

#52

9/13/68

Memorandum 68-86

Subject: Study 52 - Sovereign Immunity

Attached is a copy of the Tentative Recommendation relating to the Statute of Limitations in Actions Against Public Entities and Public Employees. This is substantially the same as the tentative recommendation distributed for comment. However, we have incorporated into the revised tentative recommendation changes to reflect suggestions made by Commissioners Sato and Stanton who reviewed the tentative recommendation and submitted editorial suggestions.

Respectfully submitted,

John H. DeBully
Executive Secretary

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

STATUTE OF LIMITATIONS IN ACTIONS AGAINST
PUBLIC ENTITIES AND PUBLIC EMPLOYEES

CALIFORNIA LAW REVISION COMMISSION
School of Law
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WARNING: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

TENTATIVE RECOMMENDATION OF THE CALIFORNIA
LAW REVISION COMMISSION

relating to

STATUTE OF LIMITATIONS IN ACTIONS AGAINST
PUBLIC ENTITIES AND PUBLIC EMPLOYEES

Section 342 of the Code of Civil Procedure and Sections 900-955.8 of the Government Code were enacted in 1963 on recommendation of the Law Revision Commission to prescribe the procedure governing claims and actions against public entities and public employees.¹ The Commission is making a continuing study to determine whether any substantive, technical, or clarifying changes are needed in the 1963 statute.² In this connection, the Commission has considered Williams v. Los Angeles Metropolitan Transit Authority, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (May 1968), and has concluded that changes are needed in the statutes prescribing the time within which actions against public entities and public employees must be commenced.

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1. Cal. Stats. 1963, Ch. 1715. See Recommendation Relating to Sovereign Immunity: Number 2--Claims, Actions and Judgments Against Public Entities and Public Employees, 4 Cal. L. Revision Comm'n Reports 1001 (1963).
 2. Revisions of the 1963 statute were made in 1965 upon recommendation of the Law Revision Commission. Cal. Stats. 1965, Ch. 653. See Recommendation Relating to Sovereign Immunity: Number 8--Revisions of the Governmental Liability Act, 7 Cal. L. Revision Comm'n Reports 401 (1965). See also Cal. Stats. 1968, Ch. 134, amending Government Code Sections 901 and 945.6 (enacted upon recommendation of the Law Revision Commission although no written recommendation was submitted to the Legislature).

Section 945.6 of the Government Code provides the statute of limitations applicable to actions against a public entity.³ The section requires that an action against a public entity be commenced within six months after a claim presented to the public entity has been denied or deemed rejected or within one year from the accrual of the cause of action, whichever period expires later. While the section contains specific savings provisions in favor of persons sentenced to imprisonment in a state prison, it contains no provision tolling the statute of limitations for a minor or other person under disability.

3. Section 945.6 provides:

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) 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 Chapters 1 and 2 of Part 3 of this division, or (2) within one year from the accrual of the cause of action, whichever period expires later.

(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.

In Williams v. Los Angeles Metropolitan Transit Authority, supra, the Supreme Court held that the provision of Code of Civil Procedure Section 352 that tolls the statute of limitations for a minor is applicable to an action against a public entity.⁴ Hence, the special statute of limitations in Section 945.6 governing actions against public entities is tolled where the plaintiff is a minor.

The Commission has reviewed not only the effect of the Williams decision on the claims statute and the problems that this decision presents for claimants and public entities but also a number of other recent decisions⁵ where apparently meritorious actions have been barred by the six-months statute of limitations because the claimant was unaware of the special statute of limitations that applies to actions against public entities. Generally, for the reasons indicated below, the Commission has concluded that a short statute of limitations for public entities and public employees is justified but that public entities should be required to advise each claimant that a special statute of limitations applies to his claim. To effectuate this general objective, the Commission makes the following recommendations:

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4. The court disapproved a contrary dictum in Frost v. State, 247 Cal. App.2d 378, 55 Cal. Rptr. 652 (1966).
 5. See Tubbs v. Southern Cal. Rapid Transit Dist., 67 Adv. Cal. 683, 63 Cal. Rptr. 377, 433 P.2d 169 (1967); Isaacson v. City of Oakland, 263 A.C.A. 453 (1968); Hunter v. County of Los Angeles, 262 A.C.A. 911 (1968); Rogers v. Board of Educ., 261 A.C.A. 384, 67 Cal. Rptr. 905 (1968); See also Williams v. Los Angeles Metropolitan Transit Authority, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968); Hubbard v. Southern Cal. Rapid Transit Dist., 68 Adv. Cal. 635, 68 Cal. Rptr. 305, 440 P.2d 505 (1968); Shotlow v. City of Los Angeles, 258 A.C.A. 480, 65 Cal. Rptr. 851 (1968).

