Meeting of:
January 24-25, 1958

Memorandum No. 3

Subject: Study No. 37(L) - Claims
           Statute

Attached are the following:

(1) A copy of the proposed Claims Statute. Sections 7000, 7001,
7002, 7004, 7005, and 7006 have been revised in light of decisions
taken at the December meeting. I have made a couple of changes in
Section 7007.

(2) A copy of a letter received from Professor Van Alstyne
commenting on the draft of the Claims Statute which was before the
Commission at the December meeting.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

JRMj:j

Agenda Item # 1

CLAIMS STATUTE

An act to add Chapter 12 to Division 7 of Title 1 of the Government Code, relating to the presentment of claims against public entities and officers agents and employees thereof.

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

Section 1. Chapter 12 is added to Division 7 of Title 1 of the Government Code, to read:

Chapter 12 Presentment of Claims Against Public Entities.

7000. This chapter applies to claims against public entities except claims of the following kinds:

a) Claims for exemption, cancellation or refund of taxes, fees and assessments.

b) Claims relating to mechanics' and materialmen's liens.

c) Claims for wages, salaries, fees and reimbursement for expenses of public employees.

d) Claims arising under workmen's compensation laws.

e) Claims for aid under public assistance programs.

f) Claims arising under any retirement or pension system.

g) Claims for principal or interest upon bonded indebtedness.

h) Claims governed by specific provisions relating to street or other public improvements.

7001. As used in this chapter "public entity" means any county, city, city and county, district, authority, or other political subdivision of the State.

7002. Until July 1, 1964, substantial compliance with the requirements of any other applicable claims procedure established by statute, charter or ordinance in existence on the effective date of this chapter shall be regarded as equivalent to compliance with the terms of this chapter.

7003. By written agreement, compliance with the provisions of this chapter may be waived by a public entity with respect to any or all claims arising out of an express contract between the parties to the waiver agreement.

7004. No suit may be brought for money or damages against a public entity until a written claim therefor has been presented to the public entity in conformity with the provisions of this chapter by the claimant or by a person acting in his behalf and has been rejected in whole or in part.

7005. A claim filed in conformity with the requirements of this chapter shall show:

    a) The name and residence or business address of the claimant.

    b) The circumstances giving rise to the claim asserted.

    c) The nature and extent of the injury or damage incurred.

    d) The amount claimed.

7006. If a claim as presented fails to comply with the requirements of Section 7005 the governing body of the public entity may give the claimant or the person presenting the claim written notice of its insufficiency stating with particularity in what respect the claim fails to comply with Section 7005. Within ten days after receipt of the notice, the claimant or the person presenting the claim may file a corrected or amended claim which shall be considered a part of the original claim for all purposes. Unless notice of insufficiency is given, any defect or omission in the claim is waived, except when the claim fails to give the residence or business address of the claimant or the person presenting the claim.

7007. A claim may be presented to a public entity only/[1]by delivering the claim personally to the clerk or secretary [or to a member of the governing body] thereof not later than the ninetieth day after the cause of action to which the claim relates has accrued within the meaning of the statute of limitations applicable to such causes of action when brought against non public entity defendants or/[2]by sending the claim to such clerk or secretary or to the governing body at its principal place of business by mail postmarked not later than such ninetieth day. If a claim is not presented to the person designated in this section the presentation shall be deemed valid if the claim is actually received by the clerk, secretary, [governing board member,] or governing body within the time prescribed.

[NOTE: Southern Committee members disagreed re inclusion of bracketed material in this section; Shaw for, Babbage against.]

7008. Where the claimant is an infant or is mentally or physically incapacitated, and by reason of such disability fails to present a claim within the time allowed, or where a person entitled to present a claim dies before the expiration of the time allowed for presentation, any court which would have proper jurisdiction and venue of an action to enforce the cause of action to which the claim relates may grant leave to present the claim after the expiration of the time allowed, where the public entity against which the claim is made will not be unduly prejudiced thereby. Application for such leave must be made by duly noticed motion, accompanied by affidavits showing the reasons for the delay and a copy of the proposed

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claim, made within a reasonable time, not to exceed one year, after the expiration of the time allowed for presentation.

7009. A public entity shall be estopped from asserting as a defense to an action failure to file a claim or the insufficiency of a claim actually filed as to form or contents or as to time, place or method of presentation of the claim if the claimant or person presenting the claim in his behalf has reasonably and in good faith relied on any representation express or implied that a claim was unnecessary or that his claim had been presented in conformity with legal requirements, made by any responsible official, employee or agent of the entity.

7010. If the governing body of the public entity fails or refuses to allow or reject a claim for ninety days after it has been received by a person designated in Section 7007, the claim shall be deemed to have been rejected on the ninetieth day. An action on such a claim must be commenced within six months after such ninetieth day.

7011. If a claim is allowed in part and rejected in part, the claimant may accept the amount allowed and sue for the balance unless he has executed a release of the entire claim. An action upon a claim rejected in whole or in part must be commenced within six months after the claimant receives written notice of such rejection.

7012. Every person who wilfully misstates or causes to be misstated any material fact in a claim presented pursuant to this chapter is guilty of a misdemeanor.

Section 2. Chapter 12 of Division 7 of Title 1 of the Government Code shall be applicable only to causes of action which accrue subsequent to its effective date.

Sections 3, et seq. [Repeal of existing statutes superseded and enactment of cross-references to this chapter].

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NOTE: Professor Van Alstyne is
commenting on the draft in which
the sections were numbered 6900,
et seq.

