

Date of Meeting: August 28-29, 1959
Date of Memo: August 19, 1959

Memorandum No. 8

Subject: History in legislature of measures
introduced in 1959 session on recommendation of
Commission.

The attached summary of the legislative history of
Commission measures in the 1959 session was prepared by Mr. McDonough.
It will be included in the second bound volume of the Commission's
reports, recommendations and studies. An abbreviated summary of
this material will also appear in the 1960 Report of the Commission.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

HISTORY IN THE LEGISLATURE OF MEASURES INTRODUCED
IN 1959 SESSION ON RECOMMENDATION OF CALIFORNIA

LAW REVISION COMMISSION

Note: The bills are discussed in the order in which the studies on which they are based are numbered in the Commission's files.

Suspension of the Absolute

Power of Alienation

Senate Bill No. 165 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.¹ At the suggestion of the State Bar, two changes were made in new Section 771 of the Civil Code enacted by the bill:

(1) "and the provision is wholly ineffective unless, consistently with the purposes of the trust, it may be given effect for some period not exceeding such time" was eliminated as unnecessary inasmuch as it merely states a principle which the courts regularly apply in determining whether a trust should be given any effect after one of its provisions is held invalid in whole or in part.

(2) "all of the creators" was substituted for "the creator" to clarify the meaning of the statute in this respect.

As thus amended, the bill was passed by the Legislature and signed by the Governor, becoming Chapter 470 of the Statutes of 1959.

1. See 1 Rep., Rec. & Studies, Calif. Law Revision Comm. G-1, XI (1957); 1959 Report, Calif. Law Revision Comm., supra, p. 14.

Effective Date of Order Ruling

on Motion for New Trial

Senate Bill No. 163 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.² The bill was passed by the Legislature without amendment and was signed by the Governor, becoming Chapter 468 of the Statutes of 1959.

Notice to Stockholders of Sale of Corporate Assets

Assembly Bill No. 403 was introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.³ The bill was passed by the Assembly but did not pass in the Senate [was not given a do pass recommendation by the Senate Judiciary Committee].

Note: The bracketed material, here and below, offers an alternative form of statement for the Commission's consideration.

Overlapping Provisions of Penal and Vehicle Codes

Assembly Bill Nos. 400 and 402 were introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.⁴ Assembly Bill No. 400 did not pass in the Assembly [was not given a do pass recommendation by the Assembly Committee on Criminal Procedure]. Assembly Bill No. 402 was passed by the Assembly but did not pass in the Senate.

No alternative statement re A.B. 405 because it did get out of Senate Committee.

2. See 1 Rep., Rec. & Study, Calif. Law Revision Comm., K-1, XI; 1959 Report, Calif. Law Revision Comm., supra, p. 16.

3. See Recommendation & Study p. G-1, supra.

4. See Recommendation & Study p. E-1, supra.

Procedure for Appointment of Guardians

Assembly Bill No. 401 was introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.⁵ A technical amendment was made to the bill in the Assembly. In the Senate Sections 1461 and 1570 of the Probate Code were amended to eliminate the provision authorizing a "person interested in his [the alleged incompetent's] estate in expectancy or otherwise" to petition for the appointment of a guardian. This was done because:

(1) The meaning of the language is indefinite;

(2) The remaining language, "any relative or friend," is broad enough to authorize any legitimately interested person to file petition; and

(3) The language of these sections is thus conformed to that of the conservatorship statute (Chapter 1, Division 5 of the Probate Code) enacted in 1957.

As thus amended, the bill was passed by the Legislature and signed by the Governor, becoming Chapter 500 of the Statutes of 1959.

Cut Off Date, Motion for New Trial

Senate Bill No. 164 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁶ The bill was amended in the Senate to make the alternative 10-day period within which to make a motion for new trial after the entry of judgment

5. See 1959 Report, Calif. Law Revision Comm., supra, p. 21.

6. Recommendation and Study, p. F-1, supra.

begin to run when written notice of entry of judgment is served upon the moving party rather than from the time when he receives such notice. The date of service is more readily susceptible of determination in the event of a dispute than is the date of receipt of notice. As thus amended, the bill was passed by the Legislature and signed by the Governor, becoming Chapter 469 of the Statutes of 1959.

Mortgages of Personal Property for Future Advances

Senate Bill No. 167 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁷ A technical amendment was made to the bill in the Senate and it was amended in the Assembly to make it clear that where the maximum amount to be secured is stated in the mortgage the amount as to which the ~~mortgages~~ is given priority over subsequent lienors is not reduced by amounts which were borrowed but had been repaid at the time when a particular advance was made. As thus amended, the bill was passed by the Legislature and signed by the Governor, becoming Chapter 528 of the Statutes of 1959.

Right of Nonresident Aliens to Inherit

Senate Bill No. 160 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁸ The bill did not pass in the Senate [was not given a do pass recommendation by the Senate Judiciary Committee].

⁷. See Recommendation and Study, p. C-1, supra.

⁸. See Recommendation and Study, p. B-1, supra.

