

Meeting

52(L)

First Supplement to Memorandum No. 27(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Presentation of Claim as a Prerequisite to Action Against Public Officer or Employee)

The draft statute attached to Memorandum No. 27(1962) contains provisions relating to presentation of a claim as a prerequisite to an action against a public officer, agent or employee. We will not be able to distribute a tentative recommendation on the general claims statute until after the July meeting at the earliest.

The staff recommends, therefore, that the Commission consider approving and distributing after the June meeting the attached tentative recommendation relating to Presentation of Claim as Prerequisite to Action Against Public Officer or Employee. We believe that this portion of the comprehensive claims statute should be distributed separately for comments and criticisms as soon as possible.

Two copies of the tentative recommendation are attached (blue sheets). Please mark any revisions in the form of the tentative recommendation on one copy and turn it in to the staff at the June meeting.

Note that the research consultant on pages 442-444 of his study recommends that the public officer and employee claims statutes be repealed. The Commission, however, has adopted the policy reflected in the attached tentative recommendation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

Presentation of Claim as Prerequisite to Action

Against Public Officer or Employee

Sections 801 and 803 of the Government Code and various municipal charters and ordinances contain provisions that 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 hereafter referred to as "personnel claims statutes."

The existing personnel claims statutes are ambiguous, inconsistent and overlapping.¹ Claimants, attorneys and courts have difficulty in determining which, if any, of the personnel claims statutes applies in a particular case. In addition, these statutes have operated as a procedural trap for unwary plaintiffs.

In 1961 the Commission submitted a recommendation to the

1. For a detailed discussion of the defects in the personnel claims statutes, see research consultant's study, Recommendation and Study Relating to The Presentation of Claims Against Public Officers and Employees, 3 Cal. Law Revision Comm'n. Rep., Rec. & Studies at H-13 et seq. (1961).

Legislature that all personnel claims statutes be repealed.² However, the legislation drafted to effectuate this recommendation was not enacted.

The Commission has concluded that the appropriate role for claims presentation procedures, including the personnel claims statutes, should be reconsidered in connection with the general problem of enlarged governmental tort liability. Accordingly, the Commission has reviewed its 1961 recommendation to determine whether the personnel claims statutes should be retained, revised or repealed in view of the Commission's other recommendations concerning governmental tort liability.

The traditional grounds used to justify the public entity claims statutes--that prompt notice is necessary to permit investigation of the claim and correction of the condition that gave rise to it--do not justify personnel claims statutes. As the Commission stated in its 1961 recommendation:

The recognized justification for a claims statute is that it assures reasonably 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 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

2. See Recommendation and Study Relating to The Presentation of Claims Against Public Officers and Employees, 3 Cal. Law Revision Comm'n Rep., Rec. & Studies, H-1 (1961).

defendant's own negligence. In many cases the injury involved arises 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 these cases 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 defendant. Of course, in some instances a public officer or employee may be held liable even though he did not have immediate personal knowledge of the injury. But in such cases the public officer's liability is no greater than that of his counterpart in private employment.³

Nevertheless, in view of the tentative determinations made in the course of its study on governmental tort liability, the Commission has concluded that some type of personnel claims statute is needed. For example, the Commission has tentatively determined that as a general rule a public entity should be required to pay a judgment rendered against its officer, agent or employee for death, injury or damage resulting from an act or omission in the scope of his office, agency or employment.⁴ If this general rule were adopted, the repeal of the personnel claims statutes would largely negate the protection by the public entity claims statutes; for, if an action against the public entity were barred because a claim was not presented

3. Recommendation and Study Relating to the Presentation of Claims Against Public Officers and Employees, 3 Cal. Law Revision Comm'n Rep., Rec. & Studies, H-5--H-6 (1961).

4. This decision will be given further consideration when the Commission prepares subsequent tentative recommendations covering various areas of substantive liability. Several existing statutes require a variety of public entities to pay judgments against their personnel.

to the public entity as required by the applicable statute, the claimant could, nevertheless, bring an action against the officer, agent or employee involved and recover a judgment which the public entity ordinarily would then be required to pay. The Commission believes, however, that a requirement that public entities assume the ultimate liability for acts or omissions of their personnel in the scope of their employment should not operate to defeat the sound public policy represented in the public entity claims statutes. It is necessary, therefore, that appropriate legislation be enacted to preserve the effectiveness of the public entity claims statutes.

Accordingly, the Commission recommends:

1. An action against a public officer, agent or employee for death, injury or damage resulting from an act or omission in the scope of his employment should be barred if an action based on the same act or omission against the employing public entity would be barred because the requirements of the public entity claims statute had not been met.⁵

5. In 1951 the Legislature enacted Section 2003 (now Section 803) of the Government Code in an attempt to accomplish the result proposed here. The attempt was not completely successful, however, for Section 803 does not apply to State personnel, nor to officers (as distinguished from "employees") of other entities. Moreover, since Section 803 applies only to actions based on "negligence," it appears that a plaintiff at times would be able to evade the public policy expressed in this section by framing his complaint on a theory other than that of negligence.

2. A cause of action against a public officer, agent or employee should not be barred, however, if the plaintiff pleads and proves that he did not know or have reason to know within the period allowed for presentation of the claim to the employing public entity that the death, injury or damage was caused by an act or omission of a public officer, agent or employee. This exception is necessary to cover those cases where the circumstances do not disclose that the public officer, agent or employee was acting as such and the plaintiff and his attorney do not discover this fact until the time for presenting the claim to the public entity has elapsed.

3. The statutory protection recommended above should supersede any charter, ordinance or regulation of a local public entity which requires the presentation of a claim as a prerequisite to the maintenance of an action against a public officer, agent or employee to enforce his personal liability.

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

An act to repeal Chapter 3 of Division 3.5 of Title 1 of, and to add Chapter 3 to Division 3.5 of Title 1 of, the Government Code, relating to presentation of a claim

as a prerequisite to an action against a public officer,
agent or employee.

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

SECTION 1. Chapter 3 (commencing with Section 800) of Division 3.5 of Title 1 of the Government Code is repealed.

SEC. 2. Chapter 3 (commencing with Section 800) is added to Division 3.5 of Title 1 of the Government Code, to read:

Chapter 3. Actions Against Public Officers and Employees

800. Except as otherwise provided in this chapter, a claim need not be presented as a prerequisite to the maintenance of an action against a public officer, agent or employee to enforce his personal liability.

801. (a) Except as provided in subdivision (b), a cause of action against a public officer, agent or employee for death, injury or damage resulting from any negligent or wrongful act or omission in the scope of his office, agency or employment is barred if an action against the public entity for such death, injury or damage is barred because of the failure to present a written claim to the public entity or because the claim presented to the public entity has not been rejected in whole or in part by the public entity or has not been deemed to have been rejected by the public entity.

(b) A cause of action against a public officer, agent or employee is not barred by this section if the plaintiff pleads and proves that he did not know or have reason to know, within the period prescribed for the presentation of a claim to the employing public entity as a condition to maintaining an action therefor against the employing public entity, that the death, injury or damage was caused by an act or omission of a public officer, agent or employee.

802. Any provision of a charter, ordinance or regulation heretofore or hereafter adopted by a local public entity which requires the presentation of a claim as a prerequisite to the maintenance of an action against a public officer, agent or employee to enforce his personal liability is invalid.

SEC. 3. This act applies only to causes of action that accrue on or after its effective date. Causes of action that accrued prior to the effective date of this act are not affected by this act but shall continue to be governed by the law applicable thereto prior to 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 was barred prior to the effective date of this act.