

February 20, 1959

MEMORANDUM

Re: Action of Senate Interim Judiciary
Committee on S. B. 166, A. B. 400,
A.B. 402, A.B. 404 and A.B. 405

S. B. 166

(Doctrine of Worthier Title)

The Senate Interim Judiciary Committee agreed to recommend to the standing committee that S. B. 166 be approved.

A. B. 400

(Taking of Vehicle Without Consent of Owner)

The Interim Committee approved Sections 1 and 2 of the bill. The Committee also approved Section 3 of the bill with the following amendment: On page 2 lines 4 and 5 substitute "self-propelled vehicle" for "automobile, bicycle, motorcycle or other vehicle." The Interim Committee agreed to recommend to the standing committee that A. B. 400, as thus amended, be approved.

The Law Revision Commission will amend A. B. 400 as proposed.

A. B. 402

(Driving While Intoxicated)

1. The Interim Committee approved Section 1 of the bill insofar as it repeals Section 367e of the Penal Code.

2. The Committee disapproved Section 2 of the bill, on the ground that "upon the highway" should remain in Vehicle Code Section 502.

The Committee decided that Section 367d should be retained in the Penal Code with the following amendment:

367d. Any person operating or driving an automobile, motorcycle or other motor vehicle, other than upon a highway, who becomes or is intoxicated while so engaged in operating or driving such automobile, motorcycle or other motor vehicle shall be guilty of a misdemeanor.

The reasons given by members of the Interim Committee for this action were as follows:

1. Senator Regan was of the view that if "upon the highway" were deleted from Vehicle Code Section 502, the result would be to give the State Highway Patrol jurisdiction to come on private property to enforce Section 502 against persons driving while intoxicated on such property.

2. Senator Grunsky was of the view that the Vehicle Code does not and should not contain any provisions making criminal conduct other than conduct upon a highway.

The Law Revision Commission considered the views of the Interim Committee at its February 1959 meeting. The Commission decided not to amend A. B. 402 before it is presented to the Assembly Judiciary Committee (Criminal) for the following reasons:

1. The jurisdiction of the highway patrol (or other law enforcement officers) is not limited to offenses committed upon highways; therefore the highway patrol would be no less authorized to make arrests

on private property under Section 367d of the Penal Code, as proposed to be amended, than it would under Section 502 of the Vehicle Code if the words "upon any highway" are deleted therefrom.

2. The Vehicle Code contains various sections making criminal conduct which occurs other than upon a highway*. The nearest example in point is that Section 501 which relates to the causing of bodily injury while driving under the influence of intoxicating liquor is not limited in terms to offenses committed "upon any highway." Moreover, by repealing Penal Code Section 367d and broadening Vehicle Code Section 502 to cover drunk driving other than upon a highway, A. B. 402 will make applicable to such drunk driving offenses the provisions of the Vehicle Code which make jail sentences mandatory for second drunk driving offenders and which require that judgments of conviction of all drunk driving offenders be sent to the Department of Motor Vehicles with consequent revocation of their drivers' licenses.

A. B. 404

(Grand Jury Law Recodification)

The Senate Interim Judiciary Committee agreed to recommend to the standing committee that A. B. 404 be approved.

* See, e.g., offenses not or not necessarily involving moving vehicles: §§ 230, 249.14, 503, 504. See, also, offenses involving moving vehicles not expressly containing limitation "upon any highway": §§ 481, 483, 484, 501.