Doctrine of Worthier Title

Senate Bill 166 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁹ The bill was passed by the Legislature without amendment and was signed by the Governor, becoming Chapter 122 of the Statutes of 1959.

Presentation of Claims Against Public Entities

Assembly Constitutional Amendment No. 16 and A. B. Nos. 405, 406, 407, 408, 409 and 410 were introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.¹⁰

A.C.A. 16 was amended in the Assembly to make it clear that the authority given to the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims extends to chartered counties, chartered cities and counties and chartered cities and officers agents and employees thereof. The constitutional amendment was approved by the Legislature, becoming _____ of 1959. It will be voted upon by the people at the _____ election.

A.B. 405 was quite extensively amended in the Assembly and the Senate. Many of the amendments appear to be self-explanatory but the following warrant brief comment:

{1) Section 701 of the Government Code¹¹ was amended to make the new claims statute applicable upon its effective date to all causes of action against chartered counties and to all causes of action against

9. See Recommendation and Study, p. D-1, supra.

10. See Recommendation and Study, p. A-1, supra.

11. This discussion is in terms of the sections of the Government Code enacted by A.B. 405.

chartered cities and chartered cities and counties other than those founded on contract. This amendment was based upon the Commission's conclusion that the Legislature has the power to prescribe claims filing procedures for chartered counties with respect to all claims and for chartered cities and chartered cities and counties with respect to all claims except those founded on contract. The Commission concluded that it is desirable to give the new claims statute the broadest scope on its effective date which it constitutionally may have. The statute will become effective with respect to claims based on contract against chartered cities and chartered cities and counties upon the effective date of the constitutional amendment embodied in _____.

(2) Two additions were made to the list of claims exempted from the new claims statute by Government Code Section 703 because the Commission determined that they, like the other types of claims listed, should be the subject of particularized legislative treatment in the context of the other statutory provisions relating to the same subject.

(3) Section 710 of the Government Code was amended to eliminate the requirement that the claimant withhold the filing of suit against a local public entity until his claim has been rejected either in

whole or in part by action of the governing body or by operation of law. As originally drafted the new claims statute gave a local public entity 80 days to act upon a claim before the claimant could bring suit. The State Bar objected strongly to this provision on the grounds that it was not necessary for the protection of public entities and would unduly prejudice claimants by delaying the date of trial and preventing the prompt initiation of discovery proceedings. No representative of a public entity spoke in defense of the 80-day waiting period when the bill was under consideration by the Legislature and the Commission concluded that it should be eliminated from the statute.

(4) Section 711 of the Government Code was amended to required that the claim be signed on the theory that this requirement would or might have the effect of assuring the bona fides and accuracy of the claim in at least some instances and that it might also facilitate prosecutions under Section 72 of the Penal Code for filing false claims.

(5) Section 712 of the Government Code was amended to require only that the local public entity mail a written notice of the insufficiency of a claim, thus throwing on the claimant the risk of his failure to receive the notice either because

the address given on the claim is erroneous or because the mail miscarries. Conforming amendments were made to Section 713 of the Government Code.

(6) The first paragraph of Section 713 of the Government Code was eliminated because of concern that the provision that a local public entity might "assert as a defense" either that no claim was presented or that a claim as presented or that a claim as presented did not comply with Section 711 might have been construed to require the public entity to raise the defense affirmatively as a matter of pleading and to preclude it from demurring to a complaint for failure to allege compliance with the statute.

(7) The provision in Section 714 of the Government Code in the bill as introduced with respect to the time for presenting claims was transferred to a new Section 715. In Section 715 of the Government Code as enacted there is substituted for the original 100-day claim filing period applicable to all claims a provision that claims relating to causes of action for death or for physical injury to the person or to personal property or growing crops must be presented within 100 days and that a claim relating to any other cause of action must be presented within one year. This change was made

upon the joint representation to the Commission by the State Bar, the County Auditors' Association and various public entities that a 100-day claim presentation period is both unnecessary and unworkable in respect of claims not arising out of physical injury to person or property.

(8) Section 717 of the Government Code in the bill as enacted (Section 716 in the bill as introduced) was amended to eliminate the requirement that written notice be given to the person who presents a claim when the claim is accepted as presented. The giving of such notice is not necessary to afford the claimant an opportunity to protect his rights, as it may be where the claim is rejected in whole or in part. Moreover, giving notice in the case of the hundreds or even thousands of claims routinely accepted would be very burdensome in the case of the larger local public entities. In any event, the claimant will ordinarily receive notice of acceptance within a reasonable time in the form of a warrant paying his claim.

(9) Section 717 of the Government Code in the bill as enacted (Section 716 in the bill as introduced) was also amended to eliminate the provision that the governing body of a local entity may not reconsider

action taken upon a claim. Upon further consideration the Commission concluded that the desirability of finality in the handling of claims is outweighed by the desirability of permitting the entity to reconsider action previously taken, particularly since new evidence may be adduced in some cases. The provision relating to compromise of suits was moved to a new Section 720 of the Government Code in the bill as enacted.

