June 8, 1960

Memorandum No. 53 (1960)

Subject: Study No. 37(L) - Claims Against Public Officers and Employees.

Attached as Exhibit I is a tentative recommendation and proposed statute relating to claims against public officers and employees.

Consideration should be given to deleting the last paragraph of the Recommendation (just preceeding the proposed statute). In its previous discussions of this study, the Commission indicated that something along these lines should be included in the first draft of the Recommendation.

The material in Exhibit II is included as a possible substitute for the last paragraph of the Recommendation in case the Commission wishes to present and to attempt to rebut the possible arguments that could be made for the retention of the personnel claims statutes. This approach is not recommended by the staff. However, the material is presented here with the hope that this matter can be disposed of at the June meeting if the Commission decides that it wants to take this approach.

Respectfully submitted

John H. DeMoully
Executive Secretary

EXHIBIT I

RECOMMENDATION OF CALIFORNIA LAW REVISION COMMISSION

relating to

Presentation of Claims Against Public Officers and Employees

Background

In 1956 the Law Revision Commission was authorized and directed by the Legislature to make a study to determine whether the various provisions of law relating to the filing of claims against public bodies and public employees should be revised.[1] Upon recommendation of the Commission, legislation was enacted in 1959 creating a uniform procedure governing the presentation of claims against local public entities. At that time the Commission reported that it had not had an opportunity to make a comprehensive study of what are referred to herein as "personnel claims provisions" - i.e., the statutes and county and city charters and ordinances which bar suit against a public officer or employee unless a "claim" relating thereto is presented within a relatively short time after the claimant's cause of action has accrued. Since then the Commission has made such a study and its recommendations are presented herein.

[1] Cal. Stat. 1956, res. c. 35, p. 256.

Recommendation

The Law Revision Commission recommends that all personnel claims provisions be repealed. The basic reason for this recommendation is that the underlying rationale of a claim statute simply has no logical application to a public officer or employee. Claim statutes are designed to give reasonably prompt notice of a potential liability to a defendant who might otherwise be unaware of its existence. Thus, as the Commission stated in its earlier report, a claims statute is justifiable as applied to a public entity which, but for such protection, might frequently find itself sued on stale claims of which it had not theretofore been aware. This rationale obviously has no application when the defendant is the public officer or employee who was himself the actor in the transaction out of which a lawsuit later arises. He plainly had notice of his potential liability from the outset. There is no more justification in terms of prompt notice of potential liability for requiring a plaintiff to present a claim as a condition of suing a public officer or employee than there is when suit is brought against a nonpublic employee or any other defendant except a public entity.

An additional reason for the Commission's recommendation is that, as its research consultant's study shows, the existing personnel claims provisions are ambiguous, inconsistent and overlapping. They tend to operate as a trap for an unwary plaintiff. This is particularly likely to happen when the circumstances do not disclose that the public officer or employee was acting as such in the transaction involved and the

plaintiff does not discover this fact until the time for presenting a claim has elapsed.

As further supporting its recommendation, the Commission notes that only one other state has enacted a personnel claims provision and its statute is of limited scope.

It has been suggested that the purpose of personnel claims provisions is to limit the substantive liability of public officers and employees and hence that they should not be repealed unless other legislative protection, at least co-extensive in scope, is concomitantly recommended, e.g., broadened provisions requiring the state and local public entities to insure their officers and employees against liability or to provide legal counsel for them at public expense. It seems difficult to believe, however, that the various legislative bodies which have enacted personnel claims provisions would have selected so indirect and uncertain a method of limiting the substantive liability of public officers and employees -- a method which would provide no protection to the defendant in those cases (probably a substantial majority) in which the claims provision was complied with and would protect a public officer or employee only in those cases where a plaintiff having a meritorious claim found himself impaled on a technical legal requirement. In any event, recommendations relating to providing liability insurance and legal counsel for public officers and employees at public expense are beyond the scope of the authority given to the Commission in connection with the present study.