A. B. 405

(New General Claims Statute)

At the meeting of February 4, 1959 the Senate Interim Judiciary Committee agreed upon the following:

1. On page 1, line 7 the title of Chapter 2 should be amended to read "Claims Against Local Public Entities."
2. Proposed Government Code Section 712 should be amended to provide that the governing body's notice be mailed to the person presenting the claim at the address given on the claim.
3. Proposed Government Code Section 713 should be amended to substitute "a residence or business address" for "the residence or business address" (lines 11 and 12 on page 4 of the bill).
4. Proposed Government Code Section 713 should be amended in such a way as to avoid the implication which might be drawn from the first sentence thereof that a complaint filed against an entity to which the statute is applicable would not be demurrable even though the pleader failed to allege compliance with the statute or facts excusing his failure to comply.
5. Subdivision (a) of proposed Government Code Section 715 should be amended as follows:

(a) Claimant was ~~less-than-sixteen-(16)-years-of~~
age a minor during all of such time or;

At its February, 1959 meeting the Law Revision Commission agreed to

accept all of these suggestions made by the Interim Committee and to amend A. B. 405 as follows:

1. Page 1, line 7 insert "Public" between "Local" and "Entities."
2. Page 3, lines 45 and 46 substitute "mailed to the person presenting the claim at the address of such person appearing on the claim written notice of its insufficiency" for "give the person presenting the claim written notice of its insufficiency."
3. Page 4, lines 1 through 6. Delete "When suit is brought against a local public entity on a cause of action for which this Chapter requires a claim to be presented, the local public entity may assert as a defense either that no claim was presented or that a claim as presented did not comply substantially with the requirements of Section 711, unless such defense has been waived."

NOTE: This amendment is designed to preserve the existing law, that a complaint filed against a public entity protected by a claims statute is demurrable unless it alleges compliance with the statute or facts excusing such compliance. The Commission believes that this will be made clear by eliminating the first sentence of proposed Section 713. No explicit provision to the effect that a complaint is demurrable which does not allege compliance with the claims statute or facts excusing such compliance would appear to be necessary in view both of the settled law to this effect and the fact that proposed Government Code Section 710 provides

explicitly that "No suit for money or damages may be brought . . . until a written claim therefor has been presented . . . and has been rejected in whole or in part."

The first sentence of proposed Government Code Section 713 is not really necessary; it merely served as a predicate for the operative language of the Section, specifying that defects in a claim are waived if notice is not given pursuant to Section 712, all of which is contained in the second sentence.

4. Page 4, line 11. Substitute "a" for "the" before "residence."

NOTE: The words "give" and "given" in the second sentence of proposed Government Code Section 713 should be changed to "mail" and "mailed" respectively. Thus, as revised, Section 713 will read as follows:

713. Any defense based upon a defect or omission in such a claim as presented is waived by failure of the governing body to mail notice of insufficiency with respect to such defect or omission as provided in Section 712, except that no notice need be mailed and no waiver shall result when the claim as presented fails to give a residence or business address of the person presenting it.

5. Page 4, line 37. Substitute "a minor" for "less than sixteen (16) years of age."

At its meeting on February 18, 1959 the Senate Interim Judiciary Committee gave further consideration to A. B. 405 and agreed upon the following:

1. Section 711 should be amended to require that the claim

be signed by the claimant. This was thought to be necessary to give some assurance that the claim would constitute a representation by the claimant and would be so regarded by him, thus giving some guaranty of its veracity. It was also suggested that the signature might facilitate prosecution of an offense under Penal Code Section 72.

Senator Grunsky commented that if this change were made it would be necessary to provide that a claim could be signed by another on behalf of a minor or a mentally incapacitated person.

2. The last paragraph of proposed Government Code Section 711 should be disapproved insofar as it permits amendment of a claim only "at any time before final action thereon is taken by the governing body of the local public entity."

At one point in the discussion it was suggested that a claimant should be permitted to amend his claim at any time before he has accepted a payment of the claim, even though the time for original presentation of the claim has elapsed. It was then suggested that a distinction might be taken with respect to amendments made after the time for presentation has elapsed as between amendments made only to correct clerical errors in the original claim and amendments which would alter the claim in substance. At the end of the discussion, however, the consensus of opinion seemed to be that the last paragraph of Section 711 should read as follows:

A claim may be amended during the time within which it could have been presented. The amendment shall be considered a part of the original claim for all purposes.