(10) Section 717 of the Government Code in the bill as introduced was deleted as unnecessary in view of the elimination of the 80-day waiting period between the presentation of a claim and the filing of suit.

(11) Subdivision (a) of Section 718 of the Government Code was amended to eliminate the provision that allowance of a claim in full precludes suit on any part of the cause of action to which the claim relates. Instead, the claimant's acceptance of the amount allowed is given such effect. Upon further consideration the Commission concluded that in a case where a claimant has mistakenly understated his claim the public entity should not be able to foreclose amendment of the claim by promptly accepting it as presented.

(12) Section 718 of the Government Code was also amended to eliminate any inference which might have been drawn from the last paragraph thereof that a writ of mandamus or other proceeding might be brought to compel action to be taken upon a claim. There is no need for such a procedure inasmuch as the claimant may bring suit upon his cause of action at any time after he has presented a claim.

(13) Proposed Section 719 of the Government Code was eliminated from the bill. The Commission was persuaded that while there are cases in which the amount set forth in a claim should not constitute a limitation upon the amount which may be pleaded, proved or recovered in a suit on the cause of action to which the claim relates, there may be other cases in which the disparity between the amount set forth in a claim and the amount prayed in an action would be so great that the claim could not be said to comply with subdivision (d) of Section 711. The Commission concluded that it would be best to leave this matter in the hands of the courts to be decided on a case by case basis.

(14) Proposed Section 720 was eliminated from the bill. The purpose of this section as

it appeared in the bill as introduced was to codify the principle, applied in a number of recent cases as reported by the Commission's research consultant, that in appropriate circumstances a public entity may be estopped from relying upon a claimant's failure to present a timely and sufficient claim. The Commission was concerned, however, that the statement of this principle in Section 720 might, on the one hand, go beyond the scope of the principle as developed in case law or, on the other hand, in some measure limit the courts in developing the principle further to meet the exigencies of particular cases which might arise. The Commission concluded that the best course is to leave the development of the estoppel principle to the courts.

(15) Section 719 of the Government Code in the bill as enacted did not appear in the bill as introduced. When the bill was first amended a special limitation provision for causes of action against local public entities to which the new claims statute is applicable was added thereto because it was anticipated that if the 80-day waiting period was enacted the courts would, in accordance with past decisions, hold that the

statute of limitations was tolled during such period. With the elimination of the waiting period there appeared to be no reason to have a special statute of limitations for such claims. The effect of Section 719 is to make applicable to public entities, except where a different statute of limitations is specifically applicable, the same statutes of limitations as are applicable to claims asserted against defendants other than local public entities. A related change was made in the last paragraph of Section 715 of the Government Code in the bill as enacted; since the ordinary statutes of limitations are applicable to claims against local public entities the special provision relating to the beginning of the claim filing period is no longer necessary.

(16) Section 4 was added to the bill to make it clear that the new claims statute is prospective only in its operation.

Assembly Bill No. 406 is a nonsubstantive recodification bill which brings into the same new division of the Government Code (Division 3.5 of Title 1) which contains the new claims statute (Chapter 2 of Division 3.5) the existing statutes relating to the presentation of claims against the State (which is made Chapter 1 of Division 3.5) and the existing statutes relating to the presentation of a claim as a

prerequisite to suit against a public officer or employee (made Chapter 3 of Division 3.5). Section 5 was added to the bill in the Assembly to make it clear that no substantive change is intended to be made in these statutory provisions by their removal to Division 3.5. Certain technical amendments were also made to the bill in the Assembly.

Assembly Bill No. 407 makes such conforming changes in the law relating to the presentation of claims against counties as are necessary in view of the enactment of the new claims statute. Section 17 of the bill was amended in the Senate to conform it to the provisions of a bill which was passed by the Legislature and signed by the Governor.

Assembly Bill No. 408 makes such conforming changes in the law relating to the presentation of claims against cities as are necessary in view of the enactment of the new claims statute. A technical amendment was made to the bill in the Assembly.

Assembly Bill No. 409 makes such conforming changes in the law relating to the presentation of claims against various types of districts as are necessary in view of the enactment of the new claims statute. Technical amendments were made to the bill in the Assembly and in the Senate.

Assembly Bill No. 410 makes such conforming changes in the law relating to the presentation of claims against other types of districts as are necessary in view of the enactment of the new claims statute. Section 87 was added to the bill in the Assembly to include a statute which came to the Commission's attention after the bill was introduced.

Note: Chapter numbers not yet available here.

Assembly Bills Nos. 405, 406, 407, 408, 409 and 410 were passed by the Legislature and signed by the Governor, becoming Chapters ____, ____, ____, ____, ____, and ____ of the Statutes of 1959, respectively.

Recodification of Statutes Relating to Grand Juries

Assembly Bill No. 404 was introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.¹² Technical amendments were made to the bill in the Senate. As thus amended, the bill was passed by the Legislature and signed by the Governor, becoming Chapter 501 of the Statutes of 1959.

^{12.} See 1959 Report Calif. Law Revision Comm., supra, p. 20.