1. Sections 350-363 of the Code of Civil Procedure are general provisions relating to the time within which actions must be commenced. Except for Section 352, the Commission has concluded that these sections should continue to apply to actions against public entities and public employees.⁶

2. Section 352 of the Code of Civil Procedure operates to toll the statute of limitations for minors, insane persons, and prisoners.⁷ The Commission recommends that this section be amended to provide that it is not applicable to actions against public entities and public employees and does not operate to extend the special limitations period prescribed by Government Code Section 945.6 (generally six months) for actions against public entities and public employees.

6. For example, as the court points out in the Williams case, "if we are to avoid incongruous results, the procedural provisions of the Government Code must be subject to the general provisions of the Code of Civil Procedure [Section 353] permitting an additional six-month limitation period upon the death of a person entitled to bring an action. Otherwise, if a person injured by a public entity should die at a time shortly before the expiration of the limitation period of six months, the probate court might not have sufficient time to appoint the personal representatives required to bring the action." 68 Adv. Cal. at 631 n.9.

7. Section 352 also provides that the statute of limitations does not run while the plaintiff is "a married woman and her husband be a necessary party with her in commencing such action." This vestigial remnant is of no significance since the abolition of coverture. See 1 Witkin, California Procedure 668 (1954).

The application of Section 352 to extend the limitation period may impose a significant and unnecessary hardship upon the public entity, for the plaintiff can defer bringing the action until the evidence has become stale and the witnesses are no longer available. A minor or insane person must present his claim promptly under the claims statute; otherwise, he has no right of action against the public entity. Thus, no significant additional burden will be imposed on him if he is required to commence his action promptly after he has been notified that his claim has been denied.⁸ In the case of a minor or incompetent plaintiff, the suit can be brought through a guardian ad litem or other representative.

3. The public entity should be required to notify each claimant of its action or failure to act on his claim. There is no obligation under existing law that the public entity act on a claim within the 45-day period allowed for action on the claim or that the entity notify the claimant of its failure to take action. Many public entities take no action on claims as a matter of policy with the result that the claimant receives no communication from the public entity alerting him to the start of the six-month period for commencing suit on the claim. This has resulted in some claimants failing to file suit within the six-month period allowed and such failure has barred any remedy on the claim.⁹

In case of a partial or total rejection of the claim, the notice of the entity's action on the claim should contain a warning, phrased

8. Although Section 352 provides for the tolling of the statute of limitations for prisoners, it is likely that this general provision is not applicable to actions by prisoners against public entities since Government Code Section 945.6 contains a special provision for the tolling of the limitation period in the case of a person who loses his civil rights through imprisonment.

9. [citations to cases to be supplied later.]

as simply as possible, that the claimant has generally only six months from the time notice of rejection is given to commence an action on the claim. The warning should also include a statement, similar to that required on a summons, that the claimant may seek the advice of an attorney and that the attorney should be consulted within the six-month limitation period. The notice should be given in substantially the same manner as notice is now given by the public entity of its action on the claim.¹⁰ This notice will protect against an inadvertent reliance on the general tolling provision of Section 352 where the claim of a minor or incompetent is involved and will provide all claimants with notice of the action taken on their claims and a warning concerning the time within which an action must be filed on a claim that has been rejected in whole or in part.

4. Government Code Section 945.6 should be amended to provide that an action must be commenced within six months after the date that the notice of the rejection of the claim and the warning concerning the six-month limitation period is given. If the required notice is not given, the claimant should be permitted to file suit within two years from the accrual of his cause of action. Under existing law, the action ordinarily must be commenced within six months from the time

10. To provide a uniform procedure for giving the notices required by Government Code Sections 910.8 (notice of insufficiency of claim), 911.8 (notice of action on application to file late claim), and 913 (notice of action on claim), a new Section 915.4 should be added to the Government Code, and existing Sections 910.8, 911.8, and 913 should be amended to conform to this new section. The manner of giving notice should remain in substance the same.

the claim is acted upon or is deemed to be denied, and the failure of the entity to give notice of its action or inaction has no effect on the limitation period.