3. Subdivision (c) of proposed Government Code Section 716 should be revised to make it clear that the governing body may "require" the claimant to accept the amount allowed in settlement of the entire claim only in the sense that it may make this a condition of receiving payment of the amount allowed.

NOTE: At its February meeting the Law Revision Commission had decided that the last sentence of Subdivision (c) of Section 716 should read as follows:

If the governing body allows the claim in part and rejects it in part it may require the claimant, if he accepts the amount allowed, to accept it in settlement of the entire claim.

I overlooked this Commission action in presenting the matter to the Interim Committee.

4. Subsection (a) of proposed Government Code Section 718 is undesirable. The allowance of a claim in full by the governing body should not operate, as does a judgment, to preclude the making of a larger claim. Only the claimant's acceptance of the amount allowed should have this effect, as is provided in subsection (b). Hence, subsection (a) should read as follows:

(a) If the claim is allowed in full and the claimant accepts the amount allowed, no suit may be maintained on any part of the cause of action to which the claim relates.

5. There was considerable discussion of proposed Government Code Section 719. One thought expressed was that this provision entirely undermines the basic notion of the claims statute, that a person may not sue a public entity unless he has given it notice of, inter alia, the nature and extent of his damage or injury and the amount claimed. Another thought expressed was that a distinction should perhaps be taken between general and special damages, the principle of Section 719 being made applicable only to the former. I do not have a clear recollection of the action finally taken by the Committee on Section 719, but I believe that it was to the effect that no agreement could be reached among the members of the Committee present and that the subject ought be given further consideration by the Commission.
6. Considerable question was also raised about proposed Government Code Section 720. It seemed clear that all members of the Committee believe that a public entity should be estopped in some cases; the doubts raised were as to whether it is either necessary or wise to try to cover this matter in the statute. Senator Christianson took the position that Section 720 is not necessary because general equitable principles of estoppel are applicable

to all causes of action and would be applicable here, as is shown by Farrell v. County of Placer, 23 Cal.2d 624, 145 P.2d 570 (1944). He expressed concern that by setting out in the statute certain factors which could give rise to estoppel we would be precluding the court from raising an estoppel on the basis of other facts which should estop the entity. I suggested, in response, (1) that the words "reasonably and in good faith relied" are intended to be and were broad enough to constitute a statutory codification of all of the equitable principles of estoppel which would otherwise be applied; (2) that if the statute does not contain a section on estoppel a court might draw the inference that the Legislature deliberately omitted it, intending thereby to overrule Farrell v. County of Placer, and (3) that the research consultant's report shows that the district court of appeal decisions following Farrell v. County of Placer have not been harmonious with respect to the extent to which the doctrine of estoppel is applicable to claims statute cases. Senator Christianson did not seem to find these responses persuasive.

Senator Grunsky expressed concern that the enactment of Section 720 would constitute a kind of invitation to claimants to assert estoppel in all cases, particularly since the statute speaks in terms of "any representation, express or implied." He suggested that any time an insurance adjustor discusses a matter with a potential claimant it might be inferred that he is

impliedly representing that the claimant will be paid. At the end of the discussion it was clear that at least a majority of the members of the Interim Committee present did not approve proposed Section 720. However, no formal action was taken.

7. Proposed Government Code Section 721 was not approved.

Senator Grunsky took the position that by making the time for filing suit begin to run from the date of presentation of the claim the Commission had selected a date which was inherently uncertain and susceptible of much dispute, particularly in cases where the claim is presented by mail. He suggested that the period be one year and begin to run from the date of accrual of the cause of action. Senator Christianson for some time expressed preference for having the ordinary statute of limitations apply to claims against public entities, running from the ordinary dates of accrual. At the end of the discussion, however, the consensus of opinion among those present appeared to be that the time should begin to run from the date of rejection of the claim and should be either six months, nine months or one year.