

#52

10/24/69

Memorandum 69-127

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

At the September meeting, the Commission indicated approval of submitting to the 1970 Legislature the prior recommendation relating to the statute of limitations in actions against public entities and public employees but determined not to make any recommendations concerning the late filing of claims.

Attached as "Appendix" is the proposed legislation. It is the same as that included in the Commission's 1969 Recommendation except for certain technical revisions and additions. If the public entities object to the proposed legislation at the December meeting, we suggest that it not be submitted to the 1970 Legislature. Absent such objections, we suggest that the proposed legislation be approved for submission to the 1970 Legislature and be printed as an Appendix in our Annual Report.

By way of background, a copy of the printed recommendation to the 1969 Legislature is attached. The preliminary portion of this printed material is an accurate explanation of the new proposed legislation attached as Appendix.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

APPENDIX

PROPOSED LEGISLATION

relating to

STATUTE OF LIMITATIONS IN ACTIONS AGAINST PUBLIC ENTITIES AND PUBLIC EMPLOYEES

The measure set out below would effectuate ~~an~~ a recommendation ~~of~~ made by the Law Revision Commission in 1968. See Recommendation Relating to Sovereign Immunity: Number 9--Statute of Limitations in Actions Against Public Entities and Public Employees (September 1968), 9 Cal. L. Revision Comm'n Reports 49 (1969). The measure set out below is substantially the same as the one recommended in September 1968. Only a few technical changes have been made.

An act to amend Section 352 of the Code of Civil Procedure and to amend Sections 910.8, 911.8, 913, 915.6, and 950.6 of, and to add Section 915.4 to, the Government Code, and to amend Section 31 of the San Joaquin County Flood Control and Water Conservation District Act (Chapter 46 of the Statutes of 1956, First Extraordinary Session), Section 10 of the Kern County Water Agency Act (Chapter 1003 of the Statutes of 1961), Section 23 of the Desert Water Agency Law (Chapter 1069 of the Statutes of 1961), ~~and~~ Section 23 of the San Geronimo Pass Water Agency Law (Chapter 1135 of the Statutes of 1961), relating to claims against public entities and public employees.

and
Section 23 of the
Bighorn Mountains
Water Agency Law
(Chapter 1175 of the
Statutes of 1969)

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) or Chapter 2 (commencing with Section 910) of Part 3, or Chapter 3 (commencing with Section 950) of Part 4, of Division 3.6 of Title 1 of the Government Code.

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 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 (e) 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 Cal.2d 599, 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. ~~(e)~~ 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. ~~(f)~~ 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.~~ ~~(g)~~ 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. If you desire to consult an attorney, you should do so 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 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 Cal.2d 599, 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.

(c) 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.

SEC. 8. Section 34 of the San Joaquin County Flood Control and Water Conservation District Act (Ch. 46, Stats. 1956, 1st Ex. Sess.) is amended to read:

Sec. 34. Claims against the district whether arising out of contract, tort, or the taking or damaging of property without compensation must be made in writing and filed with the board within six months after the cause of action arises. Claims shall be presented in the general form and manner prescribed by general law relating to the making and filing of claims against counties. Such claims may be amended within said six months to correct defects in form or statement of facts. No action against the district shall be commenced or maintained unless such claim relating thereto has been filed as hereinabove prescribed and action thereon commenced within one year after the cause of action arose shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

SEC. 9. Section 10 of the Kern County Water Agency Act (Ch. 1003, Stats. 1961) is amended to read:

Sec. 10. Claims against the agency whether arising out of contract, tort, or the taking or damaging of property without compensation shall be governed by Chapter 2 (commencing with Section 900) of Division 3.5 Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

SEC. 10. Section 23 of the Desert Water Agency Law (Ch. 1069, Stats. 1961) is amended to read:

Sec. 23. All claims for money or damages against this agency are governed by Chapter 2 (commencing with Section 700) of Division 3.5 Part 3 (commencing with Section 900) and Part 4 (commencing with Section 910) of Division 3.6 of Title 1 of the Government Code, except as provided therein, or by other statutes or regulations expressly applicable thereto.

SEC. 11. Section 23 of the San Geronimo Pass Water Agency Law (Ch. 1135, Stats. 1961) is amended to read:

Sec. 23. All claims for money or damages against this agency are governed by Chapter 2 (commencing with Section 700) of Division 3.5 Part 3 (commencing with Section 900) and Part 4 (commencing with Section 910) of Division 3.6 of Title 1 of the Government Code, except as provided therein, or by other statutes or regulations expressly applicable thereto.

Sec. 12. Section 23 of the Bighorn Mountains Water Agency Law (Ch. 1175, Stats. 1969) is amended to read:

Sec. 23. All claims for money or damages against this agency are governed by Chapter 2 (~~commencing with Section 700~~) of Division 3.5 Part 3 (commencing with Section 900) and Part 4 (commencing with Section 910) of Division 3.6 of Title 1 of the Government Code, except as provided therein, or by other statutes or regulations expressly applicable thereto.

DEPARTMENT OF PUBLIC WORKS

LEGAL DIVISION

369 PINE STREET, SAN FRANCISCO 94104



November 10, 1969

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

Attention: Mr. John H. DeMouilly,
Executive Secretary

Dear Mr. DeMouilly:

Bob Carlson asked me to reply to your letter of October 20, 1969, regarding the views of the Department of Public Works on the proposed legislation relating to the statute of limitations for minors in actions against public entities and public employees.

We have no objection to the proposed legislation in its present form, and the Department would not oppose such a bill introduced in the 1970 Legislature, provided it remains in its present form. As you know, it was the late claim provisions added by amendment that caused the bill to be vetoed by the Governor in 1969.

Thank you for the opportunity to express our views on this subject.

Sincerely,

Kenneth G. Nellis
KENNETH G. NELLIS
Attorney

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Sacramento, California 95814
November 7, 1969

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

Dear John:

Thank you for providing me with a copy of the proposed legislation relating to the claims statute. As I indicated in my letter of October 16, it is our recommendation that the bill not be submitted for the reasons stated therein. We will not oppose the bill, however, if submitted as proposed provided that it is not substantially amended as it was last year.

Very truly yours,

Bill
William G. Holliman, Jr.
Assistant Legal Counsel

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