

7/5/60

Memorandum No. 58 (1960)

Subject: Study No. 37(L) - Claims Against Public Officers and  
Employees

Attached is a revised recommendation relating to claims against public officers and employees. The letter of transmittal that will be a part of the pamphlet containing the Recommendation and Study is also included.

Also attached is Exhibit I -- a suggested substitute for paragraph "2." of the recommendation. This is submitted by Mr. McDonough.

At its March 1960 meeting the Commission decided that it will introduce legislation in 1961 to repeal the personnel claims statutes. If this legislation fails to pass in 1961, the Commission will introduce legislation in 1963 to provide a personnel claims procedure consistent with the 1959 general claims act. The staff is about ready to send the consultant's study on this topic to the printer. Does the Commission want the staff to edit out of the study the portions of the study that relate to Van Alstyne's alternative recommendation (to revise the procedure for filing claims against public officers and employees)? Specifically, should the following portions of the study be deleted: paragraph (c) on page 3, last 2 lines of page 46 and all of page 47; Appendix B? The portions of the study detailing the defects in the existing statutes would not be deleted. Nor would these revisions be made if Professor Van Alstyne objects.

Respectfully submitted

John H. DeMouly  
Executive Secretary

LETTER OF TRANSMITTAL

The California Law Revision Commission was authorized by Resolution Chapter 35 of the Statutes of 1956 to make a study of the various provisions of law relating to the presentation of claims against public bodies and public employees to determine whether they should be made uniform and otherwise revised. Upon recommendation of the Commission, legislation was enacted in 1959 creating a uniform procedure governing the presentation of claims against local public entities. At that time the Commission reported that it had not had an opportunity to make a comprehensive study of the provisions of law relating to the presentation of claims against public officers and employees. Since then the Commission has made such a study and herewith submits its recommendation and the study prepared by its research consultant, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

(37)

7/5/60

CALIFORNIA LAW REVISION COMMISSION  
School of Law  
Stanford, California

T E N T A T I V E

RECOMMENDATION AND PROPOSED LEGISLATION

relating to

Presentation of Claims Against Public Officers  
and Employees

NOTE: This is a tentative recommendation and proposed statute prepared by the California Law Revision Commission. It is not a final recommendation and the Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature. This material is being distributed at this time for the purpose of obtaining suggestions and comments from the recipients and is not to be used for any other purpose.

RECOMMENDATION OF CALIFORNIA LAW REVISION COMMISSION

relating to

Presentation of Claims Against Public Officers and Employees

Sections 801 and 803 of the Government Code and various municipal charters and ordinances contain provisions which bar suit against a public officer or employee on his personal liability unless a claim for damages is presented within a relatively short time after the claimant's cause of action has accrued. These provisions are referred to in this Recommendation as "personnel claims statutes."

The Law Revision Commission recommends that all personnel claims statutes be repealed for the following reasons:

1. Personnel claims statutes, in effect, limit the substantive liability of public officers and employees by making available to them a technical defense, which other citizens do not have, against otherwise meritorious actions. The Commission believes that these statutes, insofar as they limit substantive liability, are unfair, ineffective and unnecessary. They are unfair because they bar otherwise meritorious actions merely because the plaintiff fails to comply with a technical procedural requirement. They are ineffective because they provide no protection against substantive liability in those cases where a claim is presented within the prescribed time. They are unnecessary because other methods that are fairer and more effective can be utilized to protect public officers and employees against personally having to pay judgments arising out of their personal liability for their negligent acts or omissions in the course and scope of their employment. In his

study the Commission's research consultant refers to two such methods which the Legislature has made available to some but not all public officers and employees: defense of public personnel at public expense and personal liability insurance obtained at public expense for public officers and employees. Recommendations concerning the extension of these other methods of providing protection for public personnel are beyond the scope of the authority given to the Commission in connection with the present study.

2. As the study prepared by the Commission's research consultant demonstrates, the arguments advanced in favor of the personnel claims statutes are not convincing.<sup>1</sup> The recognized justification for a claims statute is that it is designed to give prompt notice of a potential liability to a defendant whose unique situation requires this preferred treatment. Thus, a claims statute is justified as applied to a public entity which, but for such protection, might frequently find itself sued as respondeat superior on stale claims of which it had not theretofore been aware. But the liability of a public officer or employee against which the personnel claims procedure affords protection is a personal liability based on the defendant's own negligence. There is no more justification in this case for requiring a plaintiff to present a claim as a condition of bringing suit than there would be for imposing a similar requirement when a plaintiff sues to enforce the personal liability of any other private citizen.

