieu of the "one year after accrual of cause of action" alternative.

It may be noted that when a predecessor claims act (relating to local entities) was passed in 1959, the Legislature gave consideration to the "time to sue" problem.

As originally recommended by the Law Revision Commission, no suit would have been permissible until the claim had been presented and rejected in whole or in part. The period to bring suit was recommended to be nine months after presentation of the claim. See (1959) A.B. 405 (original form), proposed Govt. C. 710, 721, 2 LRC Rpts. (1959), cited supra, p. A-12, 15, 16.

Provisions requiring the withholding of suit until the claim had been rejected were opposed by a section of the CAJ and, with Board approval, were opposed at the Legislature. Such provisions were deleted by the Legislature. See 1959 CAJ Report, 34 S. B. Jnl. 478. They were later enacted (1963) and are now in effect. See present Govt. C. 945.4.

As to the period of limitations, the 1959 Legislature in the predecessor act considered various rules. One was the rule of one year after rejection of claim. See (1959) A.B. 405, as amended March 24, 1959. A variation was that in the case of a claim for injury to person or death, the period would be 6 months after rejection of claim or one year after the claim accrued. See A.B. 405, as amended April 24, 1959.

But the final form of the "local entity" statute in 1959 provided that unless a different period was specifically made applicable for a local public entity, the general statutes of limitations should apply. See A.B. 405, as amended May 8 and June 3, 1959, 1959 Stats. p. 4137, former Govt. C. Sec. 719.

In general, the rule now proposed was in effect between 1959 and 1963 when, as part of sovereign immunity legislation, the claims statutes were again revised, and the code section now in question was enacted.

In respect of statute of limitations in the pre-1959 period, Professor Van Alstyne, in his 1959 study for the Law

Revision Commission summarized: "The great majority of claims provisions impose no time limitations upon commencement of an action although they do require a claim to be presented." Also, the study noted the then law that suits against the State based upon motor vehicle accidents were governed by the test: "within the time prescribed by the Code of Civil Procedure or within six months after the claim is rejected or disallowed." However, other claims (in which there was a long presentation period) did require suit within six months after rejection. See 2 LRC Rpts. (1959), cited supra, p. A-71,72.

In sum, the proposed enlargement of the time to sue provisions of Sec. 945.6 has legislative precedent.

It is also relevant that the recent case of *Williams v. Los Angeles Metropolitan Transit Authority*, 68 A.C. 623, holds that under existing statutes, the disability of a minor will toll the time for bringing suit after rejection of claim.