EXHIBIT II

A number of justifications have been urged in support of the personnel claims procedure. It has been stated that the principal object of the procedure is to insure that the public officer or employee concerned may have the fullest preliminary protection against groundless claims. The argument is made that to require such claims to be litigated in each case before the exact basis of the claim becomes apparent will impose an unreasonable financial burden upon the public officer or employee. This justification ignores the fact that prior to trial the public officer or employee can determine the basis of the claim against him by means of the discovery procedures. Also public personnel can be protected against unfounded litigation by other means less likely to curtail the remedies of deserving plaintiffs. For example, insurance can be provided by the public entity to cover this risk or counsel to defend the public officer or employee can be provided at public expense. To some extent, these protections are already afforded under existing statutes.[1]

It has also been urged in justification of personnel claims statutes that these statutes provide the employing entity with an opportunity to investigate the merits of the claim and to arrive at a settlement, thus

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[1] The consultant's study points out that the existing statutes providing for a free defense of public officers and employees are ambiguous and in need of revision. The Commission agrees that these statutes are in need of revision but considered such revision beyond the scope of this study as authorized by the Legislature.

avoiding litigation. To the extent that public entities themselves are potentially liable, no need exists for a separate procedure governing claims against public officers and employees. The plaintiff must present his claim to the public entity in accordance with the general claims statute enacted in 1959 or be barred from action thereon against the public entity.

A more plausible justification for the personnel claims procedures is found in the fact that some, but not all, public entities have a statutory duty to provide free defense counsel for their officers and employees. Public entities are also authorized to obtain liability insurance for their personnel. A few statutes provide that in certain exceptional cases a public entity is required to satisfy a judgment secured against an officer or employee on his personal liability. These factors give the public entity a financial interest in all claims against its officers and employees, even though the entity may be immune from liability as an employer under the doctrine of sovereign or governmental immunity. However, in most instances where a claim is based on negligence of a public officer or employee in the course and scope of his employment, the employing entity will in all likelihood receive actual notice of the accident through internal administrative channels or by informal means long before receiving a formal claim pursuant to statute. At the latest, when suit is brought and the officer or employee requests the services of public counsel in his behalf, or a claim is made to the insurance carrier, notice will be received by the public entity. Thus, it seems reasonably certain that the employing entity will normally receive actual notice of substantially all claims of negligence on the part of its employees

and officers in due course, although possibly not always within the short period of time prescribed by the statutory claims procedure.

The personnel claims provisions, which place public personnel in a specially privileged position, have also been justified on the ground that public personnel are exposed to a greater probability of personally paying for their personal negligence or misconduct than private employees. This is because, under the doctrine of sovereign or governmental immunity, the public employer may not be liable and in such case the judgment obtained against the public officer or employee must be paid by him alone. It must be conceded that, as a practical matter, a private employee has less cause for concern about his personal liability for acts committed in the performance of his employment. Action is almost always brought against his employer. If recovery is obtained from the private employer, the employer rarely seeks to recover from the employee. This is not to say, however, that there are not occasions when the private employee is forced to use his own funds to pay a judgment arising from an act committed in the course of his employment.

Granted that public personnel are subject to a greater risk of personally having to pay a judgment, it seems difficult to believe that the various legislative bodies which have enacted personnel claims provisions would have selected so indirect and uncertain a method of limiting the substantive liability of public officers and employees -- a method that would provide no protection to the defendant in those cases (probably a substantial majority) in which the claims provision was complied with and would protect a public officer or employee only in those cases where a plaintiff having a meritorious claim found himself

impaled on a technical legal requirement. More effective ways of providing public personnel with greater protection would be to require free defense of public officers and employees, to provide public personnel with liability insurance or to require the employing entity to satisfy a judgment secured against a public officer or employee. In any event, recommendations relating to these matters are beyond the scope of the authority given to the Commission in connection with the present study.

(37) May 27, 1960

Proposed Legislation

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

An act to amend Section 313 of the Code of Civil Procedure, to repeal Sections 800, 801, 802 and 803 of the Government Code and to add Sections 800 and 801 to Chapter 3 of Division 3.5 of Title 1 of the Government Code, relating to claims against public officers, agents and employees.

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

SECTION 1. Sections 800, 801, 802 and 803 of the Government Code are hereby repealed.

SEC. 2. Sections 800 and 801 are added to Chapter 3 of Division 3.5 of Title 1 of the Government Code, to read:

800. A claim need not be presented as a prerequisite to the commencement of an action against a public officer, agent or employee to enforce his personal liability.

801. Any charter, ordinance or regulation heretofore or hereafter adopted by a local public entity, as defined in Section 700 of this code, to the extent that it requires the presentation of a claim as a prerequisite to the commencement of an action against a public officer, agent or employee to enforee his personal liability, is invalid.

SEC. 3. Section 313 of the Code of Civil Procedure is amended to read:

313. The general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the State [~~,-and-against-the-officers-and-employees thereof,~~] is prescribed by Division 3.5 (commencing with Section 600) of Title 1 of the Government Code.

SEC. 4. This act applies only to causes of action heretofore or hereafter accruing that are not barred on the effective date of this act. Nothing in this act shall be deemed to allow an action on, or to permit reinstatement of, a cause of action that has been barred prior to the effective date of this act.