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<sup>1</sup> For a more complete discussion of these arguments, see research consultant's study, infra at .

Another argument sometimes made in favor of personnel claims statutes is that they are necessary to protect the public entity in those cases where the public entity is liable by statute to pay a judgment against an officer or employee, or has insured his liability or is required by statute to defend a suit brought against him. The Commission believes that the fact that the public entity is thus involved in the suit against its officer or employee is no reason to limit his personal liability. It may be in the interest of good employee relations and hence sound public policy to require or authorize a public entity to assume all or part of the burden of such personal liability as its officers and employees may incur in the course of their public employment. But it is quite unfair to transfer this burden to the injured plaintiff. The plaintiff should have an adequate right of redress against every individual who harms him, without regard to whether that individual is a public officer or employee or any other citizen. The fact that a public entity chooses for its own reasons or is required by statute to assume all or a part of this liability in some instances does not justify legislation which, in effect, limits the liability in order to reduce the public expense involved. The cost of the public policy should be borne by the public, not by the individual who has been injured.

3. Personnel claims statutes create a procedural trap for unwary plaintiffs. In addition to the fact that a plaintiff is unlikely to be aware of the existence of personnel claims statutes and may not consult an attorney until it is too late, the circumstances of the particular case sometimes do not disclose that the public officer or employee was acting as such and the plaintiff and his attorney may not discover this

fact until the time for presenting the claim has elapsed.

4. As the report of the Commission's research consultant shows, the existing personnel claims statutes are ambiguous, inconsistent and overlapping.<sup>2</sup> Claimants, attorneys and the courts have difficulty in determining which, if any, of the claims presentation provisions applies in a particular case.

5. Only one other state has enacted a general personnel claims statute and its statute is of limited scope.

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<sup>2</sup> For a detailed discussion of the defects in the personnel claims statutes, see research consultant's study, infra at .

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

An act to amend Section 313 of the Code of Civil Procedure, to repeal Sections 800, 801, 802 and 803 of the Government Code and to add Sections 800 and 801 to Chapter 3 of Division 3.5 of Title 1 of the Government Code, relating to claims against public officers, agents and employees.

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

SECTION 1. Sections 800, 801, 802 and 803 of the Government Code are hereby repealed.

SEC. 2. Sections 800 and 801 are added to Chapter 3 of Division 3.5 of Title 1 of the Government Code, to read:

800. A claim need not be presented as a prerequisite to the commencement of an action against a public officer, agent or employee to enforce his personal liability.

801. Any provision of a charter, ordinance or regulation heretofore or hereafter adopted by a local public entity, as defined in Section 700 of this code, which requires the presentation of a claim as a prerequisite to the commencement of an action against a public officer, agent or employee to enforce his personal liability, is invalid.

SEC. 3. Section 313 of the Code of Civil Procedure is amended to read:

313. The general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the State [~~, and against the officers and employees thereof,~~] is prescribed by Division 3.5 (commencing with Section 600) of Title 1 of the Government Code.

SEC. 4. This act applies only to causes of action heretofore or hereafter accruing that are not barred on the effective date of this act. Nothing in this act shall be deemed to allow an action on, or to permit reinstatement of, a cause of action that has been barred prior to the effective date of this act.

EXHIBIT I

Suggested substitute for paragraph "2." of Recommendation

(Submitted by Mr. McDonough)

2. As the study prepared by the Commission's research consultant demonstrates, the arguments advanced in favor of the personnel claims statutes are not convincing.<sup>1</sup> The recognized justification for a claims statute is that it is designed to give reasonably prompt notice of a potential liability to a defendant who might otherwise be unaware of its existence. Thus, a claims statute is justified as applied to a public entity which, but for such protection, might frequently find itself sued on stale claims of which it had not theretofore been aware. But the liability of public officers and employees against which the personnel claims procedure affords protection is a personal liability based on the defendant's own negligence. Ordinarily, the injury involved rises directly out of an act or omission of the public officer and employee and he is immediately aware of it. There is no more justification in such case for requiring a plaintiff to present a claim as a condition of bringing suit than there would be for imposing a similar requirement when a plaintiff sues any other private citizen. In some instances a public officer in a supervisory position may be held liable for the failure of a subordinate to perform his duties and thus may not have immediate personal knowledge of the injury. But such cases are likely to

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<sup>1</sup> For a more complete discussion of the arguments, see research consultant's study, infra at .

be rare and, in any event, the public officer's liability is no greater than that of his counterpart in private employment.

[no change in remainder of paragraph "2."]