

Second Supplement to Memorandum 95-58

Administrative Adjudication by State Agencies: Followup Legislation (Comments of Department of Corporations)

Attached is a letter from the Department of Corporations commenting on two administrative adjudication issues.

Quasi-Public Entities

The Department is opposed to the concept of subjecting quasi-public entity hearings to the administrative adjudication bill of rights, "because no justification has been shown for the far-reaching proposal." The Department does not indicate what specific problems would be caused by requiring the hearings to adhere to fundamental due process and public policy principles. **The staff suggests that the Commission solicit from the Department an indication of the specific problems that would be caused by such a requirement.**

Confidentiality of Offers of Settlement or Compromise

The Department is concerned that Government Code Section 11415.60, which protects the confidentiality of offers of compromise or settlement made in settlement negotiations, might be construed also to immunize all communications made during settlement negotiations. The statute provides:

Notwithstanding any other provision of law, no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.

The staff has no problem with adding language to the Comment, as suggested by the Department, pointing out that, unlike other confidentiality statutes, the statute does not protect communications made during settlement negotiations; it

only protects evidence of the fact that the offer of compromise or settlement has been made.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

PETE WILSON, Governor

DEPARTMENT OF CORPORATIONS

Sacramento, California



IN REPLY REFER TO:
FILE NO: ALPHA

November 1, 1995

Law Revision Commission
RECEIVED

NOV 01 1995

File: _____

Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Senate Bill 523 - Issues

Dear Mr. Sterling:

This is in response to your letter dated October 3, 1995, which explained that the Law Revision Commission was contemplating a proposal to amend the Administrative Procedure Act to provide that its provisions would apply to "quasi-public entities." You mentioned in your letter that it has been suggested that the Escrow Agents' Fidelity Corporation may be such an entity which should fall under the control of the Administrative Procedure Act.

The Department of Corporations regrets to inform you that after preliminarily reviewing the language of proposed Section 11410.60, the Department will recommend an oppose position to the proposal because no justification has been shown for the far-reaching proposal. The Department fears that the term "quasi-public entities" as used is overbroad.

It must be emphasized that the Escrow Agents' Fidelity Corporation is a corporation authorized by the Legislature and incorporated under the Nonprofit Mutual Benefit Corporation Law. It is not an administrative agency, and does not conduct hearings pursuant to a delegation of authority from the Department of Corporations. In fact, the statute specifies that a person whose application for certificate has been denied, revoked, or suspended may appeal the decision by binding arbitration or judicial action pursuant to the Code of Civil Procedure. Therefore, the Department believes that no justification has been provided to show that a corporation incorporated under the Nonprofit Mutual Benefit Corporation Law should be compelled to follow the Administrative Procedure Act.

Similarly, the far-reaching language of the proposal may also unjustifiably affect physician and surgeon cooperative corporations, which enter into interindemnity, reciprocal, or

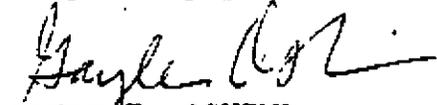
Nathaniel Sterling
November 1, 1995
Page 2

interinsurance contracts complying with Section 1280.7 of the Insurance Code, as specified in Section 25100(q) of the Corporations Code.

As for the rule on the admissibility of evidence of offers to compromise or to settle, the Department is concerned that defendants may attempt to use Section 11415.60 of the Government Code to keep confidential the contents of the evidence of settlement or compromise, or the contents of communications made during settlement negotiations. Therefore, to avoid future and further confusion, the Department respectfully requests that a comment be inserted to clarify that provision "...only protects evidence of the fact that an offer of compromise was made." (See page 5 of Memorandum 95-54.) And, as we discussed, the Department requests that a comment be attached explaining that Section 11415.60 of the Government Code is different from Section 1152 of the Evidence Code.

If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,



GAYLE T. OSHIMA
Corporations Counsel
(916) 445-8042

GTO:jw