The short six-month period will ensure that any suit against a public entity will be brought within a reasonably short period after the entity has acted on the claim and placed the claimant on notice of his responsibility to pursue the matter promptly in the courts if he so chooses. The two-year period will serve as a sanction for failure to give the notice and will provide a definite limitation period for all claims where the required notice is not given.

5. Section 950.4 should be amended to make clear that the limitation period for an action against a public employee is extended during any period the public employee is out of the state¹¹ and in any case where he dies shortly before the expiration of the limitation period.¹²

11. Code of Civil Procedure Section 351 provides:

351. If, when the cause of action accrues against a person, he is out of the State, the action may be commenced within the term herein limited, after his return to the State, and if, after the cause of action accrues, he departs from the State, the time of his absence is not part of the time limited for the commencement of the action.

12. Code of Civil Procedure Section 353 provides, in part:

If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his representatives, after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

6. Government Code Section 950.6, which sets forth the limitation period for actions against public employees, should be amended to conform to the foregoing recommendations.

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

An act to amend Section 352 of the Code of Civil Procedure and to amend Sections 910.8, 911.8, 913, 945.6, 950.4, and 950.6 of, and to add Section 915.4 to, the Government Code, relating to claims against public entities and public employees.

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), Chapter 2 (commencing with Section 910), or Chapter 3 (commencing with Section 950), of Part 3 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 (c) 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 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968). See also Government Code Section 950.4(b).

Sec. 2. Section 910.8 of the Government Code is amended to read:

910.8. (a) 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.

(b) 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.--~~(c) 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 rejecting a claim in whole or in part shall be given in the manner prescribed by Section 915.4.
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.

(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. Your attorney should be consulted within six (6) months from the date of this notice."

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 rejecting a claim in whole or in part shall be given in the manner prescribed by Section 915.4.
~~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.~~

(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. Your attorney should be consulted within six (6) months from the date of this notice."

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. Such notice shall be given pursuant to the uniform procedure established under Section 915.4. The requirement of giving written notice in every case will serve to keep each claimant aware of the status of his claim.

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 period of limitations and advice to secure the services of an attorney. The notice and warning will alert each 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 provision 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 either:

(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.

(c) Section 915.2 applies to notices given under this section.

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 in conjunction with Government Code Section 913, to require that an action be commenced within six months after notice of rejection is given pursuant to that section. 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 of time 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 of rejection is personally delivered to the claimant or deposited in the mail at which time the claimant will receive a warning that he has a limited time within which to act 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 notice of rejection, but the claimant is permitted six months from the date such notice is given to file suit.

If notice is not given, the extended 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 by the board 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 Adv. Cal. 623, 68 Cal. Rptr. 305, 440 P.2d 505 (1968).

Sec. 7. Section 950.4 of the Government Code is amended to read:

950.4. (a) A cause of action against a public employee or former public employee is not barred by Section 950.2 if the plaintiff pleads and proves that he did not know or have reason to know, within the period for the presentation of a claim to the employing public entity as a condition to maintaining an action for such injury against the employing public entity, as that period is prescribed by Section 911.2 or by such other claims procedure as may be applicable, that the injury was caused by an act or omission of the public entity or by an act or omission of an employee of the public entity in the scope of his employment as a public employee.

(b) A cause of action against a public employee or former public employee is not barred by Section 950.2 if:

(1) The sole ground on which such cause of action would otherwise be barred is that an action was not commenced against the public entity within the time limited by Section 945.6; and

(2) The plaintiff pleads and proves that the limitation period prescribed by subdivision (b) of Section 950.6 is extended by application of Section 351 or 353 of the Code of Civil Procedure and that the action against the public employee or former public employee was commenced within the time limited for the commencement of the action as so extended.

Comment. Subdivision (b) has been added to Section 950.4 so that it will be clear that the time within which an action against a public employee or former public employee must be commenced is extended by the application of Code of Civil Procedure Section 351 (absence of defendant from the state) or 353 (death of plaintiff before expiration of limitation period) in an appropriate case. See Williams v. Los Angeles Metropolitan Transit Authority, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968).

Sec. 8. 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.