December 24, 1957

Prof. John McDonough
Law Revision Commission
Stanford, California

Dear John:

Please pardon any typographical errors in this letter; but our stenographic
personnel is on a holiday and this is a personally typed communication.
Hunt and peck, no less.

My comments on the revised drafts of the claims provisions follow:

1. The proposed constitutional amendment looks very good. My only
suggestion is that perhaps it might be made section 10 of Article XI,
thereby filling a gap in that article, and bringing the new provision into
physical proximity to the local government provisions which it is intended
to supercede.

2. Section 6900 - My attention was recently directed to the fact
that some improvement acts make provision for presentation of claims.
See, for example, section 7174 of the Streets and Highways Code. These
kinds of claims or "petitions" or "objections" are not the type which the
study had in mind. They must be made before the public improvement
proceeds, in order to fix a basis for the improvement assessment in advance.
Yet, they might possibly be regarded as within the scope of the new law
unless expressly excluded. Hence, I would recommend an additional sub-
section (h) be added to section 6900 to read:

(h) Claims governed by specific provisions of any street or
other public improvement act.

3. Section 6902. I view sympathetically any effort to try to put a
limitation upon the problem of overlapping claims provisions. The five
year limit here provided may be the answer. At least, this ought to give
ample time to lawyers to be thoroughly familiar with the new procedure.

4. Section 6904. It is my feeling that the matter of claims as a
condition to suit against public employees serves chiefly the function of
allowing early investigation by the employing entity, thereby serving as
a protection against unfounded liability under the respondeat superior
theory. In many cases, the investigation may establish that the entity is

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immune from liability. In any event, I believe the purpose here is notice.
No need for rejection of the claim exists; and it is somewhat anomalous to
conceive of the governing body rejecting or otherwise passing on a claim
not even addressed to it. Thus, I believe it would be best, as recommended
on p. 194 of the study, to move Govt. Code 2003 from its present place and
include it in the new statute. Any reference to claims against employees
would then be deleted from sec. 6904.

5. Section 6905. This provision seems to be worded in sufficiently
broad language to avoid the possibilities of inadvertent but purely
technical noncompliance which have cropped up in the case law. The
original draft I prepared was deficient in not having such a provision.

6. Section 6906. Since section 6905 quite properly requires only
the address of the claimant, I believe section 6906 should be amended to
change the expression "person presenting the claim" to "claimant or person
presenting the claim" at each point where the former expression appears
in the section. The claimant may not always be the person presenting the
claim.

I feel that the exception where the address is not given is a good provision.
Administratively, the governing board should be able to know without any
doubt if the waiver requirement applies or not. The decision should, in my
opinion, be one that could be made easily by simply examining the face of
the claim. As soon as any element of constructive notice enters the picture,
or any requirement of diligent search of telephone books or other records,
a possible basis for litigation is established. The requirement of the
claimant's address, in any event, is one not likely to be omitted by the
person who prepares the claim.

7. Section 6907. I like the "ninetieth day" wording.

8. Section 6909. The original draft, which excluded the failure to
file a claim from the estoppel principle, was an attempt to state in
substance the content of existing case law. It is my feeling that to
permit estoppel to excuse a non-filing would invite unfounded litigation.
Where a plausible basis for estoppel existed, the claimant could simply
bide his time until the statute of limitations was about to expire, and
then bring suit - and the entity in fact may not have had the benefit of
substantially prompt notice and investigation. At least, the necessity
that a claim be presented before suit is brought, even though untimely,
imposes some compulsion upon claimants to make an early filing, and thus
ensures a fair degree of protection to the entity.

I also feel some concern about the elimination of the earlier requirement
that actual notice to the entity be shown before estoppel can be imposed;
and that such notice be within the claim filing period. As it now reads,
the section seems to be an invitation to designing claimants to lull the
entity into a sense of security, deprive it of the benefits of early
investigation, and then hope to convince a jury that an estoppel should
excuse noncompliance with the claims procedure. The original draft at
least imposed some compulsion upon claimants to communicate informally

with responsible public officials within the claim presentation period, thereby giving actual (although not formal) notice of the claim.

9. Section 6911. I believe the "unless" clause is consistent with the intent of the original draft, and is probably a desirable clarifying amendment.

10. I am in agreement with the policy of placing the nonretroactive provision in a separate section and not in the code. I believe the publishers of the codes do give ample notice of this sort of thing to serve the purpose effectively.

11. One last comment. I strongly believe that it would be a mistake to place the claims statute in the Government Code. It should be in the Code of Civil Procedure, since such claims provisions are in one respect like a statute of limitations. In addition, practically all lawyers have copies of the CCP on their desks, but many do not have a Government Code handy. They use the CCP all the time. They would rapidly become familiar with its provisions if it were located there; but I am afraid that it would again prove to be somewhat of a trap in the Government Code.

This statute is essentially procedural, in my opinion, even though it relates to governmental entities. Thus, it should be treated as a procedural enactment. We can be sure that attorneys for governmental entities will be thoroughly familiar with the new law regardless of where it is placed. But, the experience of the last fifty years has shown that many lawyers are not familiar with the claims statutes; and even fewer laymen. I believe the location of the law is an extremely important consideration in attempting to prevent the sort of injustices that so frequently characterize the operation of existing claims provisions – many of which are already in the Government Code, but are still largely unknown.

Best wishes to you and the Commission on this very important project.

Sincerely yours,

/s/ Arvo Van Alstyne

Professor of Law