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SUPPLEMENT TO MEMORANDUM NO. 37 (1960)

Subject: Claims Against Public Officers and Employees.

Attached is a letter from Mr. Stanton to Professor Van Alstyne. Mr. Stanton asked that we reproduce this letter and distribute it to you prior to the meeting.

Respectfully submitted,

John H. DeMoully
Executive Secretary

April 12, 1960

Professor Arvo Van Alstyne
School of Law
University of California at Los Angeles
Los Angeles, California

Re: Claims against Public Officers and Employees

Dear Arvo:

As indicated by the enclosed memorandum, I have some rather definite ideas on the above subject which I expressed to the Commission at its March meeting and which I have now reduced to writing.

I should appreciate your frank reactions to the points covered in this memorandum, if possible prior to the April meeting, which is set for April 21-22 and 23.

In addition to the matters covered in the memorandum I direct your attention to the following matters:

1. In United States v. Gilman, 347 U. S. 507, the United States Supreme Court had before it the issue as to whether the United States could recover indemnity from one of its employees after it had been held liable under the Federal Tort Claims Act for the negligence of the employee. The Court held that such indemnity could not be recovered, basing its decision upon the conclusion that the matter of whether or not the Government should undertake to recover indemnity from a negligent employee presented policy questions which should be settled by Congress rather than by the courts. The Court refers to the right of an employer to sue his employee as "a form of discipline" and it disposes of the argument that such a suit would probably only be brought when the employee carried insurance by saying that any decision it made could have no such limitation "since we deal only with a rule of indemnity which is utterly independent of any underwriting of the liability." The Court suggests that "the cost in the morale and efficiency of employees would be too high a price to pay for the rule of indemnity the petitioner now asks us to write into the Tort Claims Act." In a footnote, the Court refers to the testimony of an Assistant Attorney General at hearings before the House Judiciary Committee in which it was pointed out that "over long years of experience" the Federal Government had concluded that unless it was willing to go in and defend employees charged with negligence "the consequence is a very real attack upon the morale of the services".

While the issue before the Supreme Court in the Gilman case is somewhat different from the issue before the Commission, and it may be one that we will not reach fully until we work on the governmental immunity project, I feel that the considerations which were given weight by the Court

in that case are considerations to which the Commission should give serious attention when it acts on the matter of repealing Sections 801 and 803 of the Government Code.

2. In Lehmuth v. Long Beach Unified School District, 53 A.C. 551, the California Supreme Court affirmed two personal injury verdicts, one in the amount of $5,178 and the other in the amount of $277,844, against a school district, which verdicts were based, according to the Court, upon a finding that the district's employees had "negligently supervised" the activities of three students, thereby causing the injuries to the plaintiffs. The negligence consisted of failing to furnish these students with safety chains for a trailer. The testimony on this issue was in conflict, with the testimony of witnesses presented by the district being to the effect that "safety chains were used and were kept in the trailer," and the testimony of the students (who were highly interested witnesses, since they escaped liability through their testimony) being to the effect that they were not furnished with any chains (53 A.C. 559).

The district employees in this case who negligently supervised these students are fortunate in that they were working for a school district and were therefore entitled to the benefit of Section 1044 of the Education Code. If they had not been employed by a school district--for example, if they had been employed by a county superintendent of schools or by a State College--they would not necessarily be protected by their employer's liability insurance, and in the absence of such insurance protection, their employer would have had a claim over against them for almost $283,000. I doubt that the employer would ever undertake to enforce such a claim, since if it did, it would destroy the morale not only of the employees involved but of every one of its other employees, but if we are to have a government of laws rather than of men, inequitable rules of this sort should be abolished rather than left on the books on the chance that, as a practical matter, they will not be enforced.

In requesting your reactions I wish to make it clear that I am not requesting that you pursue the points made with further research. I have yet to convince the Commission that the points require further study at this time, and I may never do so. I know, however, that your reactions as an authority in this field will have an important bearing upon my final views in the matter, and I am sure that this will also be true as to the other Commissioners.

Sincerely yours,

THOMAS E. STANTON, JR.

TES:hk
Enclosure
cc: John H. DeMoully, Esq.
Hon. Roy A. Gustafson