

Memorandum 72-37

Subject: Study 52 - Sovereign Immunity (Nuisance Liability)

The title of the attached editorial--"One 'Solution'; More Problems"--seems particularly appropriate. The editorial notes the recent case permitting the imposition of aircraft noise damage on a nuisance theory and approves Los Angeles City Attorney Roger Arnebergh's solution to enact a moratorium statute and have the problem studied by the California Law Revision Commission.

The background on this problem is summarized in Memorandum 70-102 attached. Proposed legislation, prepared by the staff in September 1970, is included in the attached tentative recommendation. The Commission in October 1970 decided not to submit the recommended legislation to the 1971 Legislature but directed the staff to bring up the matter again if and when other sovereign immunity provisions were being considered in connection a recommendation to the Legislature.

I personally am hopeful that the Commission does not get involved in a study of the "entire problem" as suggested by Roger Arnebergh, especially with a short deadline imposed by virtue of a legislative moratorium. However, because it is not possible now to anticipate future developments, I believe that you will want to be familiar with the background on this matter.

Respectfully submitted,

John H. DeMouly
Executive Secretary

San Juan Mercury Tuesday, May 9, 1972

One 'Solution'; More Problems

Los Angeles City Atty. Roger Arnebergh is a mighty nervous man these days. Noise from International Airport and the California Supreme Court has him jumpy.

The court has ruled that noise pollution damage suits may be filed against the city of Los Angeles, and Arnebergh says a flood of such nuisance actions could force the airport to close.

As remedy he suggests a legislative moratorium on such litigation so that the entire problem may be studied by legislative committees and the California Law Revision Commission.

It is a reasonable position, and the Legislature should accommodate

Arnebergh and Los Angeles in this matter. The implications of the state Supreme Court's ruling are grim, to say the least. Should the order be extended to encompass every major airport in the state, nuisance suits might threaten them all with closure, which would hardly benefit the environment in the long run.

The air freight and passengers thus grounded would have to be moved by other means, most probably by more trucks, buses, diesel trains and private automobiles. It might be quieter around the state's airports, but increased air pollution and traffic congestion would probably more than offset whatever advantage closing the airports would bring.